

1 **Senate Bill No. 10**

2 (By Senators Jenkins and Plymale)

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4 [Introduced February 13, 2013; referred to the Committee on
5 Government Organization; and then to the Committee on the
6 Judiciary.]
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11 A BILL to amend and reenact §30-3-14 of the Code of West Virginia,
12 1931, as amended; to amend and reenact §30-4-21 of said code;
13 and to amend and reenact §30-14-12a of said code, all relating
14 to the Board of Medicine, Board of Dental Examiners and the
15 Board of Osteopathy; and permitting the boards to
16 independently initiate disciplinary proceedings in certain
17 circumstances.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §30-3-14 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted; that §30-4-21 of said code be amended and
21 reenacted; and that §30-14-12a of said code be amended and
22 reenacted, all to read as follows:

23 **ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.**

1 §30-3-14. Professional discipline of physicians and podiatrists;
2 reporting of information to board pertaining to
3 medical professional liability and professional
4 incompetence required; penalties; grounds for license
5 denial and discipline of physicians and podiatrists;
6 investigations; physical and mental examinations;
7 hearings; sanctions; summary sanctions; reporting by
8 the board; reapplication; civil and criminal
9 immunity; voluntary limitation of license; probable
10 cause determinations.

11 (a) The board may independently initiate disciplinary
12 proceedings as well as initiate disciplinary proceedings based on
13 information received from medical peer review committees,
14 physicians, podiatrists, hospital administrators, professional
15 societies and others.

16 The board may initiate investigations as to professional
17 incompetence or other reasons for which a licensed physician or
18 podiatrist may be adjudged unqualified based upon criminal
19 convictions; complaints by citizens, pharmacists, physicians,
20 podiatrists, peer review committees, hospital administrators,
21 professional societies or others; or unfavorable outcomes arising
22 out of medical professional liability. The board shall initiate an

1 investigation if it receives notice that three or more judgments or
2 any combination of judgments and settlements resulting in five or
3 more unfavorable outcomes arising from medical professional
4 liability have been rendered or made against the physician or
5 podiatrist within a five-year period. The board may not consider
6 any judgments or settlements as conclusive evidence of professional
7 incompetence or conclusive lack of qualification to practice.

8 (b) Upon request of the board, any medical peer review
9 committee in this state shall report any information that may
10 relate to the practice or performance of any physician or
11 podiatrist known to that medical peer review committee. Copies of
12 the requests for information from a medical peer review committee
13 may be provided to the subject physician or podiatrist if, in the
14 discretion of the board, the provision of ~~such~~ copies will not
15 jeopardize the board's investigation. In the event that copies are
16 provided, the subject physician or podiatrist is allowed fifteen
17 days to comment on the requested information and ~~such~~ the comments
18 must be considered by the board.

19 The chief executive officer of every hospital shall, within
20 sixty days after the completion of the hospital's formal
21 disciplinary procedure and also within sixty days after the
22 commencement of and again after the conclusion of any resulting
23 legal action, report in writing to the board the name of any member

1 of the medical staff or any other physician or podiatrist
2 practicing in the hospital whose hospital privileges have been
3 revoked, restricted, reduced or terminated for any cause, including
4 resignation, together with all pertinent information relating to
5 such action. The chief executive officer shall also report any
6 other formal disciplinary action taken against any physician or
7 podiatrist by the hospital upon the recommendation of its medical
8 staff relating to professional ethics, medical incompetence,
9 medical professional liability, moral turpitude or drug or alcohol
10 abuse. Temporary suspension for failure to maintain records on a
11 timely basis or failure to attend staff or section meetings need
12 not be reported. Voluntary cessation of hospital privileges for
13 reasons unrelated to professional competence or ethics need not be
14 reported.

15 ~~Any~~ A managed care organization operating in this state which
16 provides a formal peer review process shall report in writing to
17 the board, within sixty days after the completion of any formal
18 peer review process and also within sixty days after the
19 commencement of and again after the conclusion of any resulting
20 legal action, the name of any physician or podiatrist whose
21 credentialing has been revoked or not renewed by the managed care
22 organization. The managed care organization shall also report in
23 writing to the board any other disciplinary action taken against a

1 physician or podiatrist relating to professional ethics,
2 professional liability, moral turpitude or drug or alcohol abuse
3 within sixty days after completion of a formal peer review process
4 which results in the action taken by the managed care organization.
5 For purposes of this subsection, "managed care organization" means
6 a plan that establishes, operates or maintains a network of health
7 care providers who have entered into agreements with and been
8 credentialed by the plan to provide health care services to
9 enrollees or insureds to whom the plan has the ultimate obligation
10 to arrange for the provision of or payment for health care services
11 through organizational arrangements for ongoing quality assurance,
12 utilization review programs or dispute resolutions.

13 Any professional society in this state comprised primarily of
14 physicians or podiatrists which takes formal disciplinary action
15 against a member relating to professional ethics, professional
16 incompetence, medical professional liability, moral turpitude or
17 drug or alcohol abuse shall report in writing to the board within
18 sixty days of a final decision the name of the member, together
19 with all pertinent information relating to the action.

20 Every person, partnership, corporation, association, insurance
21 company, professional society or other organization providing
22 professional liability insurance to a physician or podiatrist in
23 this state, including the State Board of Risk and Insurance

1 Management, shall submit to the board the following information
2 within thirty days from ~~any~~ a judgment or settlement of a civil or
3 medical professional liability action excepting product liability
4 actions: The name of the insured; the date of ~~any~~ judgment or
5 settlement; whether ~~any~~ an appeal has been taken on the judgment
6 and, if so, by which party; the amount of ~~any~~ settlement or
7 judgment against the insured; and other information required by the
8 board.

9 Within thirty days from the entry of an order by a court in a
10 medical professional liability action or other civil action in
11 which a physician or podiatrist licensed by the board is determined
12 to have rendered health care services below the applicable standard
13 of care, the clerk of the court in which the order was entered
14 shall forward a certified copy of the order to the board.

15 Within thirty days after a person known to be a physician or
16 podiatrist licensed or otherwise lawfully practicing medicine and
17 surgery or podiatry in this state or applying to be licensed is
18 convicted of a felony under the laws of this state or of ~~any~~ a
19 crime under the laws of this state involving alcohol or drugs in
20 any way, including ~~any~~ a controlled substance under state or
21 federal law, the clerk of the court of record in which the
22 conviction was entered shall forward to the board a certified true
23 and correct abstract of record of the convicting court. The

1 abstract shall include the name and address of the physician or
2 podiatrist or applicant, the nature of the offense committed and
3 the final judgment and sentence of the court.

4 Upon a determination of the board that there is probable cause
5 to believe that any person, partnership, corporation, association,
6 insurance company, professional society or other organization has
7 failed or refused to make a report required by this subsection, the
8 board shall provide written notice to the alleged violator stating
9 the nature of the alleged violation and the time and place at which
10 the alleged violator shall appear to show good cause why a civil
11 penalty should not be imposed. The hearing shall be conducted in
12 accordance with the provisions of article five, chapter
13 twenty-nine-a of this code. After reviewing the record of the
14 hearing, if the board determines that a violation of this
15 subsection has occurred, the board shall assess a civil penalty of
16 not less than \$1,000 nor more than \$10,000 against the violator.
17 The board shall notify ~~any~~ the person so assessed of the assessment
18 in writing and the notice shall specify the reasons for the
19 assessment. If the violator fails to pay the amount of the
20 assessment to the board within thirty days, the Attorney General
21 may institute a civil action in the circuit court of Kanawha County
22 to recover the amount of the assessment. In ~~any~~ a civil action,
23 the court's review of the board's action shall be conducted in

1 accordance with the provisions of section four, article five,
2 chapter twenty-nine-a of this code. Notwithstanding any other
3 provision of this article to the contrary, when there are
4 conflicting views by recognized experts as to whether ~~any~~ alleged
5 conduct breaches an applicable standard of care, the evidence must
6 be clear and convincing before the board may find that the
7 physician or podiatrist has demonstrated a lack of professional
8 competence to practice with a reasonable degree of skill and safety
9 for patients.

10 Any person may report to the board relevant facts about the
11 conduct of any physician or podiatrist in this state which in the
12 opinion of that person amounts to medical professional liability or
13 professional incompetence.

14 The board shall provide forms for filing reports pursuant to
15 this section. Reports submitted in other forms shall be accepted
16 by the board.

17 The filing of a report with the board pursuant to ~~any~~ a
18 provision of this article, ~~any~~ an investigation by the board or ~~any~~
19 a disposition of a case by the board does not preclude ~~any~~ an
20 action by a hospital, other health care facility or professional
21 society comprised primarily of physicians or podiatrists to
22 suspend, restrict or revoke the privileges or membership of the
23 physician or podiatrist. Notwithstanding any provision of this

1 code to the contrary, the board may independently initiate
2 disciplinary proceedings based on a report or information from an
3 agent or investigator of the Board of Pharmacy related to data from
4 the Controlled Substances Monitoring Program.

5 (c) The board may deny an application for license or other
6 authorization to practice medicine and surgery or podiatry in this
7 state and may discipline a physician or podiatrist licensed or
8 otherwise lawfully practicing in this state who, after a hearing,
9 has been adjudged by the board as unqualified due to any of the
10 following reasons:

11 (1) Attempting to obtain, obtaining, renewing or attempting to
12 renew a license to practice medicine and surgery or podiatry by
13 bribery, fraudulent misrepresentation or through known error of the
14 board;

15 (2) Being found guilty of a crime in any jurisdiction which
16 ~~offense~~ is a felony, involves moral turpitude or directly relates
17 to the practice of medicine. ~~Any~~ A plea of nolo contendere is a
18 conviction for ~~the~~ purposes of this subdivision;

19 (3) False or deceptive advertising;

20 (4) Aiding, assisting, procuring or advising ~~any~~ an
21 unauthorized person to practice medicine and surgery or podiatry
22 contrary to law;

23 (5) Making or filing a report that the person knows to be

1 false; intentionally or negligently failing to file a report or
2 record required by state or federal law; willfully impeding or
3 obstructing the filing of a report or record required by state or
4 federal law; or inducing another person to do any of the foregoing.

5 The reports and records covered in this subdivision mean only those
6 that are signed in the capacity as a licensed physician or
7 podiatrist;

8 (6) Requesting, receiving or paying directly or indirectly a
9 payment, rebate, refund, commission, credit or other form of profit
10 or valuable consideration for the referral of patients to ~~any~~ a
11 person or entity in connection with providing medical or other
12 health care services or clinical laboratory services, supplies of
13 any kind, drugs, medication or ~~any~~ other medical goods, services or
14 devices used in connection with medical or other health care
15 services;

16 (7) Unprofessional conduct by ~~any~~ a physician or podiatrist in
17 referring a patient to ~~any~~ a clinical laboratory or pharmacy in
18 which the physician or podiatrist has a proprietary interest unless
19 the physician or podiatrist discloses in writing ~~such~~ the interest
20 to the patient. The written disclosure shall indicate that the
21 patient may choose any clinical laboratory for purposes of having
22 ~~any~~ laboratory work or assignment performed or any pharmacy for
23 purposes of purchasing ~~any~~ a prescribed drug or ~~any~~ other medical

1 goods or devices used in connection with medical or other health
2 care services;

3 As used in this subdivision, "proprietary interest" does not
4 include an ownership interest in a building in which space is
5 leased to a clinical laboratory or pharmacy at the prevailing rate
6 under a lease arrangement that is not conditional upon the income
7 or gross receipts of the clinical laboratory or pharmacy;

8 (8) Exercising influence within a patient-physician
9 relationship for the purpose of engaging a patient in sexual
10 activity;

11 (9) Making a deceptive, untrue or fraudulent representation in
12 the practice of medicine and surgery or podiatry;

13 (10) Soliciting patients, either personally or by an agent,
14 through the use of fraud, intimidation or undue influence;

15 (11) Failing to keep written records justifying the course of
16 treatment of a patient including, but not limited to, patient
17 histories, examination and test results and treatment rendered, if
18 any;

19 (12) Exercising influence on a patient in such a way as to
20 exploit the patient for financial gain of the physician or
21 podiatrist or of a third party. Any influence includes, but is not
22 limited to, the promotion or sale of services, goods, appliances or
23 drugs;

1 (13) Prescribing, dispensing, administering, mixing or
2 otherwise preparing a prescription drug, including ~~any~~ a controlled
3 substance under state or federal law, other than in good faith and
4 in a therapeutic manner in accordance with accepted medical
5 standards and in the course of the physician's or podiatrist's
6 professional practice. ~~Provided, That~~ A physician who discharges
7 his or her professional obligation to relieve the pain and
8 suffering and promote the dignity and autonomy of dying patients in
9 his or her care and, in so doing, exceeds the average dosage of a
10 pain relieving controlled substance, as defined in Schedules II and
11 III of the Uniform Controlled Substance Act, does not violate this
12 article;

13 (14) Performing ~~any~~ a procedure or prescribing ~~any~~ a therapy
14 that, by the accepted standards of medical practice in the
15 community, would constitute experimentation on human subjects
16 without first obtaining full, informed and written consent;

17 (15) Practicing or offering to practice beyond the scope
18 permitted by law or accepting and performing professional
19 responsibilities ~~that~~ the person knows or has reason to know he or
20 she is not competent to perform;

21 (16) Delegating professional responsibilities to a person when
22 the physician or podiatrist delegating the responsibilities knows
23 or has reason to know that the person is not qualified by training,

1 experience or licensure to perform them;

2 (17) Violating ~~any~~ a provision of this article or a rule or
3 order of the board or failing to comply with a subpoena or subpoena
4 duces tecum issued by the board;

5 (18) Conspiring with any other person to commit an act or
6 committing an act that would tend to coerce, intimidate or preclude
7 another physician or podiatrist from lawfully advertising his or
8 her services;

9 (19) Gross negligence in the use and control of prescription
10 forms;

11 (20) Professional incompetence; or

12 (21) The inability to practice medicine and surgery or
13 podiatry with reasonable skill and safety due to physical or mental
14 impairment, including deterioration through the aging process, loss
15 of motor skill or abuse of drugs or alcohol. A physician or
16 podiatrist adversely affected under this subdivision shall be
17 afforded an opportunity at reasonable intervals to demonstrate that
18 he or she may resume the competent practice of medicine and surgery
19 or podiatry with reasonable skill and safety to patients. In any
20 proceeding under this subdivision, neither the record of
21 proceedings nor any orders entered by the board shall be used
22 against the physician or podiatrist in any other proceeding.

23 (d) The board shall deny ~~any~~ an application for a license or

1 other authorization to practice medicine and surgery or podiatry in
2 this state ~~to any applicant who,~~ and shall revoke the license of
3 ~~any~~ a physician or podiatrist licensed or otherwise lawfully
4 practicing within this state who is found guilty by ~~any~~ a court of
5 competent jurisdiction of ~~any~~ a felony involving prescribing,
6 selling, administering, dispensing, mixing or otherwise preparing
7 ~~any~~ a prescription drug, including ~~any~~ a controlled substance under
8 state or federal law, for other than generally accepted therapeutic
9 purposes. Presentation to the board of a certified copy of the
10 guilty verdict or plea rendered in the court is sufficient proof
11 ~~thereof~~ for the purposes of this article. A plea of nolo
12 contendere has the same effect as a verdict or plea of guilt. Upon
13 application of a physician that has had his or her license revoked
14 because of a drug related felony conviction, upon completion of any
15 sentence of confinement, parole, probation or other court-ordered
16 supervision and full satisfaction of ~~any~~ fines, judgments or other
17 fees imposed by the sentencing court, the board may issue the
18 applicant a new license upon a finding that the physician is,
19 except for the underlying conviction, otherwise qualified to
20 practice medicine. ~~Provided, That~~ The board may place whatever
21 terms, conditions or limitations it deems appropriate upon a
22 physician licensed pursuant to this subsection.

23 (e) The board may refer ~~any~~ cases coming to its attention to

1 an appropriate committee of an appropriate professional
2 organization for investigation and report. Except for complaints
3 related to obtaining initial licensure to practice medicine and
4 surgery or podiatry in this state by bribery or fraudulent
5 misrepresentation, ~~any~~ a complaint filed more than two years after
6 the complainant knew or, in the exercise of reasonable diligence,
7 should have known of the existence of grounds for the complaint,
8 shall be dismissed. ~~Provided, That~~ In cases of conduct alleged to
9 be part of a pattern of similar misconduct or professional
10 incapacity that, if continued, would pose risks of a serious or
11 substantial nature to the physician's or podiatrist's current
12 patients, the investigating body may conduct a limited
13 investigation related to the physician's or podiatrist's current
14 capacity and qualification to practice and may recommend
15 conditions, restrictions or limitations on the physician's or
16 podiatrist's license to practice that it considers necessary for
17 the protection of the public. Any report shall contain
18 recommendations for any necessary disciplinary measures and shall
19 be filed with the board within ninety days of any referral. The
20 recommendations shall be considered by the board and the case may
21 be further investigated by the board. The board, after full
22 investigation, shall take whatever action it considers appropriate,
23 as provided in this section.

1 (f) The investigating body, as provided in subsection (e) of
2 this section, may request and the board, under any circumstances,
3 may require a physician or podiatrist or person applying for
4 licensure or other authorization to practice medicine and surgery
5 or podiatry in this state to submit to a physical or mental
6 examination by a physician or physicians approved by the board. A
7 physician or podiatrist submitting to an examination has the right,
8 at his or her expense, to designate another physician to be present
9 at the examination and make an independent report to the
10 investigating body or the board. The expense of the examination
11 shall be paid by the board. ~~Any~~ An individual who applies for or
12 accepts the privilege of practicing medicine and surgery or
13 podiatry in this state is considered to have given his or her
14 consent to submit to all examinations when requested to do so in
15 writing by the board and to have waived all objections to the
16 admissibility of the testimony or examination report of any
17 examining physician on the ground that the testimony or report is
18 privileged communication. If a person fails or refuses to submit
19 to an examination under circumstances which the board finds are not
20 beyond his or her control, failure or refusal is prima facie
21 evidence of his or her inability to practice medicine and surgery
22 or podiatry competently and in compliance with the standards of
23 acceptable and prevailing medical practice.

1 (g) In addition to any other investigators it employs, the
2 board may appoint one or more licensed physicians to act for it in
3 investigating the conduct or competence of a physician.

4 (h) In every disciplinary or licensure denial action, the
5 board shall furnish the physician or podiatrist or applicant with
6 written notice setting out with particularity the reasons for its
7 action. Disciplinary and licensure denial hearings shall be
8 conducted in accordance with the provisions of article five,
9 chapter twenty-nine-a of this code. However, hearings shall be
10 heard upon sworn testimony and the rules of evidence for trial
11 courts of record in this state shall apply to all hearings. A
12 transcript of all hearings under this section shall be made and the
13 respondent may obtain a copy of the transcript at his or her
14 expense. The physician or podiatrist has the right to defend
15 against ~~any~~ a charge by the introduction of evidence, the right to
16 be represented by counsel, the right to present and cross-examine
17 witnesses and the right to have subpoenas and subpoenas duces tecum
18 issued on his or her behalf for the attendance of witnesses and the
19 production of documents. The board shall make all its final
20 actions public. The order shall contain the terms of all action
21 taken by the board.

22 (i) In disciplinary actions in which probable cause has been
23 found by the board, the board shall, within twenty days of the date

1 of service of the written notice of charges or sixty days prior to
2 the date of the scheduled hearing, whichever is sooner, provide the
3 respondent with the complete identity, address and telephone number
4 of any person known to the board with knowledge about the facts of
5 any of the charges; provide a copy of any statements in the
6 possession of or under the control of the board; provide a list of
7 proposed witnesses with addresses and telephone numbers, with a
8 brief summary of his or her anticipated testimony; provide
9 disclosure of any trial expert pursuant to the requirements of Rule
10 26(b) (4) of the West Virginia Rules of Civil Procedure; provide
11 inspection and copying of the results of any reports of physical
12 and mental examinations or scientific tests or experiments; and
13 provide a list and copy of any proposed exhibit to be used at the
14 hearing. ~~Provided, That The board shall not be~~ The board is not
15 required to furnish or produce ~~any~~ materials which contain opinion
16 work product information or would be a violation of the
17 attorney-client privilege. Within twenty days of the date of
18 service of the written notice of charges, the board shall disclose
19 any exculpatory evidence with a continuing duty to do so throughout
20 the disciplinary process. Within thirty days of receipt of the
21 board's mandatory discovery, the respondent shall provide the board
22 with the complete identity, address and telephone number of any
23 person known to the respondent with knowledge about the facts of

1 any of the charges; provide a list of proposed witnesses, with
2 addresses and telephone numbers, to be called at hearing, with a
3 brief summary of his or her anticipated testimony; provide
4 disclosure of any trial expert pursuant to the requirements of Rule
5 26(b) (4) of the West Virginia Rules of Civil Procedure; provide
6 inspection and copying of the results of any reports of physical
7 and mental examinations or scientific tests or experiments; and
8 provide a list and copy of any proposed exhibit to be used at the
9 hearing.

10 (j) Whenever it finds ~~any~~ a person unqualified because of any
11 of the grounds set forth in subsection (c) of this section, the
12 board may enter an order imposing one or more of the following:

13 (1) Deny his or her application for a license or other
14 authorization to practice medicine and surgery or podiatry;

15 (2) Administer a public reprimand;

16 (3) Suspend, limit or restrict his or her license or other
17 authorization to practice medicine and surgery or podiatry for not
18 more than five years, including limiting the practice of that
19 person to, or by the exclusion of, one or more areas of practice,
20 including limitations on practice privileges;

21 (4) Revoke his or her license or other authorization to
22 practice medicine and surgery or podiatry or to prescribe or
23 dispense controlled substances for a period not to exceed ten

1 years;

2 (5) Require him or her to submit to care, counseling or
3 treatment designated by the board as a condition for initial or
4 continued licensure or renewal of licensure or other authorization
5 to practice medicine and surgery or podiatry;

6 (6) Require him or her to participate in a program of
7 education prescribed by the board;

8 (7) Require him or her to practice under the direction of a
9 physician or podiatrist designated by the board for a specified
10 period of time; and

11 (8) Assess a civil fine of not less than \$1,000 nor more than
12 \$10,000.

13 (k) Notwithstanding the provisions of section eight, article
14 one, chapter thirty of this code, if the board determines the
15 evidence in its possession indicates that a physician's or
16 podiatrist's continuation in practice or unrestricted practice
17 constitutes an immediate danger to the public, the board may take
18 any of the actions provided in subsection (j) of this section on a
19 temporary basis and without a hearing if institution of proceedings
20 for a hearing before the board are initiated simultaneously with
21 the temporary action and begin within fifteen days of the action.
22 The board shall render its decision within five days of the
23 conclusion of a hearing under this subsection.

1 (1) ~~Any~~ A person against whom disciplinary action is taken
2 pursuant to the provisions of this article has the right to
3 judicial review as provided in articles five and six, chapter
4 twenty-nine-a of this code: *Provided*, That a circuit judge may
5 also remand the matter to the board if it appears from competent
6 evidence presented to it in support of a motion for remand that
7 there is newly discovered evidence of such a character as ought to
8 produce an opposite result at a second hearing on the merits before
9 the board and:

10 (1) The evidence appears to have been discovered since the
11 board hearing; and

12 (2) The physician or podiatrist exercised due diligence in
13 asserting his or her evidence and that due diligence would not have
14 secured the newly discovered evidence prior to the appeal.

15 A person may not practice medicine and surgery or podiatry or
16 deliver health care services in violation of ~~any~~ a disciplinary
17 order revoking, suspending or limiting his or her license while ~~any~~
18 an appeal is pending. Within sixty days, the board shall report
19 its final action regarding restriction, limitation, suspension or
20 revocation of the license of a physician or podiatrist, limitation
21 on practice privileges or other disciplinary action against ~~any~~ a
22 physician or podiatrist to all appropriate state agencies,
23 appropriate licensed health facilities and hospitals, insurance

1 companies or associations writing medical malpractice insurance in
2 this state, the American Medical Association, the American Podiatry
3 Association, professional societies of physicians or podiatrists in
4 the state and any entity responsible for the fiscal administration
5 of Medicare and Medicaid.

6 (m) ~~Any~~ A person against whom disciplinary action has been
7 taken under the provisions of this article shall, at reasonable
8 intervals, be afforded an opportunity to demonstrate that he or she
9 can resume the practice of medicine and surgery or podiatry on a
10 general or limited basis. At the conclusion of a suspension,
11 limitation or restriction period, the physician or podiatrist may
12 resume practice if the board has so ordered.

13 (n) Any entity, organization or person, including the board,
14 any member of the board, its agents or employees and any entity or
15 organization or its members referred to in this article, any
16 insurer, its agents or employees, a medical peer review committee
17 and a hospital governing board, its members or any committee
18 appointed by it acting without malice and without gross negligence
19 in making any report or other information available to the board or
20 a medical peer review committee pursuant to law and any person
21 acting without malice and without gross negligence who assists in
22 the organization, investigation or preparation of any such report
23 or information or assists the board or a hospital governing body or

1 any committee in carrying out any of its duties or functions
2 provided by law is immune from civil or criminal liability, except
3 that the unlawful disclosure of confidential information possessed
4 by the board is a misdemeanor as provided in this article.

5 (o) A physician or podiatrist may request in writing to the
6 board a limitation on or the surrendering of his or her license to
7 practice medicine and surgery or podiatry or other appropriate
8 sanction as provided in this section. The board may grant the
9 request and, if it considers it appropriate, may waive the
10 commencement or continuation of other proceedings under this
11 section. A physician or podiatrist whose license is limited or
12 surrendered or against whom other action is taken under this
13 subsection may, at reasonable intervals, petition for removal of
14 any restriction or limitation on or for reinstatement of his or her
15 license to practice medicine and surgery or podiatry.

16 (p) In every case considered by the board under this article
17 regarding discipline or licensure, whether initiated by the board
18 or upon complaint or information from ~~any~~ a person or organization,
19 the board shall make a preliminary determination as to whether
20 probable cause exists to substantiate charges of disqualification
21 due to any reason set forth in subsection (c) of this section. If
22 probable cause is found to exist, all proceedings on the charges
23 shall be open to the public who are entitled to all reports,

1 records and nondeliberative materials introduced at the hearing
2 including the record of the final action taken: *Provided*, That any
3 medical records, which were introduced at the hearing and which
4 pertain to a person who has not expressly waived his or her right
5 to the confidentiality of the records, may not be open to the
6 public nor is the public entitled to the records.

7 (q) If the board receives notice that a physician or
8 podiatrist has been subjected to disciplinary action or has had his
9 or her credentials suspended or revoked by the board, a hospital or
10 a professional society, as defined in subsection (b) of this
11 section, for three or more incidents during a five-year period, the
12 board shall require the physician or podiatrist to practice under
13 the direction of a physician or podiatrist designated by the board
14 for a specified period of time to be established by the board.

15 (r) Notwithstanding any other provisions of this article, the
16 board may, at any time, ~~on~~ either on its own motion, ~~or upon~~ motion
17 by the complainant, ~~or upon~~ motion by the physician or podiatrist
18 or by stipulation of the parties, refer the matter to mediation.
19 The board shall obtain a list from the West Virginia State Bar's
20 mediator referral service of certified mediators with expertise in
21 professional disciplinary matters. The board and the physician or
22 podiatrist may choose a mediator from that list. If the board and
23 the physician or podiatrist are unable to agree on a mediator, the

1 board shall designate a mediator from the list by neutral rotation.
2 The mediation ~~shall not be considered~~ is not a proceeding open to
3 the public and any reports and records introduced at the mediation
4 ~~shall do~~ do not become part of the public record. The mediator and
5 all participants in the mediation shall maintain and preserve the
6 confidentiality of all mediation proceedings and records. The
7 mediator may not be subpoenaed or called to testify or otherwise be
8 subject to process requiring disclosure of confidential information
9 in ~~any~~ a proceeding relating to or arising out of the disciplinary
10 or licensure matter mediated: *Provided,* That any confidentiality
11 agreement and any written agreement made and signed by the parties
12 as a result of mediation may be used in any proceedings
13 subsequently instituted to enforce the written agreement. The
14 agreements may be used in other proceedings if the parties agree in
15 writing.

16 **ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.**

17 **§30-4-21. Complaints; investigations.**

18 (a) Upon receipt of a written complaint filed against ~~any~~ a
19 dentist or dental hygienist, the board shall provide a copy of the
20 complaint to the dentist or dental hygienist as specified by
21 legislative rule promulgated by the board.

22 (b) The board may investigate the complaint. If the board
23 finds upon investigation that probable cause exists that the

1 dentist or dental hygienist has violated ~~any~~ a provision of this
2 article or the rules, the board shall serve the dentist or dental
3 hygienist with a written statement of charges and a notice
4 specifying the date, time and place of hearing. The hearing shall
5 be held in accordance with section twenty-two of this article.

6 (c) Notwithstanding any provision of this code to the
7 contrary, the board may independently initiate disciplinary
8 proceedings based on a report or information from an agent or
9 investigator of the Board of Pharmacy related to data from the
10 Controlled Substance Monitoring Program.

11 **ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.**

12 **§30-14-12a. Initiation of suspension or revocation proceedings**
13 **allowed and required; reporting of information to**
14 **board pertaining to professional malpractice and**
15 **professional incompetence required; penalties;**
16 **probable cause determinations.**

17 (a) The board may independently initiate suspension or
18 revocation proceedings as well as initiate suspension or revocation
19 proceedings based on information received from any person.

20 The board shall initiate investigations as to professional
21 incompetence or other reasons for which a licensed osteopathic
22 physician and surgeon may be adjudged unqualified if the board

1 receives notice that three or more judgments or any combination of
2 judgments and settlements resulting in five or more unfavorable
3 outcomes arising from medical professional liability have been
4 rendered or made against such osteopathic physician within a
5 five-year period.

6 (b) Upon request of the board, ~~any~~ a medical peer review
7 committee in this state shall report any information that may
8 relate to the practice or performance of ~~any~~ an osteopathic
9 physician known to that medical peer review committee. Copies of
10 such requests for information from a medical peer review committee
11 may be provided to the subject osteopathic physician if, in the
12 discretion of the board, the provision of such copies will not
13 jeopardize the board's investigation. In the event that copies are
14 provided, the subject osteopathic physician has fifteen days to
15 comment on the requested information and ~~such~~ the comments must be
16 considered by the board.

17 After the completion of a hospital's formal disciplinary
18 procedure and after any resulting legal action, the chief executive
19 officer of ~~such~~ the hospital shall report in writing to the board
20 within sixty days the name of any member of the medical staff or
21 ~~any~~ other osteopathic physician practicing in the hospital whose
22 hospital privileges have been revoked, restricted, reduced or
23 terminated for any cause, including resignation, together with all

1 pertinent information relating to such action. The chief executive
2 officer shall also report any other formal disciplinary action
3 taken against ~~any~~ an osteopathic physician by the hospital upon the
4 recommendation of its medical staff relating to professional
5 ethics, medical incompetence, medical malpractice, moral turpitude
6 or drug or alcohol abuse. Temporary suspension for failure to
7 maintain records on a timely basis or failure to attend staff or
8 section meetings need not be reported.

9 Any professional society in this state comprised primarily of
10 osteopathic physicians or physicians and surgeons of other schools
11 of medicine which takes formal disciplinary action against a member
12 relating to professional ethics, professional incompetence,
13 professional malpractice, moral turpitude or drug or alcohol abuse,
14 shall report in writing to the board within sixty days of a final
15 decision the name of such member, together with all pertinent
16 information relating to such action.

17 Every person, partnership, corporation, association, insurance
18 company, professional society or other organization providing
19 professional liability insurance to an osteopathic physician in
20 this state shall submit to the board the following information
21 within thirty days from any judgment, dismissal or settlement of a
22 civil action or of any claim involving the insured: The date of
23 ~~any~~ judgment, dismissal or settlement; whether ~~any~~ an appeal has

1 been taken on the judgment, and, if so, by which party; the amount
2 of ~~any~~ settlement or judgment against the insured; and ~~such~~ other
3 information required by the board.

4 Within thirty days after a person known to be an osteopathic
5 physician licensed or otherwise lawfully practicing medicine and
6 surgery in this state, or applying to be licensed, is convicted of
7 a felony under the laws of this state or of any crime under the
8 laws of this state involving alcohol or drugs ~~in any way~~, including
9 ~~any~~ a controlled substance under state or federal law, the clerk of
10 the court of record in which the conviction was entered shall
11 forward to the board a certified true and correct abstract of
12 record of the convicting court. The abstract shall include the
13 name and address of ~~such~~ the osteopathic physician or applicant,
14 the nature of the offense committed and the final judgment and
15 sentence of the court.

16 Upon a determination of the board that there is probable cause
17 to believe that ~~any~~ a person, partnership, corporation,
18 association, insurance company, professional society or other
19 organization has failed or refused to make a report required by
20 this subsection, the board shall provide written notice to the
21 alleged violator stating the nature of the alleged violation and
22 the time and place at which the alleged violator shall appear to
23 show good cause why a civil penalty should not be imposed. The

1 hearing shall be conducted in accordance with the provisions of
2 article five, chapter twenty-nine-a of this code. After reviewing
3 the record of such hearing, if the board determines that a
4 violation of this subsection has occurred, the board shall assess
5 a civil penalty of not less than \$1,000 nor more than \$10,000
6 against such violator. The board shall notify anyone assessed of
7 the assessment in writing and the notice shall specify the reasons
8 for the assessment. If the violator fails to pay the amount of the
9 assessment to the board within thirty days, the Attorney General
10 may institute a civil action in the circuit court of Kanawha County
11 to recover the amount of the assessment. In any such civil action,
12 the court's review of the board's action shall be conducted in
13 accordance with the provisions of section four, article five,
14 chapter twenty-nine-a of this code.

15 Any person may report to the board relevant facts about the
16 conduct of any osteopathic physician in this state which in the
17 opinion of such person amounts to professional malpractice or
18 professional incompetence.

19 The board shall provide forms for filing reports pursuant to
20 this section. Reports submitted in other forms shall be accepted
21 by the board.

22 The filing of a report with the board pursuant to ~~any~~ a
23 provision of this article, ~~any~~ an investigation by the board or ~~any~~

1 a disposition of a case by the board does not preclude any action
2 by a hospital, other health care facility or professional society
3 comprised primarily of osteopathic physicians or physicians and
4 surgeons of other schools of medicine to suspend, restrict or
5 revoke the privileges or membership of such osteopathic physician.
6 Notwithstanding any provision of this code to the contrary, the
7 board may independently initiate disciplinary proceedings based on
8 a report or information from an agent or investigator of the Board
9 of Pharmacy related to data from the Controlled Substances
10 Monitoring Program.

11 (c) In every case considered by the board under this article
12 regarding suspension, revocation or issuance of a license, whether
13 initiated by the board or upon complaint or information from any
14 person or organization, the board shall make a preliminary
15 determination as to whether probable cause exists to substantiate
16 charges of cause to suspend, revoke or refuse to issue a license as
17 set forth in subsection (a), section eleven of this article. If
18 ~~such~~ probable cause is found to exist, all proceedings on ~~such~~ the
19 charges ~~shall be~~ are open to the public who are entitled to all
20 reports, records and nondeliberative materials introduced at such
21 hearing, including the record of the final action taken: *Provided,*
22 That any medical records, which were introduced at ~~such~~ the hearing
23 and ~~which~~ pertain to a person who has not expressly waived his or

1 her right to the confidentiality of ~~such~~ the records, shall not be
2 open to the public nor is the public entitled to such records. If
3 a finding is made that probable cause does not exist, the public
4 has a right of access to the complaint or other document setting
5 forth the charges and the findings of fact and conclusions
6 supporting ~~such finding that probable cause does not exist, if the~~
7 finding so long as the subject osteopathic physician consents to
8 such access.

9 (d) If the board receives notice that an osteopathic physician
10 has been subjected to disciplinary action or has had his or her
11 credentials suspended or revoked by the board, a medical peer
12 review committee, a hospital or professional society, as defined in
13 subsection (b) of this section, for three or more incidents in a
14 five-year period, the board shall require the osteopathic physician
15 to practice under the direction of another osteopathic physician
16 for a specified period to be established by the board.

(NOTE: The purpose of this bill is to permit the Board of
Medicine, Board of Dental Examiners and the Board of Osteopathy to
independently initiate disciplinary proceedings in certain
circumstances.)

Strike-throughs indicate language that would be stricken from
the present law and underscoring indicates new language that would
be added.)