

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4520

(BY DELEGATES HANSHAW AND SHOTT)

[Passed March 8, 2016; in effect ninety days from passage.]

1 AN ACT to amend and reenact §16-5G-2 and §16-5G-4 of the Code of West Virginia, 1931, as
2 amended, all relating to hospitals owned or operated by nonprofit corporations, nonprofit
3 associations or local governmental units; clarifying that these hospitals may have only one
4 governing body whose meetings shall be open to the public; enumerating matters which
5 may be acted upon in executive session; and clarifying and expanding authorization for
6 holding of executive sessions.

Be it enacted by the Legislature of West Virginia:

1 That §16-5G-2 and §16-5G-4 of the Code of West Virginia, 1931, as amended, be
2 amended and reenacted, all to read as follows:

ARTICLE 5G. OPEN HOSPITAL PROCEEDINGS.

§16-5G-2. Definitions.

1 As used in this article:

2 (1) "Decision" means any determination, action, vote or final disposition of a motion,
3 proposal, resolution, order or measure on which a vote of the governing body is required at any
4 meeting at which a quorum is present;

5 (2) "Executive session" means any meeting or part of a meeting of the governing body of
6 a hospital that is closed to the public;

7 (3) "Governing body" means:

8 (A) With respect to a hospital owned or operated by a nonprofit corporation, the board of
9 directors established pursuant to section eight hundred one, article eight, chapter thirty-one-e of
10 this code;

11 (B) With respect to a county hospital, the board of trustees established pursuant to section
12 fifteen, article three, chapter seven of this code; or

13 (C) With respect to all other hospitals subject to this article, the single board of directors,
14 board of trustees, or, if given another name, the single group of governing board members having
15 the authority to make decisions concerning the management and control of a hospital: *Provided,*

16 That the medical staff of a hospital, the executive committee of the medical staff of a hospital and
17 any other committee or subcommittee of the medical staff of a hospital are not a governing body
18 of any hospital described in paragraphs (A), (B) and (C) of this subdivision;

19 (4) "Hospital" means any hospital owned or operated by a nonprofit corporation, nonprofit
20 association or local governmental unit;

21 (5) "Meeting" means the convening of the governing body of a hospital for which a quorum
22 is required in order to make a decision or to deliberate toward a decision on any matter: *Provided,*
23 That the convening of a committee, subcommittee or other subcomponent of the governing body
24 or the convening of any group other than the governing body that makes recommendations to the
25 governing body is not a meeting within the meaning of this article unless the committee,
26 subcommittee, subcomponent or group is vested with independent decision-making authority and
27 exercises the independent decision-making authority at any convening; and

28 (6) "Quorum" means, unless otherwise defined by applicable law, a simple majority of the
29 constituent membership of the governing body.

§16-5G-4. Exceptions.

1 (a) This article does not prevent the governing body of a hospital from holding an executive
2 session during a regular, special or emergency meeting, after the presiding officer has identified
3 the authorization under this article for the holding of the executive session and has presented it
4 to the governing body and to the general public, but no official action may be made in the
5 executive session, except as is necessary:

6 (1) To protect the confidentiality of protected health information as defined by the Health
7 Insurance Portability and Accountability Act of 1996;

8 (2) To preserve the privilege and confidentiality of peer review information as provided in
9 article three-c, chapter thirty of this code;

10 (3) To approve confidential legal settlements or otherwise act in connection with matters
11 described in subdivision (5), subsection (b) of this section; or

12 (4) To end an executive session and readmit the public to a meeting.

13 (b) An executive session may be held only upon a majority affirmative vote of the members
14 present of the governing body of a hospital as defined in this article for the following:

15 (1) The appointment, employment, retirement, promotion, demotion, disciplining,
16 resignation, discharge, dismissal or compensation of any officer or employee, or other personnel
17 matters, or for the purpose of conducting a hearing on a complaint against an officer or employee,
18 unless the officer or employee requests an open meeting;

19 (2) The disciplining, suspension or expulsion of any student or trainee enrolled in a
20 program conducted by the hospital, unless the student or trainee requests an open meeting;

21 (3) Investigations and proceedings involving the issuance, denial, suspension or
22 revocation of the authority or privilege of a medical practitioner to use the hospital and to engage
23 in particular kinds of practice or to perform particular kinds of operations, unless the person
24 seeking the authority or privilege or whose authority or privilege was denied, suspended or
25 revoked requests an open meeting;

26 (4) Matters concerning the failure or refusal of a medical practitioner to comply with
27 reasonable regulations of a hospital with respect to the conditions under which operations are
28 performed and other medical services are delivered;

29 (5) To conduct privileged attorney-client communications or to consider the work product
30 of the hospital's attorney or the hospital administration, including materials prepared by an
31 attorney or others in anticipation of litigation, litigation strategies and reports, confidential legal
32 settlements and discussions, negotiations and alternative dispute resolution proceedings
33 conducted in pursuit of a legal settlement;

34 (6) The physical or mental health of any person, unless the person requests an open
35 meeting;

36 (7) Matters which, if discussed in public, would be likely to affect adversely the reputation
37 of any person;

38 (8) Any official investigation or matters relating to crime prevention or law enforcement;

39 (9) The development of security personnel or devices;

40 (10) Matters involving or affecting the purchase, sale or lease of property, advance
41 construction planning, the investment of public funds or other matters involving competition which,
42 if made public, might adversely affect the financial or other interest of the state or any political
43 subdivision or the hospital; or

44 (11) To consider or act upon the matters described in subdivisions (1), (2), (3) and (4),
45 subsection (a) of this section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2016.

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Governor