

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 123

BY SENATOR STOLLINGS

[Introduced January 13, 2016;

Referred to the Committee on Health and Human

Resources; and then to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §16-4F-1, §16-4F-2, §16-4F-3, §16-4F-4 and §16-4F-5; to amend and reenact
3 §30-3-14 of said code; to amend and reenact §30-3E-3 of said code; to amend and reenact
4 §30-5-14 of said code; to amend and reenact §30-7-15a of said code; and to amend and
5 reenact §30-14-11 of said code, all relating to treatment for sexually transmitted diseases;
6 providing for expedited partner therapy; defining terms; allowing prescribing of antibiotics
7 to sexual partners of patient without prior examination of partner; requiring patient
8 counseling; establishing counseling criteria; requiring informational materials be prepared
9 by the Department of Health and Human Resources; providing limited liability for providing
10 expedited partnership therapy; requiring rulemaking; and providing that physicians,
11 physician assistants, pharmacists and advanced practice registered nurses are not
12 subject to disciplinary action for providing certain treatment for sexually transmitted
13 diseases for sexual partners of patient.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §16-4F-1, §16-4F-2, §16-4F-3, §16-4F-4 and §16-4F-5; that §30-3-14 of said
3 code be amended and reenacted; that §30-3E-3 of said code be amended and reenacted; that
4 §30-5-14 of said code be amended and reenacted; that §30-7-15a of said code be amended and
5 reenacted; and that §30-14-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4F. EXPEDITED PARTNER THERAPY.

§16-4F-1. Definitions.

1 As used in this article, unless the context otherwise indicates, the following terms have the
2 following meanings:

3 “Department” means the West Virginia Department of Health and Human Resources.

4 “Expedited partner therapy” means prescribing, dispensing, furnishing or otherwise
5 providing prescription antibiotic drugs to the sexual partner or partners of a person clinically
6 diagnosed as infected with a sexually transmitted disease without physical examination of the
7 partner or partners.

8 “Health care professional” means:

9 (A) An allopathic physician licensed pursuant to article three, chapter thirty of this code;

10 (B) An osteopathic physician licensed pursuant to article fourteen, chapter thirty of this
11 code;

12 (C) A physician assistant licensed pursuant to section four, article three-e, chapter thirty
13 of this code;

14 (D) An advanced practice registered nurse authorized with prescriptive authority pursuant
15 to section fifteen-a, article seven, chapter thirty of this code; or

16 (E) A pharmacist licensed pursuant to article five, chapter thirty of this code.

17 “Sexually transmitted disease” means a disease that may be treated by expedited partner
18 therapy as determined by rule of the department.

§16-4F-2. Expedited partner therapy.

1 (a) Notwithstanding any other provision of law to the contrary, a health care professional
2 who makes a clinical diagnosis of a sexually transmitted disease may provide expedited partner
3 therapy for the treatment of the sexually transmitted disease if, in the judgment of the health care
4 professional, the sexual partner is unlikely or unable to present for comprehensive health care,
5 including evaluation, testing and treatment for sexually transmitted diseases. Expedited partner
6 therapy is limited to a sexual partner who may have been exposed to a sexually transmitted
7 disease within the previous sixty days and who is able to be contacted by the patient.

8 (b) Any health care professional who provides expedited partner therapy shall comply with
9 all necessary provisions of article four of this chapter.

10 (c) A health care professional who provides expedited partner therapy shall provide
11 counseling for the patient, including advice that all women and symptomatic persons, and in
12 particular women with symptoms suggestive of pelvic inflammatory disease, are encouraged to
13 seek medical attention. The health care professional shall also provide in written or electronic
14 format materials provided by the department to be given by the patient to his or her sexual partner.

§16-4F-3. Informational materials.

1 (a) The department shall provide information and technical assistance as appropriate to
2 health care professionals who provide expedited partner therapy. The department shall develop
3 and disseminate in electronic and other formats the following written materials:

4 (1) Informational materials for sexual partners, as described in subsection (c), section two
5 of this article;

6 (2) Informational materials for persons who are repeatedly diagnosed with sexually
7 transmitted diseases; and

8 (3) Guidance for health care professionals on the safe and effective provision of expedited
9 partner therapy.

10 (b) The department may offer educational programs about expedited partner therapy for
11 health care professionals.

§16-4F-4. Limitation of liability.

1 (a) A health care professional who provides expedited partner therapy in good faith without
2 fee or compensation under this article and provides counseling and written materials as required
3 in subsection (c), section two of this article is not subject to civil or professional liability in
4 connection with the provision of the therapy, counseling and materials, except in the case of gross
5 negligence or willful and wanton misconduct. A health care professional is not subject to civil or
6 professional liability for choosing not to provide expedited partner therapy.

7 (b) A pharmacist or pharmacy is not subject to civil or professional liability for choosing not
8 to fill a prescription that would cause that pharmacist or pharmacy to violate any provision of
9 article five, chapter thirty of this code.

§16-4F-5. Rulemaking.

1 The Secretary of the Department of Health and Human Resources shall propose rules for
2 legislative approval in accordance with article three, chapter twenty-nine-a of this code to
3 designate certain diseases as sexually transmitted diseases which may be treated by expedited
4 partner therapy. The department shall consider the recommendations and classifications of the
5 federal Department of Health and Human Services, Centers for Disease Control and Prevention
6 and other nationally recognized medical authorities in making these designations.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

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

8 (a) The board may independently initiate disciplinary proceedings as well as initiate
9 disciplinary proceedings based on information received from medical peer review committees,
10 physicians, podiatrists, hospital administrators, professional societies and others.

11 The board may initiate investigations as to professional incompetence or other reasons
12 for which a licensed physician or podiatrist may be adjudged unqualified based upon criminal
13 convictions; complaints by citizens, pharmacists, physicians, podiatrists, peer review committees,
14 hospital administrators, professional societies or others; or unfavorable outcomes arising out of
15 medical professional liability. The board shall initiate an investigation if it receives notice that three
16 or more judgments, or any combination of judgments and settlements resulting in five or more

17 unfavorable outcomes arising from medical professional liability have been rendered or made
18 against the physician or podiatrist within a five-year period. The board may not consider any
19 judgments or settlements as conclusive evidence of professional incompetence or conclusive lack
20 of qualification to practice.

21 (b) Upon request of the board, any medical peer review committee in this state shall report
22 any information that may relate to the practice or performance of any physician or podiatrist known
23 to that medical peer review committee. Copies of the requests for information from a medical
24 peer review committee may be provided to the subject physician or podiatrist if, in the discretion
25 of the board, the provision of such copies will not jeopardize the board's investigation. In the
26 event that copies are provided, the subject physician or podiatrist is allowed fifteen days to
27 comment on the requested information and such comments must be considered by the board.

28 The chief executive officer of every hospital shall, within sixty days after the completion of
29 the hospital's formal disciplinary procedure and also within sixty days after the commencement of
30 and again after the conclusion of any resulting legal action, report in writing to the board the name
31 of any member of the medical staff or any other physician or podiatrist practicing in the hospital
32 whose hospital privileges have been revoked, restricted, reduced or terminated for any cause,
33 including resignation, together with all pertinent information relating to such action. The chief
34 executive officer shall also report any other formal disciplinary action taken against any physician
35 or podiatrist by the hospital upon the recommendation of its medical staff relating to professional
36 ethics, medical incompetence, medical professional liability, moral turpitude or drug or alcohol
37 abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend
38 staff or section meetings need not be reported. Voluntary cessation of hospital privileges for
39 reasons unrelated to professional competence or ethics need not be reported.

40 Any managed care organization operating in this state which provides a formal peer review
41 process shall report in writing to the board, within sixty days after the completion of any formal
42 peer review process and also within sixty days after the commencement of and again after the

43 conclusion of any resulting legal action, the name of any physician or podiatrist whose
44 credentialing has been revoked or not renewed by the managed care organization. The managed
45 care organization shall also report in writing to the board any other disciplinary action taken
46 against a physician or podiatrist relating to professional ethics, professional liability, moral
47 turpitude or drug or alcohol abuse within sixty days after completion of a formal peer review
48 process which results in the action taken by the managed care organization. For purposes of this
49 subsection, "managed care organization" means a plan that establishes, operates or maintains a
50 network of health care providers who have entered into agreements with and been credentialed
51 by the plan to provide health care services to enrollees or insureds to whom the plan has the
52 ultimate obligation to arrange for the provision of or payment for health care services through
53 organizational arrangements for ongoing quality assurance, utilization review programs or dispute
54 resolutions.

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

60 Every person, partnership, corporation, association, insurance company, professional
61 society or other organization providing professional liability insurance to a physician or podiatrist
62 in this state, including the State Board of Risk and Insurance Management, shall submit to the
63 board the following information within thirty days from any judgment or settlement of a civil or
64 medical professional liability action excepting product liability actions: The name of the insured;
65 the date of any judgment or settlement; whether any appeal has been taken on the judgment and,
66 if so, by which party; the amount of any settlement or judgment against the insured; and other
67 information required by the board.

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

72 Within thirty days after a person known to be a physician or podiatrist licensed or otherwise
73 lawfully practicing medicine and surgery or podiatry in this state or applying to be licensed is
74 convicted of a felony under the laws of this state or of any crime under the laws of this state
75 involving alcohol or drugs in any way, including any controlled substance under state or federal
76 law, the clerk of the court of record in which the conviction was entered shall forward to the board
77 a certified true and correct abstract of record of the convicting court. The abstract shall include
78 the name and address of the physician or podiatrist or applicant, the nature of the offense
79 committed and the final judgment and sentence of the court.

80 Upon a determination of the board that there is probable cause to believe that any person,
81 partnership, corporation, association, insurance company, professional society or other
82 organization has failed or refused to make a report required by this subsection, the board shall
83 provide written notice to the alleged violator stating the nature of the alleged violation and the time
84 and place at which the alleged violator shall appear to show good cause why a civil penalty should
85 not be imposed. The hearing shall be conducted in accordance with ~~the provisions of~~ article five,
86 chapter twenty-nine-a of this code. After reviewing the record of the hearing, if the board
87 determines that a violation of this subsection has occurred, the board shall assess a civil penalty
88 of not less than \$1,000 nor more than \$10,000 against the violator. The board shall notify any
89 person so assessed of the assessment in writing and the notice shall specify the reasons for the
90 assessment. If the violator fails to pay the amount of the assessment to the board within thirty
91 days, the Attorney General may institute a civil action in the circuit court of Kanawha County to
92 recover the amount of the assessment. In any civil action, the court's review of the board's action
93 shall be conducted in accordance with ~~the provisions of~~ section four, article five, chapter twenty-

94 nine-a of this code. Notwithstanding any other provision of this article to the contrary, when there
95 are conflicting views by recognized experts as to whether any alleged conduct breaches an
96 applicable standard of care, the evidence must be clear and convincing before the board may find
97 that the physician or podiatrist has demonstrated a lack of professional competence to practice
98 with a reasonable degree of skill and safety for patients.

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

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

104 The filing of a report with the board pursuant to any provision of this article, any
105 investigation by the board or any disposition of a case by the board does not preclude any action
106 by a hospital, other health care facility or professional society comprised primarily of physicians
107 or podiatrists to suspend, restrict or revoke the privileges or membership of the physician or
108 podiatrist.

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

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

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

119 (3) False or deceptive advertising;

120 (4) Aiding, assisting, procuring or advising any unauthorized person to practice medicine
121 and surgery or podiatry contrary to law;

122 (5) Making or filing a report that the person knows to be false; intentionally or negligently
123 failing to file a report or record required by state or federal law; willfully impeding or obstructing
124 the filing of a report or record required by state or federal law; or inducing another person to do
125 any of the foregoing. The reports and records covered in this subdivision mean only those that
126 are signed in the capacity as a licensed physician or podiatrist;

127 (6) Requesting, receiving or paying directly or indirectly a payment, rebate, refund,
128 commission, credit or other form of profit or valuable consideration for the referral of patients to
129 any person or entity in connection with providing medical or other health care services or clinical
130 laboratory services, supplies of any kind, drugs, medication or any other medical goods, services
131 or devices used in connection with medical or other health care services;

132 (7) Unprofessional conduct by any physician or podiatrist in referring a patient to any
133 clinical laboratory or pharmacy in which the physician or podiatrist has a proprietary interest
134 unless the physician or podiatrist discloses in writing such interest to the patient. The written
135 disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having
136 any laboratory work or assignment performed or any pharmacy for purposes of purchasing any
137 prescribed drug or any other medical goods or devices used in connection with medical or other
138 health care services;

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

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

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

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

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

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

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

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

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

168 (16) Delegating professional responsibilities to a person when the physician or podiatrist
169 delegating the responsibilities knows or has reason to know that the person is not qualified by
170 training, experience or licensure to perform them;

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

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

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

177 (20) Professional incompetence; or

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

186 (d) The board shall deny any application for a license or other authorization to practice
187 medicine and surgery or podiatry in this state to any applicant who, and shall revoke the license
188 of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is
189 found guilty by any court of competent jurisdiction of any felony involving prescribing, selling,
190 administering, dispensing, mixing or otherwise preparing any prescription drug, including any
191 controlled substance under state or federal law, for other than generally accepted therapeutic
192 purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in
193 the court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere has
194 the same effect as a verdict or plea of guilt. Upon application of a physician that has had his or
195 her license revoked because of a drug related felony conviction, upon completion of any sentence
196 of confinement, parole, probation or other court-ordered supervision and full satisfaction of any

197 fines, judgments or other fees imposed by the sentencing court, the board may issue the applicant
198 a new license upon a finding that the physician is, except for the underlying conviction, otherwise
199 qualified to practice medicine: *Provided*, That the board may place whatever terms, conditions or
200 limitations it deems appropriate upon a physician licensed pursuant to this subsection.

201 (e) The board may refer any cases coming to its attention to an appropriate committee of
202 an appropriate professional organization for investigation and report. Except for complaints
203 related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by
204 bribery or fraudulent misrepresentation, any complaint filed more than two years after the
205 complainant knew, or in the exercise of reasonable diligence should have known, of the existence
206 of grounds for the complaint shall be dismissed: *Provided*, That in cases of conduct alleged to be
207 part of a pattern of similar misconduct or professional incapacity that, if continued, would pose
208 risks of a serious or substantial nature to the physician's or podiatrist's current patients, the
209 investigating body may conduct a limited investigation related to the physician's or podiatrist's
210 current capacity and qualification to practice and may recommend conditions, restrictions or
211 limitations on the physician's or podiatrist's license to practice that it considers necessary for the
212 protection of the public. Any report shall contain recommendations for any necessary disciplinary
213 measures and shall be filed with the board within ninety days of any referral. The
214 recommendations shall be considered by the board and the case may be further investigated by
215 the board. The board after full investigation shall take whatever action it considers appropriate,
216 as provided in this section.

217 (f) The investigating body, as provided in subsection (e) of this section, may request and
218 the board under any circumstances may require a physician or podiatrist or person applying for
219 licensure or other authorization to practice medicine and surgery or podiatry in this state to submit
220 to a physical or mental examination by a physician or physicians approved by the board. A
221 physician or podiatrist submitting to an examination has the right, at his or her expense, to
222 designate another physician to be present at the examination and make an independent report to

223 the investigating body or the board. The expense of the examination shall be paid by the board.
224 Any individual who applies for or accepts the privilege of practicing medicine and surgery or
225 podiatry in this state is considered to have given his or her consent to submit to all examinations
226 when requested to do so in writing by the board and to have waived all objections to the
227 admissibility of the testimony or examination report of any examining physician on the ground that
228 the testimony or report is privileged communication. If a person fails or refuses to submit to an
229 examination under circumstances which the board finds are not beyond his or her control, failure
230 or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry
231 competently and in compliance with the standards of acceptable and prevailing medical practice.

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

234 (h) In every disciplinary or licensure denial action, the board shall furnish the physician or
235 podiatrist or applicant with written notice setting out with particularity the reasons for its action.
236 Disciplinary and licensure denial hearings shall be conducted in accordance with ~~the provisions~~
237 ~~of~~ article five, chapter twenty-nine-a of this code. However, hearings shall be heard upon sworn
238 testimony and the rules of evidence for trial courts of record in this state shall apply to all hearings.
239 A transcript of all hearings under this section shall be made, and the respondent may obtain a
240 copy of the transcript at his or her expense. The physician or podiatrist has the right to defend
241 against any charge by the introduction of evidence, the right to be represented by counsel, the
242 right to present and cross-examine witnesses and the right to have subpoenas and subpoenas
243 duces tecum issued on his or her behalf for the attendance of witnesses and the production of
244 documents. The board shall make all its final actions public. The order shall contain the terms of
245 all action taken by the board.

246 (i) In disciplinary actions in which probable cause has been found by the board, the board
247 shall, within twenty days of the date of service of the written notice of charges or sixty days prior
248 to the date of the scheduled hearing, whichever is sooner, provide the respondent with the

249 complete identity, address and telephone number of any person known to the board with
250 knowledge about the facts of any of the charges; provide a copy of any statements in the
251 possession of or under the control of the board; provide a list of proposed witnesses with
252 addresses and telephone numbers, with a brief summary of his or her anticipated testimony;
253 provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West
254 Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of
255 physical and mental examinations or scientific tests or experiments; and provide a list and copy
256 of any proposed exhibit to be used at the hearing: *Provided*, That the board shall not be required
257 to furnish or produce any materials which contain opinion work product information or would be a
258 violation of the attorney-client privilege. Within twenty days of the date of service of the written
259 notice of charges, the board shall disclose any exculpatory evidence with a continuing duty to do
260 so throughout the disciplinary process. Within thirty days of receipt of the board's mandatory
261 discovery, the respondent shall provide the board with the complete identity, address and
262 telephone number of any person known to the respondent with knowledge about the facts of any
263 of the charges; provide a list of proposed witnesses with addresses and telephone numbers, to
264 be called at hearing, with a brief summary of his or her anticipated testimony; provide disclosure
265 of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil
266 Procedure; provide inspection and copying of the results of any reports of physical and mental
267 examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit
268 to be used at the hearing.

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

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

273 (2) Administer a public reprimand;

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

277 (4) Revoke his or her license or other authorization to practice medicine and surgery or
278 podiatry or to prescribe or dispense controlled substances for a period not to exceed ten years;

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

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

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

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

286 (k) Notwithstanding the provisions of section eight, article one of this chapter, if the board
287 determines the evidence in its possession indicates that a physician's or podiatrist's continuation
288 in practice or unrestricted practice constitutes an immediate danger to the public, the board may
289 take any of the actions provided in subsection (j) of this section on a temporary basis and without
290 a hearing if institution of proceedings for a hearing before the board are initiated simultaneously
291 with the temporary action and begin within fifteen days of the action. The board shall render its
292 decision within five days of the conclusion of a hearing under this subsection.

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

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

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

302 A person may not practice medicine and surgery or podiatry or deliver health care services
303 in violation of any disciplinary order revoking, suspending or limiting his or her license while any
304 appeal is pending. Within sixty days, the board shall report its final action regarding restriction,
305 limitation, suspension or revocation of the license of a physician or podiatrist, limitation on practice
306 privileges or other disciplinary action against any physician or podiatrist to all appropriate state
307 agencies, appropriate licensed health facilities and hospitals, insurance companies or
308 associations writing medical malpractice insurance in this state, the American Medical
309 Association, the American Podiatry Association, professional societies of physicians or podiatrists
310 in the state and any entity responsible for the fiscal administration of Medicare and Medicaid.

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

316 (n) Any entity, organization or person, including the board, any member of the board, its
317 agents or employees and any entity or organization or its members referred to in this article, any
318 insurer, its agents or employees, a medical peer review committee and a hospital governing
319 board, its members or any committee appointed by it acting without malice and without gross
320 negligence in making any report or other information available to the board or a medical peer
321 review committee pursuant to law and any person acting without malice and without gross
322 negligence who assists in the organization, investigation or preparation of any such report or
323 information or assists the board or a hospital governing body or any committee in carrying out any
324 of its duties or functions provided by law is immune from civil or criminal liability, except that the

325 unlawful disclosure of confidential information possessed by the board is a misdemeanor as
326 provided in this article.

327 (o) A physician or podiatrist may request in writing to the board a limitation on or the
328 surrendering of his or her license to practice medicine and surgery or podiatry or other appropriate
329 sanction as provided in this section. The board may grant the request and, if it considers it
330 appropriate, may waive the commencement or continuation of other proceedings under this
331 section. A physician or podiatrist whose license is limited or surrendered or against whom other
332 action is taken under this subsection may, at reasonable intervals, petition for removal of any
333 restriction or limitation on or for reinstatement of his or her license to practice medicine and
334 surgery or podiatry.

335 (p) In every case considered by the board under this article regarding discipline or
336 licensure, whether initiated by the board or upon complaint or information from any person or
337 organization, the board shall make a preliminary determination as to whether probable cause
338 exists to substantiate charges of disqualification due to any reason set forth in subsection (c) of
339 this section. If probable cause is found to exist, all proceedings on the charges shall be open to
340 the public who are entitled to all reports, records and nondeliberative materials introduced at the
341 hearing, including the record of the final action taken: *Provided*, That any medical records, which
342 were introduced at the hearing and which pertain to a person who has not expressly waived his
343 or her right to the confidentiality of the records, may not be open to the public nor is the public
344 entitled to the records.

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

351 (r) Notwithstanding any other provisions of this article, the board may, at any time, on its
352 own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or
353 by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the
354 West Virginia State Bar's mediator referral service of certified mediators with expertise in
355 professional disciplinary matters. The board and the physician or podiatrist may choose a
356 mediator from that list. If the board and the physician or podiatrist are unable to agree on a
357 mediator, the board shall designate a mediator from the list by neutral rotation. The mediation
358 shall not be considered a proceeding open to the public and any reports and records introduced
359 at the mediation shall not become part of the public record. The mediator and all participants in
360 the mediation shall maintain and preserve the confidentiality of all mediation proceedings and
361 records. The mediator may not be subpoenaed or called to testify or otherwise be subject to
362 process requiring disclosure of confidential information in any proceeding relating to or arising out
363 of the disciplinary or licensure matter mediated: *Provided*, That any confidentiality agreement
364 and any written agreement made and signed by the parties as a result of mediation may be used
365 in any proceedings subsequently instituted to enforce the written agreement. The agreements
366 may be used in other proceedings if the parties agree in writing.

367 (s) A physician licensed under this chapter may not be disciplined for providing expedited
368 partner therapy in accordance with article four-f, chapter sixteen of this code.

ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.

369 **§30-3E-3. Rulemaking.**

1 (a) The boards shall propose rules for legislative approval in accordance with ~~the~~
2 ~~provisions of~~ article three, chapter twenty-nine-a of this code to implement ~~the provisions of~~ this
3 article, including:

- 4 (1) The extent to which physician assistants may practice in this state;
- 5 (2) The extent to which physician assistants may pronounce death;
- 6 (3) Requirements for licenses and temporary licenses;

7 (4) Requirements for practice agreements;

8 (5) Requirements for continuing education;

9 (6) Conduct of a licensee for which discipline may be imposed;

10 (7) The eligibility and extent to which a physician assistant may prescribe at the direction
11 of his or her supervising physician, including the following:

12 (A) A list of drugs and pharmacologic categories, or both, the prescription of which may
13 not be delegated to a physician assistant, including all drugs listed in Schedules I and II of the
14 Uniform Controlled Substances Act, antineoplastic and chemotherapeutic agents, or both, used
15 in the active treatment of current cancer, radiopharmaceuticals, general anesthetics, radiographic
16 contrast materials and any other limitation or exclusions of specific drugs or categories of drugs
17 as determined by the boards;

18 (B) Authority to include, in a practice agreement, the delegation of prescribing authority
19 for up to a 72-hour supply of drugs listed under Schedule III of the Uniform Controlled Substances
20 Act so long as the prescription is nonrefillable and an annual supply of any drug, with the exception
21 of controlled substances, which is prescribed for the treatment of a chronic condition, other than
22 chronic pain management, with the chronic condition being treated identified on the prescription;
23 and

24 (C) A description of the education and training requirements for a physician assistant to
25 be eligible to receive delegated prescriptive writing authority as part of a practice agreement;

26 (8) The authority a supervising physician may delegate for prescribing, dispensing and
27 administering of controlled substances, prescription drugs or medical devices if the practice
28 agreement includes:

29 (A) A notice of intent to delegate prescribing of controlled substances, prescription drugs
30 or medical devices;

31 (B) An attestation that all prescribing activities of the physician assistant shall comply with
32 applicable federal and state law governing the practice of physician assistants;

33 (C) An attestation that all medical charts or records shall contain a notation of any
34 prescriptions written by a physician assistant;

35 (D) An attestation that all prescriptions shall include the physician assistant's name and
36 the supervising physician's name, business address and business telephone number legibly
37 written or printed; and

38 (E) An attestation that the physician assistant has successfully completed each of the
39 requirements established by the appropriate board to be eligible to prescribe pursuant to a
40 practice agreement accompanied by the production of any required documentation establishing
41 eligibility;

42 (9) A fee schedule; ~~and~~

43 (10) A provision that a physician assistant licensed under this article may not be disciplined
44 for providing expedited partner therapy in accordance with article four-f, chapter sixteen of this
45 code; and

46 ~~(10)~~ (11) Any other rules necessary to effectuate the provisions of this article.

47 (b) The boards may propose emergency rules pursuant to article three, chapter twenty-
48 nine-a of this code to ensure conformity with this article.

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS
AND PHARMACIES.**

49 **§30-5-14. Prohibiting the dispensing of prescription orders in absence of practitioner-**
50 **patient relationship.**

1 A pharmacist may not compound or dispense any prescription order when he or she has
2 knowledge that the prescription was issued by a practitioner without establishing a valid
3 practitioner-patient relationship. An online or telephonic evaluation by questionnaire, or an online
4 or telephonic consultation, is inadequate to establish a valid practitioner-patient relationship:
5 *Provided, That this prohibition does not apply:*

- 6 (1) In a documented emergency;
- 7 (2) In an on-call or cross-coverage situation; or
- 8 (3) For the treatment of sexually transmitted diseases by expedited partner therapy as set
- 9 forth in article four-f, chapter sixteen of this code; or
- 10 ~~(3)~~ (4) Where patient care is rendered in consultation with another practitioner who has an
- 11 ongoing relationship with the patient and who has agreed to supervise the patient's treatment,
- 12 including the use of any prescribed medications.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

**§30-7-15a. Prescriptive authority for prescription drugs; coordination with Board of
14 Pharmacy.**

1 (a) The board may, in its discretion, authorize an advanced practice registered nurse to
2 prescribe prescription drugs in a collaborative relationship with a physician licensed to practice in
3 West Virginia and in accordance with applicable state and federal laws. An authorized advanced
4 practice registered nurse may write or sign prescriptions or transmit prescriptions verbally or by
5 other means of communication.

6 (b) For purposes of this section, an agreement to a collaborative relationship for
7 prescriptive practice between a physician and an advanced practice registered nurse shall be set
8 forth in writing. Verification of the agreement shall be filed with the board by the advanced practice
9 registered nurse. The board shall forward a copy of the verification to the Board of Medicine and
10 the Board of Osteopathic Medicine. Collaborative agreements shall include, but are not limited
11 to, the following:

12 (1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it
13 applies to the advanced practice registered nurse's clinical practice;

14 (2) Statements describing the individual and shared responsibilities of the advanced
15 practice registered nurse and the physician pursuant to the collaborative agreement between
16 them;

17 (3) Periodic and joint evaluation of prescriptive practice; and

18 (4) Periodic and joint review and updating of the written guidelines or protocols.

19 (c) The board shall promulgate legislative rules in accordance with ~~the provisions of~~
20 chapter twenty-nine-a of this code governing the eligibility and extent to which an advanced
21 practice registered nurse may prescribe drugs. Such rules shall provide, at a minimum, a state
22 formulary classifying those categories of drugs which shall not be prescribed by advanced
23 practice registered nurse including, but not limited to, Schedules I and II of the Uniform Controlled
24 Substances Act, antineoplastics, radiopharmaceuticals and general anesthetics. Drugs listed
25 under Schedule III shall be limited to a 72-hour supply without refill. The rules shall also include
26 a provision that advanced nurse practitioners licensed under this chapter may not be disciplined
27 for providing expedited partner therapy in accordance with article four-f, chapter sixteen of this
28 code. In addition to the above referenced provisions and restrictions and pursuant to a
29 collaborative agreement as set forth in subsections (a) and (b) of this section, the rules shall
30 permit the prescribing of an annual supply of any drug, with the exception of controlled
31 substances, which is prescribed for the treatment of a chronic condition, other than chronic pain
32 management. For the purposes of this section, a “chronic condition” is a condition which lasts
33 three months or more, generally cannot be prevented by vaccines, can be controlled but not cured
34 by medication and does not generally disappear. These conditions, with the exception of chronic
35 pain, include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes,
36 epilepsy and seizures, and obesity. The prescriber authorized in this section shall note on the
37 prescription the chronic disease being treated.

38 (d) The board shall consult with other appropriate boards for the development of the
39 formulary.

40 (e) The board shall transmit to the Board of Pharmacy a list of all advanced practice
41 registered nurse with prescriptive authority. The list shall include:

- 42 (1) The name of the authorized advanced practice registered nurse;
- 43 (2) The prescriber's identification number assigned by the board; and
- 44 (3) The effective date of prescriptive authority.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

45 **§30-14-11. Refusal, suspension or revocation of license; suspension or revocation of**
46 **certificate of authorization.**

1 (a) The board may either refuse to issue or may suspend or revoke any license for any
2 one or more of the following causes:

- 3 (1) Conviction of a felony, as shown by a certified copy of the record of the trial court;
- 4 (2) Conviction of a misdemeanor involving moral turpitude;
- 5 (3) Violation of any provision of this article regulating the practice of osteopathic physicians
6 and surgeons;
- 7 (4) Fraud, misrepresentation or deceit in procuring or attempting to procure admission to
8 practice;
- 9 (5) Gross malpractice;
- 10 (6) Advertising by means of knowingly false or deceptive statements;
- 11 (7) Advertising, practicing or attempting to practice under a name other than one's own;
- 12 (8) Habitual drunkenness, or habitual addiction to the use of morphine, cocaine or other
13 habit-forming drugs.

14 (b) The board shall also have the power to suspend or revoke for cause any certificate of
15 authorization issued by it. It shall have the power to reinstate any certificate of authorization
16 suspended or revoked by it.

17 (c) An osteopathic physician licensed under this chapter may not be disciplined for
18 providing expedited partner therapy in accordance with article four-f, chapter sixteen of this code.

Introduced SB 123

NOTE: The purpose of this bill is to allow for expedited partner therapy treatment for a sexually transmitted disease. The bill permits prescribing antibiotics for the partner of a patient without first examining the partner under certain circumstances. The bill requires counseling by the physician. The bill also requires the Department of Health and Human Resources to develop outreach materials. The bill provides for limited liability for physicians, physician assistants and advanced practice registered nurses who prescribe in an expedited partner therapy setting. The bill provides that health care professionals and pharmacists are not liable for not providing expedited partner therapy or filling certain prescriptions. The bill makes changes to the licensing portions of the code to make it permissible for the various disciplines to provide expedited partner therapy without disciplinary actions from their respective licensing boards.

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