

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled

Committee Substitute

for

Committee Substitute

for

Senate Bill 273

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Passed March 9, 2018; in effect 90 days from passage]

1 AN ACT to amend and reenact §16-5H-2 and §16-5H-9 of the Code of West Virginia, 1931, as
2 amended; to amend and reenact §16-5Y-2, §16-5Y-4, and §16-5Y-5 of said code; to
3 amend said code by adding thereto a new article, designated §16-54-1, §16-54-2, §16-
4 54-3, §16-54-4, §16-54-5, §16-54-6, §16-54-7, §16-54-8, and §16-54-9; to amend and
5 reenact §30-3-14 of said code; to amend and reenact §30-3A-1, §30-3A-2, §30-3A-3, and
6 §30-3A-4 of said code; to amend and reenact §30-4-19 of said code; to amend and reenact
7 §30-5-6 of said code; to amend and reenact §30-7-11 of said code; to amend and reenact
8 §30-8-18 of said code; to amend and reenact §30-10-19 of said code; to amend and
9 reenact §30-14-12a of said code; to amend and reenact §30-36-2 of said code; to amend
10 said code by adding thereto a new section, designated §60A-5-509; and to amend and
11 reenact §60A-9-4, §60A-9-5, and §60A-9-5a of said code, all relating to reducing the use
12 of certain prescription drugs; providing for an exemption from registration for office-based,
13 medication-assisted treatment program in specified cases; providing for an exemption for
14 medication-assisted treatment programs; clarifying physician responsibility for medication-
15 assisted treatment; clarifying definition of “pain management clinic”; providing for
16 emergency rulemaking; defining terms; providing for an advance directive; requiring
17 consultation with patients prior to prescribing an opioid; limiting the amount of opioid
18 prescriptions; requiring a narcotics contract in certain circumstances; providing exceptions
19 to prescribing limits; providing for referral to a pain clinic or pain specialist; providing
20 reports to licensing boards regarding abnormal or unusual prescribing practices; requiring
21 referral to certain alternative treatments; requiring insurance coverage for certain
22 procedures to treat chronic pain; updating board’s titles; requiring the Board of Pharmacy
23 to report quarterly to various licensing boards; exempting the Board of Pharmacy from
24 certain purchasing requirements; clarifying who must report to the Controlled Substances
25 Monitoring Program Database; clarifying the practice of acupuncture; precluding
26 retaliation against a health care provider for declining to prescribe a narcotic; and

27 permitting the investigation and discipline for abnormal and unusual prescribing and
28 dispensing of prescription drugs.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5H. CHRONIC PAIN CLINIC LICENSING ACT.

§16-5H-2. Definitions.

1 “Chronic pain” means pain that has persisted after reasonable medical efforts have been
2 made to relieve the pain or cure its cause and that has continued, either continuously or
3 episodically, for longer than three continuous months. For purposes of this article, “chronic pain”
4 does not include pain directly associated with a terminal condition.

5 “Director” means the Director of the Office of Health Facility Licensure and Certification
6 within the Office of the Inspector General.

7 “Owner” means any person, partnership, association, or corporation listed as the owner
8 of a pain management clinic on the licensing forms required by this article.

9 “Pain management clinic” means all privately-owned pain management clinics, facilities,
10 or offices not otherwise exempted from this article and which meet both of the following criteria:

11 (1) Where in any month more than 50 percent of patients of the clinic are prescribed or
12 dispensed Schedule II opioids or other Schedule II controlled substances specified in rules
13 promulgated pursuant to this article for chronic pain resulting from conditions that are not terminal;
14 and

15 (2) The facility meets any other identifying criteria established by the secretary by rule.

16 “Physician” means an individual authorized to practice medicine or surgery or osteopathic
17 medicine or surgery in this state.

18 “Prescriber” means an individual who is authorized by law to prescribe drugs or drug
19 therapy related devices in the course of the individual’s professional practice, including only a

20 medical or osteopathic physician authorized to practice medicine or surgery; a physician assistant
21 or osteopathic physician assistant who holds a certificate to prescribe drugs; or an advanced
22 nurse practitioner who holds a certificate to prescribe.

23 “Secretary” means the Secretary of the West Virginia Department of Health and Human
24 Resources. The secretary may define in rules any term or phrase used in this article which is not
25 expressly defined.

§16-5H-9. Rules.

1 (a) The Secretary of the Department of Health and Human Resources, in collaboration
2 with the West Virginia Board of Medicine and the West Virginia Board of Osteopathy, shall
3 promulgate rules in accordance with the provisions of §29A-1-1 *et seq.* of this code for the
4 licensure of pain management clinics to ensure adequate care, treatment, health, safety, welfare,
5 and comfort of patients at these facilities. These rules shall include, at a minimum:

- 6 (1) The process to be followed by applicants seeking a license;
- 7 (2) The qualifications and supervision of licensed and nonlicensed personnel at pain
8 management clinics and training requirements for all facility health care practitioners who are not
9 regulated by another board;
- 10 (3) The provision and coordination of patient care, including the development of a written
11 plan of care;
- 12 (4) The management, operation, staffing, and equipping of the pain management clinic;
- 13 (5) The clinical, medical, patient, and business records kept by the pain management
14 clinic;
- 15 (6) The procedures for inspections and for the review of utilization and quality of patient
16 care;
- 17 (7) The standards and procedures for the general operation of a pain management clinic,
18 including facility operations, physical operations, infection control requirements, health and safety
19 requirements, and quality assurance;

20 (8) Identification of drugs that may be used to treat chronic pain that identify a facility as a
21 pain management clinic, including, at a minimum, tramadol and carisoprodol;

22 (9) Any other criteria that identify a facility as a pain management clinic;

23 (10) The standards and procedures to be followed by an owner in providing supervision,
24 direction, and control of individuals employed by or associated with a pain management clinic;

25 (11) Data collection and reporting requirements; and

26 (12) Such other standards or requirements as the secretary determines are appropriate.

27 (b) The rules authorized by this section may be filed as emergency rules if deemed
28 necessary to promptly effectuate the purposes of this article. The Legislature finds that the
29 changes made to this article during the 2018 regular session of the Legislature constitute an
30 emergency for the purposes of filing any amendment to existing rules.

ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.

§16-5Y-2. Definitions.

1 "Addiction" means a primary, chronic disease of brain reward, motivation, memory, and
2 related circuitry. Dysfunction in these circuits leads to characteristic biological, psychological,
3 social, and spiritual manifestations which is reflected in an individual pathologically pursuing
4 reward or relief by substance use, or both, and other behaviors. Addiction is characterized by
5 inability to consistently abstain; impairment in behavioral control; craving; diminished recognition
6 of significant problems with one's behaviors; interpersonal problems with one's behaviors and
7 interpersonal relationships; a dysfunctional emotional response; and as addiction is currently
8 defined by the American Society of Addiction Medicine.

9 "Administrator" means an individual designated by the governing body to be responsible
10 for the day-to-day operation of the opioid treatment programs.

11 "Advanced alcohol and drug abuse counselor" means an alcohol and drug abuse
12 counselor who is certified by the West Virginia Certification Board for Addiction and Prevention
13 Professionals who demonstrates a high degree of competence in the addiction counseling field.

14 “Alcohol and drug abuse counselor” means a counselor certified by the West Virginia
15 Certification Board for Addiction and Prevention Professionals for specialized work with patients
16 who have substance use problems.

17 “Biopsychosocial” means of, relating to, or concerned with, biological, psychological, and
18 social aspects in contrast to the strictly biomedical aspects of disease.

19 “Center for Substance Abuse Treatment” means the center under the Substance Abuse
20 and Mental Health Services Administration that promotes community-based substance abuse
21 treatment and recovery services for individuals and families in the community and provides
22 national leadership to improve access, reduce barriers, and promote high quality, effective
23 treatment and recovery services.

24 “Controlled Substances Monitoring Program Database” means the database maintained
25 by the West Virginia Board of Pharmacy pursuant to §60A-9-3 of this code that monitors and
26 tracks certain prescriptions written or dispensed by dispensers and prescribers in West Virginia.

27 “Director” means the Director of the Office of Health Facility Licensure and Certification.

28 “Dispense” means the preparation and delivery of a medication-assisted treatment
29 medication in an appropriately labeled and suitable container to a patient by a medication-assisted
30 treatment program or pharmacist.

31 “Governing body” means the person or persons identified as being legally responsible for
32 the operation of the opioid treatment program. A governing body may be a board, a single entity
33 or owner, or a partnership. The governing body must comply with the requirements prescribed in
34 rules promulgated pursuant to this article.

35 “Medical director” means a physician licensed within the State of West Virginia who
36 assumes responsibility for administering all medical services performed by the medication-
37 assisted treatment program, either by performing them directly or by delegating specific
38 responsibility to authorized program physicians and health care professionals functioning under
39 the medical director’s direct supervision and functioning within their scope of practice.

40 “Medication-assisted treatment” means the use of medications and drug screens, in
41 combination with counseling and behavioral therapies, to provide a holistic approach to the
42 treatment of substance use disorders.

43 “Medication-assisted treatment program” means all publicly and privately owned opioid
44 treatment programs and office-based, medication-assisted treatment programs, which prescribe
45 medication-assisted treatment medications and treat substance use disorders, as those terms are
46 defined in this article.

47 “Medication-assisted treatment medication” means any medication that is approved by the
48 United States Food and Drug Administration under Section 505 of the Federal Food, Drug and
49 Cosmetic Act, 21 U. S. C. § 355, for use in the treatment of substance use disorders that is an
50 opioid agonist or partial opioid agonist and is listed on the Schedule of Controlled Substances in
51 §60A-2-2201 *et seq.* of this code.

52 “Office-based, medication-assisted treatment” means all publicly or privately owned
53 clinics, facilities, offices, or programs that provide medication-assisted treatment to individuals
54 with substance use disorders through the prescription, administration, or dispensing of a
55 medication-assisted treatment medication in the form of a partial opioid agonist.

56 “Opioid agonist” means substances that bind to and activate the opiate receptors resulting
57 in analgesia and pain regulation, respiratory depression, and a wide variety of behavioral
58 changes. As used in this article, the term “opioid agonist” does not include partial agonist
59 medications used as an alternative to opioid agonists in the treatment of opioid addiction.

60 “Opioid treatment program” means all publicly- or privately-owned medication-assisted
61 treatment programs in clinics, facilities, offices, or programs that provide medication-assisted
62 treatment to individuals with substance use disorders through on-site administration or dispensing
63 of a medication-assisted treatment medication in the form of an opioid agonist or partial opioid
64 agonist.

65 “Owner” means any person, partnership, association, or corporation listed as the owner
66 of a medication-assisted treatment program on the licensing or registration forms required by this
67 article.

68 “Partial opioid agonist” means a Federal Drug Administration approved medication that is
69 used as an alternative to opioid agonists for the treatment of substance use disorders and that
70 binds to and activates opiate receptors, but not to the same degree as full agonists.

71 “Physician” means an individual licensed in this state to practice allopathic medicine or
72 surgery by the West Virginia Board of Medicine or osteopathic medicine or surgery by the West
73 Virginia Board of Osteopathic Medicine and that meets the requirements of this article.

74 “Prescriber” means a person authorized in this state, working within their scope of practice,
75 to give direction, either orally or in writing, for the preparation and administration of a remedy to
76 be used in the treatment of substance use disorders.

77 “Program sponsor” means the person named in the application for the certification and
78 licensure of an opioid treatment program who is responsible for the administrative operation of
79 the opioid treatment program and who assumes responsibility for all of its employees, including
80 any practitioners, agents, or other persons providing medical, rehabilitative, or counseling
81 services at the program.

82 “Secretary” means the Secretary of the West Virginia Department of Health and Human
83 Resources or his or her designee.

84 “State opioid treatment authority” means the agency or individual designated by the
85 Governor to exercise the responsibility and authority of the state for governing the treatment of
86 substance use disorders, including, but not limited to, the treatment of opiate addiction with opioid
87 drugs.

88 “State oversight agency” means the agency or office of state government identified by the
89 secretary to provide regulatory oversight of medication-assisted treatment programs on behalf of
90 the State of West Virginia.

91 “Substance” means the following:

92 (1) Alcohol;

93 (2) Controlled substances defined by §60A-2-204, §60A-2-206, §60A-2-208, and §60A-2-
94 210 of this code; or

95 (3) Any chemical, gas, drug, or medication consumed which causes clinically and
96 functionally significant impairment, such as health problems, disability, and failure to meet major
97 responsibilities at work, school, or home.

98 “Substance Abuse and Mental Health Services Administration” means the agency under
99 the United States Department of Health and Human Services responsible for the accreditation
100 and certification of medication-assisted treatment programs and that provides leadership,
101 resources, programs, policies, information, data, contracts, and grants for the purpose of reducing
102 the impact of substance abuse and mental or behavioral illness.

103 “Substance use disorder” means patterns of symptoms resulting from use of a substance
104 that the individual continues to take, despite experiencing problems as a result; or as defined in
105 the most recent edition of the American Psychiatric Association’s Diagnostic and Statistical
106 Manual of Mental Disorders.

107 “Telehealth” means the mode of delivering health care services and public health via
108 information and communication technologies to facilitate the diagnosis, consultation, treatment
109 education, care management, and self-management of a patient’s health care while the patient is
110 at the originating site and the health care provider is at a distant site.

111 “Variance” means written permission granted by the secretary to a medication-assisted
112 treatment program that a requirement of this article or rules promulgated pursuant to this article
113 may be accomplished in a manner different from the manner set forth in this article or associated
114 rules.

115 “Waiver” means a formal, time-limited agreement between the designated oversight
116 agency and the medication-assisted treatment program that suspends a rule, policy, or standard

117 for a specific situation so long as the health and safety of patients is better served in the situation
118 by suspension of the rule, policy, or standard than by enforcement.

**§16-5Y-4. Office-based, medication-assisted treatment programs to obtain registration;
application; fees and inspections.**

1 (a) No person, partnership, association, or corporation may operate an office-based,
2 medication-assisted treatment program without first obtaining a registration from the secretary in
3 accordance with the provisions of this article and the rules lawfully promulgated pursuant to this
4 article.

5 (b) Any person, partnership, association, or corporation desiring a registration to operate
6 an office-based, medication-assisted treatment program in this state shall file with the Office of
7 Health Facility Licensure and Certification an application in such form and with such information
8 as the secretary shall prescribe and furnish accompanied by an application fee.

9 (c) The Director of the Office of Health Facility Licensure and Certification or his or her
10 designee shall inspect and review all documentation submitted with the application. The director
11 shall then provide a recommendation to the secretary whether to approve or deny the application
12 for registration. The secretary shall issue a registration if the facility is in compliance with the
13 provisions of this article and with the rules lawfully promulgated pursuant to this article.

14 (d) A registration shall be issued in one of three categories:

15 (1) An initial 12-month registration shall be issued to an office-based, medication-assisted
16 treatment program establishing a new program or service for which there is insufficient consumer
17 participation to demonstrate substantial compliance with this article and with all rules promulgated
18 pursuant to this article;

19 (2) A provisional registration shall be issued when an office-based, medication-assisted
20 treatment program seeks a renewal registration, or is an existing program as of the effective date
21 of this article and is seeking an initial registration, and the office-based, medication-assisted
22 treatment program is not in substantial compliance with this article and with all rules promulgated

23 pursuant to this article, but does not pose a significant risk to the rights, health, and safety of a
24 consumer. It shall expire not more than six months from the date of issuance, and may not be
25 consecutively reissued; or

26 (3) A renewal registration shall be issued when an office-based, medication-assisted
27 treatment program is in substantial compliance with this article and with all rules promulgated
28 pursuant to this article. A renewal registration shall expire not more than one year from the date
29 of issuance.

30 (e) At least 60 days prior to the registration expiration date, an application for renewal shall
31 be submitted by the office-based, medication-assisted treatment program to the secretary on
32 forms furnished by the secretary. A registration shall be renewed if the secretary determines that
33 the applicant is in compliance with this article and with all rules promulgated pursuant to this
34 article. A registration issued to one program location pursuant to this article is not transferrable
35 or assignable. Any change of ownership of a registered office-based, medication-assisted
36 treatment program requires submission of a new application. The office-based, medication-
37 assisted treatment program shall notify the secretary of any change in ownership within 10 days
38 of the change and must submit a new application within the time frame prescribed by the
39 secretary.

40 (f) Any person, partnership, association, or corporation seeking to obtain or renew a
41 registration for an office-based, medication-assisted treatment program in this state must submit
42 to the secretary the following documentation:

- 43 (1) Full operating name of the program as advertised;
- 44 (2) Legal name of the program as registered with the West Virginia Secretary of State;
- 45 (3) Physical address of the program;
- 46 (4) Preferred mailing address for the program;
- 47 (5) Email address to be used as the primary contact for the program;
- 48 (6) Federal Employer Identification Number assigned to the program;

49 (7) All business licenses issued to the program by this state, the state Tax Department,
50 the Secretary of State, and all other applicable business entities;

51 (8) Brief description of all services provided by the program;

52 (9) Hours of operation;

53 (10) Legal Registered Owner Name – name of the person registered as the legal owner
54 of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal
55 owner separately, indicating the percentage of ownership;

56 (11) Medical director's full name, medical license number, Drug Enforcement
57 Administration registration number, and a listing of all current certifications;

58 (12) For each physician, counselor, or social worker of the program, provide the following:

59 (A) Employee's role and occupation within the program;

60 (B) Full legal name;

61 (C) Medical license, if applicable;

62 (D) Drug Enforcement Administration registration number, if applicable;

63 (E) Drug Enforcement Administration identification number to prescribe buprenorphine for
64 addiction, if applicable; and

65 (F) Number of hours worked at program per week;

66 (13) Name and location address of all programs owned or operated by the applicant;

67 (14) Notarized signature of applicant;

68 (15) Check or money order for registration fee;

69 (16) Verification of education and training for all physicians, counselors, and social
70 workers practicing at or used by referral by the program such as fellowships, additional education,
71 accreditations, board certifications, and other certifications; and

72 (17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber
73 practicing at the program for the three months preceding the date of application.

74 (g) Upon satisfaction that an applicant has met all of the requirements of this article, the
75 secretary shall issue a registration to operate an office-based, medication-assisted treatment
76 program. An entity that obtains this registration may possess, have custody or control of, and
77 dispense drugs indicated and approved by the United States Food and Drug Administration for
78 the treatment of substance use disorders.

79 (h) The office-based, medication-assisted treatment program shall display the current
80 registration in a prominent location where services are provided and in clear view of all patients.

81 (i) The secretary or his or her designee shall perform complaint and verification
82 inspections on all office-based, medication-assisted treatment programs that are subject to this
83 article and all rules adopted pursuant to this article to ensure continued compliance.

84 (j) Any person, partnership, association, or corporation operating an office-based,
85 medication-assisted treatment program shall be permitted to continue operation until the effective
86 date of the new rules promulgated pursuant to this article. At that time a person, partnership,
87 association, or corporation shall file for registration within six months pursuant to the licensing
88 procedures and requirements of this section and the new rules promulgated hereunder. The
89 existing procedures of the person, partnership, association, or corporation shall remain effective
90 until receipt of the registration.

91 (k) A person, partnership, association, or corporation providing office-based, medication-
92 assisted treatment to no more than 30 patients of their practice or program is exempt from the
93 registration requirement contained in §16-5Y-4(a) of this code: *Provided*, That it:

94 (1) Operates in compliance with all legislative rules promulgated pursuant to this article
95 regulating office-based, medication-assisted treatment; and

96 (2) Attests to the Office of Health Facility Licensure and Certification on a form prescribed
97 by the secretary that the person, partnership, association, or corporation requires counselling and
98 drug screens, has implemented diversion control measures, will provide patient numbers upon
99 request, and will provide any other information required by the secretary in rule; and

100 (3) Is prohibited from establishing an office-based, medication-assisted treatment at any
101 other location or facility after the submission of an attestation submitted pursuant to §16-5Y-
102 4(k)(2) of this code. This subdivision includes any person, partnership, association, or corporation
103 that has an ownership interest in a partnership, association, or corporation or other corporate
104 entity providing office-based, medication-assisted treatment.

§16-5Y-5. Operational requirements.

1 (a) The medication-assisted treatment program shall be licensed and registered in this
2 state with the secretary, the Secretary of State, the state Tax Department, and all other applicable
3 business or licensing entities.

4 (b) The program sponsor need not be a licensed physician but shall employ a licensed
5 physician for the position of medical director, when required by the rules promulgated pursuant to
6 this article.

7 (c) Each medication-assisted treatment program shall designate a medical director. If the
8 medication-assisted treatment program is accredited by a Substance Abuse and Mental Health
9 Services Administration approved accrediting body that meets nationally accepted standards for
10 providing medication-assisted treatment, including the Commission on Accreditation of
11 Rehabilitation Facilities or the Joint Commission on Accreditation of Healthcare Organizations,
12 then the program may designate a medical director to oversee all facilities associated with the
13 accredited medication-assisted treatment program. The medical director shall be responsible for
14 the operation of the medication-assisted treatment program, as further specified in the rules
15 promulgated pursuant to this article. He or she may delegate the day-to-day operation of a
16 medication-assisted treatment program as provided in rules promulgated pursuant to this article.
17 Within 10 days after termination of a medical director, the medication-assisted treatment program
18 shall notify the director of the identity of another medical director for that program. Failure to have
19 a medical director practicing at the program may be the basis for a suspension or revocation of
20 the program license. The medical director shall:

21 (1) Have a full, active, and unencumbered license to practice allopathic medicine or
22 surgery from the West Virginia Board of Medicine or to practice osteopathic medicine or surgery
23 from the West Virginia Board of Osteopathic Medicine in this state and be in good standing and
24 not under any probationary restrictions;

25 (2) Meet both of the following training requirements:

26 (A) If the physician prescribes a partial opioid agonist, he or she shall complete the
27 requirements for the Drug Addiction Treatment Act of 2000; and

28 (B) Complete other programs and continuing education requirements as further described
29 in the rules promulgated pursuant to this article;

30 (3) Practice at the licensed or registered medication-assisted treatment program a
31 sufficient number of hours, based upon the type of medication-assisted treatment license or
32 registration issued pursuant to this article, to ensure regulatory compliance, and carry out those
33 duties specifically assigned to the medical director as further described in the rules promulgated
34 pursuant to this article;

35 (4) Be responsible for monitoring and ensuring compliance with all requirements related
36 to the licensing and operation of the medication-assisted treatment program;

37 (5) Supervise, control, and direct the activities of each individual working or operating at
38 the medication-assisted treatment program, including any employee, volunteer, or individual
39 under contract, who provides medication-assisted treatment at the program or is associated with
40 the provision of that treatment. The supervision, control, and direction shall be provided in
41 accordance with rules promulgated by the secretary; and

42 (6) Complete other requirements prescribed by the secretary by rule.

43 (d) Each medication-assisted treatment program shall designate counseling staff, either
44 employees, or those used on a referral-basis by the program, which meet the requirements of this
45 article and the rules promulgated pursuant to this article. The individual members of the
46 counseling staff shall have one or more of the following qualifications:

- 47 (1) Be a licensed psychiatrist;
- 48 (2) Certification as an alcohol and drug counselor;
- 49 (3) Certification as an advanced alcohol and drug counselor;
- 50 (4) Be a counselor, psychologist, marriage and family therapist, or social worker with a
51 master's level education with a specialty or specific training in treatment for substance use
52 disorders, as further described in the rules promulgated pursuant to this article;
- 53 (5) Under the direct supervision of an advanced alcohol and drug counselor, be a
54 counselor with a bachelor's degree in social work or another relevant human services field:
55 *Provided*, That the individual practicing with a bachelor's degree under supervision applies for
56 certification as an alcohol and drug counselor within three years of the date of employment as a
57 counselor; or
- 58 (6) Be a counselor with a graduate degree actively working toward licensure or certification
59 in the individual's chosen field under supervision of a licensed or certified professional in that field
60 and/or advanced alcohol and drug counselor.
- 61 (e) The medication-assisted treatment program shall be eligible for, and not prohibited
62 from, enrollment with West Virginia Medicaid and other private insurance. Prior to directly billing
63 a patient for any medication-assisted treatment, a medication-assisted treatment program must
64 receive either a rejection of prior authorization, rejection of a submitted claim, or a written denial
65 from a patient's insurer or West Virginia Medicaid denying coverage for such treatment: *Provided*,
66 That the secretary may grant a variance from this requirement pursuant to §15-5Y-6 of this code.
67 The program shall also document whether a patient has no insurance. At the option of the
68 medication-assisted treatment program, treatment may commence prior to billing.
- 69 (f) The medication-assisted treatment program shall apply for and receive approval as
70 required from the United States Drug Enforcement Administration, Center for Substance Abuse
71 Treatment, or an organization designated by Substance Abuse and Mental Health and Mental
72 Health Administration.

73 (g) All persons employed by the medication-assisted treatment program shall comply with
74 the requirements for the operation of a medication-assisted treatment program established within
75 this article or by any rule adopted pursuant to this article.

76 (h) All employees of an opioid treatment program shall furnish fingerprints for a state and
77 federal criminal records check by the Criminal Identification Bureau of the West Virginia State
78 Police and the Federal Bureau of Investigation. The fingerprints shall be accompanied by a signed
79 authorization for the release of information and retention of the fingerprints by the Criminal
80 Identification Bureau and the Federal Bureau of Investigation. The opioid treatment program shall
81 be subject to the provisions of §16-49-1 *et seq.* of this code and subsequent rules promulgated
82 thereunder.

83 (i) The medication-assisted treatment program shall not be owned by, nor shall it employ
84 or associate with, any physician or prescriber:

85 (1) Whose Drug Enforcement Administration number is not currently full, active, and
86 unencumbered;

87 (2) Whose application for a license to prescribe, dispense, or administer a controlled
88 substance has been denied by and is not full, active, and unencumbered in any jurisdiction; or

89 (3) Whose license is anything other than a full, active, and unencumbered license to
90 practice allopathic medicine or surgery by the West Virginia Board of Medicine or osteopathic
91 medicine or surgery by the West Virginia Board of Osteopathic Medicine in this state, and, who is
92 in good standing and not under any probationary restrictions.

93 (j) A person may not dispense any medication-assisted treatment medication, including a
94 controlled substance as defined by §60A-1-101 of this code, on the premises of a licensed
95 medication-assisted treatment program, unless he or she is a physician or pharmacist licensed in
96 this state and employed by the medication-assisted treatment program unless the medication-
97 assisted treatment program is a federally certified narcotic treatment program. Prior to dispensing
98 or prescribing medication-assisted treatment medications, the treating physician must access the

99 Controlled Substances Monitoring Program Database to ensure the patient is not seeking
100 medication-assisted treatment medications that are controlled substances from multiple sources
101 and to assess potential adverse drug interactions, or both. Prior to dispensing or prescribing
102 medication-assisted treatment medications, the treating physician shall also ensure that the
103 medication-assisted treatment medication utilized is related to an appropriate diagnosis of a
104 substance use disorder and approved for such usage. The physician shall also review the
105 Controlled Substances Monitoring Program Database no less than quarterly and at each patient's
106 physical examination. The results obtained from the Controlled Substances Monitoring Program
107 Database shall be maintained with the patient's medical records.

108 (k) A medication-assisted treatment program responsible for medication administration
109 shall comply with:

- 110 (1) The West Virginia Board of Pharmacy regulations;
- 111 (2) The West Virginia Board of Examiners for Registered Professional Nurses regulations;
- 112 (3) All applicable federal laws and regulations relating to controlled substances; and
- 113 (4) Any requirements as specified in the rules promulgated pursuant to this article.

114 (l) Each medication-assisted treatment program location shall be licensed separately,
115 regardless of whether the program is operated under the same business name or management
116 as another program.

117 (m) The medication-assisted treatment program shall develop and implement patient
118 protocols, treatment plans, or treatment strategies and profiles, which shall include, but not be
119 limited by, the following guidelines:

- 120 (1) When a physician diagnoses an individual as having a substance use disorder, the
121 physician may treat the substance use disorder by managing it with medication in doses not
122 exceeding those approved by the United States Food and Drug Administration as indicated for
123 the treatment of substance use disorders and not greater than those amounts described in the
124 rules promulgated pursuant to this article. The treating physician and treating counselor's

125 diagnoses and treatment decisions shall be made according to accepted and prevailing standards
126 for medical care;

127 (2) The medication-assisted treatment program shall maintain a record of all of the
128 following:

129 (A) Medical history and physical examination of the individual;

130 (B) The diagnosis of substance use disorder of the individual;

131 (C) The plan of treatment proposed, the patient's response to the treatment, and any
132 modification to the plan of treatment;

133 (D) The dates on which any medications were prescribed, dispensed, or administered, the
134 name and address of the individual for whom the medications were prescribed, dispensed, or
135 administered, and the amounts and dosage forms for any medications prescribed, dispensed, or
136 administered;

137 (E) A copy of the report made by the physician or counselor to whom referral for evaluation
138 was made, if applicable; and

139 (F) A copy of the coordination of care agreement, which is to be signed by the patient,
140 treating physician, and treating counselor. If a change of treating physician or treating counselor
141 takes place, a new agreement must be signed. The coordination of care agreement must be
142 updated or reviewed at least annually. If the coordination of care agreement is reviewed, but not
143 updated, this review must be documented in the patient's record. The coordination of care
144 agreement will be provided in a form prescribed and made available by the secretary;

145 (3) Medication-assisted treatment programs shall report information, data, statistics, and
146 other information as directed in this code, and the rules promulgated pursuant to this article to
147 required agencies and other authorities;

148 (4) A prescriber authorized to prescribe a medication-assisted treatment medication who
149 practices at a medication-assisted treatment program is responsible for maintaining the control
150 and security of his or her prescription blanks and any other method used for prescribing a

151 medication-assisted treatment medication. The prescriber shall comply with all state and federal
152 requirements for tamper-resistant prescription paper. In addition to any other requirements
153 imposed by statute or rule, the prescriber shall notify the secretary and appropriate law-
154 enforcement agencies in writing within 24 hours following any theft or loss of a prescription blank
155 or breach of any other method of prescribing a medication-assisted treatment medication; and

156 (5) The medication-assisted treatment program shall have a drug testing program to
157 ensure a patient is in compliance with the treatment strategy.

158 (n) Medication-assisted treatment programs shall only prescribe, dispense, or administer
159 liquid methadone to patients pursuant to the restrictions and requirements of the rules
160 promulgated pursuant to this article.

161 (o) The medication-assisted treatment program shall immediately notify the secretary, or
162 his or her designee, in writing of any changes to its operations that affect the medication-assisted
163 treatment program's continued compliance with the certification and licensure requirements.

164 (p) If a physician treats a patient with more than 16 milligrams per day of buprenorphine
165 then clear medical notes shall be placed in the patient's medical file indicating the clinical reason
166 or reasons for the higher level of dosage.

167 (q) If a physician is not the patient's obstetrical or gynecological provider, the physician
168 shall consult with the patient's obstetrical or gynecological provider to the extent possible to
169 determine whether the prescription is appropriate for the patient.

170 (r) A practitioner providing medication-assisted treatment may perform certain aspects of
171 telehealth if permitted under his or her scope of practice.

172 (s) The physician shall follow the recommended manufacturer's tapering schedule for the
173 medication-assisted treatment medication. If the schedule is not followed, the physician shall
174 document in the patient's medical record and the clinical reason why the schedule was not
175 followed. The secretary may investigate a medication-assisted treatment program if a high
176 percentage of its patients are not following the recommended tapering schedule.

ARTICLE 54. OPIOID REDUCTION ACT.

§16-54-1. Definitions.

1 As used in this section:

2 “Acute pain” means a time limited pain caused by a specific disease or injury.

3 “Chronic pain” means a noncancer, non-end of life pain lasting more than three months or
4 longer than the duration of normal tissue healing.

5 “Health care practitioner” or “practitioner” means:

6 (1) A physician licensed pursuant to the provisions of §30-3-1 *et seq.* and §30-14-1 *et seq.*
7 of this code;

8 (2) A podiatrist licensed pursuant to the provisions of §30-3-1 *et seq.* of this code;

9 (3) A physician assistant with prescriptive authority as set forth in §30-3E-3 of this code;

10 (4) An advanced practice registered nurse with prescriptive authority as set forth in §30-
11 7-15a of this code;

12 (5) A dentist licensed pursuant to the provisions of §30-4-1 *et seq.* of this code; and

13 (6) An optometrist licensed pursuant to the provisions of §30-8-1 *et seq.* of this code;

14 “Office” means the Office of Drug Control Policy.

15 “Pain clinic” means the same as that term is defined in §16-5H-2 of this code.

16 “Pain specialist” means a practitioner who is board certified in pain management or a
17 related field.

§16-54-2. Voluntary nonopioid advanced directive form.

1 (a) The office shall establish a voluntary nonopioid advanced directive form. The form shall
2 be available on the office’s web site. The form shall indicate to a health care practitioner that an
3 individual may not be administered or offered a prescription or medication order for an opioid. The
4 advance directive shall be filed in the individual’s medical record in either a health care facility or
5 a private office of a practitioner, or both, and shall be transferred with the person from one
6 practitioner to another or from one health care facility to another.

7 (b) An individual may revoke the voluntary nonopioid advanced directive form for any
8 reason and may do so by written or oral means.

9 (c) A practitioner without actual knowledge of an advance directive as set forth in §16-54-
10 2(a) of this code and who prescribes an opioid in a medical emergency situation is not civilly or
11 criminally liable for failing to act in accordance with the directives unless the act or omission was
12 the result of a practitioner's gross negligence or willful misconduct. For purposes of this section,
13 a "medical emergency situation" shall mean an acute injury or illness that poses an immediate
14 risk to a person's life or long-term health.

§16-54-3. Opioid prescription notifications.

1 Prior to issuing a prescription for an opioid, a practitioner shall:

2 (1) Advise the patient regarding the quantity of the opioid and a patient's option to fill the
3 prescription in a lesser quantity; and

4 (2) Inform the patient of the risks associated with the opioid prescribed.

§16-54-4. Opioid prescription limitations.

1 (a) When issuing a prescription for an opioid to an adult patient seeking treatment in an
2 emergency room for outpatient use, a health care practitioner may not issue a prescription for
3 more than a four-day supply.

4 (b) When issuing a prescription for an opioid to an adult patient seeking treatment in an
5 urgent care facility setting for outpatient use, a health care practitioner may not issue a
6 prescription for more than a four-day supply: *Provided*, That an additional dosing for up to no
7 more than a seven-day supply may be permitted, but only if the medical rationale for more than a
8 four-day supply is documented in the medical record.

9 (c) A health care practitioner may not issue an opioid prescription to a minor for more than
10 a three-day supply and shall discuss with the parent or guardian of the minor the risks associated
11 with opioid use and the reasons why the prescription is necessary.

12 (d) A dentist or an optometrist may not issue an opioid prescription for more than a three-
13 day supply at any time.

14 (e) A practitioner may not issue an initial opioid prescription for more than a seven-day
15 supply. The prescription shall be for the lowest effective dose which in the medical judgement of
16 the practitioner would be the best course of treatment for this patient and his or her condition.

17 (f) Prior to issuing an initial opioid prescription, a practitioner shall:

18 (1) Take and document the results of a thorough medical history, including the patient's
19 experience with nonopioid medication, nonpharmacological pain management approaches, and
20 substance abuse history;

21 (2) Conduct, as appropriate, and document the results of a physical examination;

22 (3) Develop a treatment plan, with particular attention focused on determining the cause
23 of the patient's pain; and

24 (4) Access relevant prescription monitoring information under the Controlled Substances
25 Monitoring Program Database.

26 (g) Notwithstanding any provision of this code or legislative rule to the contrary, no
27 medication listed as a Schedule II controlled substance as set forth in §60A-2-206 of this code,
28 may be prescribed by a practitioner for greater than a 30-day supply: *Provided*, That two additional
29 prescriptions, each for a 30-day period for a total of a 90-day supply, may be prescribed if the
30 practitioner accesses the West Virginia Controlled Substances Monitoring Program Database as
31 set forth in §60A-9-1 *et seq.* of this code: *Provided, however*, That the limitations in this section
32 do not apply to cancer patients, patients receiving hospice care from a licensed hospice provider,
33 patients receiving palliative care, a patient who is a resident of a long-term care facility, or a patient
34 receiving medications that are being prescribed for use in the treatment of substance abuse or
35 opioid dependence.

36 (h) A practitioner is required to conduct and document the results of a physical examination
37 every 90 days for any patient for whom he or she continues to treat with any Schedule II controlled
38 substance as set forth in §60-2-206 of this code.

39 (i) A veterinarian licensed pursuant to the provisions of §30-10-1 *et seq.* of this code may
40 not issue more than an initial opioid prescription for more than a seven-day supply. The

41 prescription shall be for the lowest effective dose which in the medical judgment of the veterinarian
42 would be the best course of treatment for this patient and his or her condition.

43 (j) A prescription for any opioid drug listed on Schedule II as set forth in §60A-2-206 of
44 this code for greater than a seven-day period shall require the patient to execute a narcotics
45 contract with their prescribing practitioner. The contract shall be made a part of the patient's
46 medical record. The narcotics contract is required to provide that:

47 (1) The patient agrees only to obtain scheduled medications from this particular
48 prescribing practitioner;

49 (2) The patient agrees he or she will only fill those prescriptions at a single pharmacy
50 which includes a pharmacy with more than one location;

51 (3) The patient agrees to notify the prescribing practitioner within 72 hours of any
52 emergency where he or she is prescribed scheduled medication; and

53 (4) If the patient fails to honor the provisions of the narcotics contract, the prescribing
54 practitioner may either terminate the provider-patient relationship or continue to treat the patient
55 without prescribing a Schedule II opioid for the patient. Should the practitioner decide to terminate
56 the relationship, he or she is required to do so pursuant to the provisions of this code and any
57 rules promulgated hereunder. Termination of the relationship for the patient's failure to honor the
58 provisions of the contract is not subject to any disciplinary action by the practitioner's licensing
59 board.

§16-54-5. Subsequent prescriptions; limitations.

1 (a) No fewer than six days after issuing the initial prescription as set forth in §16-54-4
2 of this code, the practitioner, after consultation with the patient, may issue a subsequent
3 prescription for an opioid to the patient if:

4 (1) The subsequent prescription would not be deemed an initial prescription pursuant
5 to §16-54-4 of this code;

6 (2) The practitioner determines the prescription is necessary and appropriate to the
7 patient's treatment needs and documents the rationale for the issuance of the subsequent
8 prescription; and

9 (3) The practitioner determines that issuance of the subsequent prescription does not
10 present an undue risk of abuse, addiction, or diversion and documents that determination.

11 (b) Prior to issuing the subsequent prescription of the course of treatment, a
12 practitioner shall discuss with the patient, or the patient's parent or guardian if the patient is
13 under 18 years of age, the risks associated with the drug being prescribed. This discussion
14 shall include:

15 (1) The risks of addiction and overdose associated with opioid drugs and the dangers
16 of taking opioid drugs with alcohol, benzodiazepines, and other central nervous system
17 depressants;

18 (2) The reasons why the prescription is necessary;

19 (3) Alternative treatments that may be available; and

20 (4) Risks associated with the use of the drugs being prescribed, specifically that
21 opioids are highly addictive, even when taken as prescribed, that there is a risk of developing
22 a physical or psychological dependence on the controlled substance, and that the risks of
23 taking more opioids than prescribed, or mixing sedatives, benzodiazepines, or alcohol with
24 opioids, can result in fatal respiratory depression.

25 (c) The discussion as set forth in §16-54-5(b) of this code shall be included in a notation
26 in the patient's medical record.

§16-54-6. Ongoing treatment; referral to pain clinic or pain specialist.

1 (a) At the time of the issuance of the third prescription for a prescription opioid the
2 practitioner shall consider referring the patient to a pain clinic or a pain specialist. The
3 practitioner shall discuss the benefits of seeking treatment through a pain clinic or a pain

4 specialist and provide him or her with an understanding of any risks associated by choosing
5 not to pursue that as an option.

6 (b) If the patient declines to seek treatment from a pain clinic or a pain specialist and
7 opts to remain a patient of the practitioner, and the practitioner continues to prescribe an
8 opioid for pain as provided in this code, the practitioner shall:

9 (1) Note in the patient's medical records that the patient knowingly declined treatment
10 from a pain clinic or pain specialist;

11 (2) Review, at a minimum of every three months, the course of treatment, any new
12 information about the etiology of the pain, and the patient's progress toward treatment
13 objectives and document the results of that review;

14 (3) Assess the patient prior to every renewal to determine whether the patient is
15 experiencing problems associated with physical and psychological dependence and
16 document the results of that assessment; and

17 (4) Periodically make reasonable efforts, unless clinically contraindicated, to either
18 stop the use of the controlled substance, decrease the dosage, try other drugs or treatment
19 modalities in an effort to reduce the potential for abuse or the development of physical or
20 psychological dependence, and document with specificity the efforts undertaken.

§16-54-7. Exceptions.

1 (a) This article does not apply to a prescription for a patient who is currently in active
2 treatment for cancer, receiving hospice care from a licensed hospice provider or palliative care
3 provider, or is a resident of a long-term care facility, or to any medications that are being
4 prescribed for use in the treatment of substance abuse or opioid dependence.

5 (b) A practitioner may prescribe an initial seven-day supply of an opioid to a post-surgery
6 patient immediately following a surgical procedure. Based upon the medical judgment of the
7 practitioner, a subsequent prescription may be prescribed by the practitioner pursuant to the

8 provisions of this code. Nothing in this section authorizes a practitioner to prescribe any
9 medication which he or she is not permitted to prescribe pursuant to their practice act.

10 (c) A practitioner who acquires a patient after January 1, 2018, who is currently being
11 prescribed an opioid from another practitioner shall be required to access the Controlled
12 Substances Monitoring Program Database as set forth in §60A-9-1 *et seq.* of this code. Any
13 prescription would not be deemed an initial prescription pursuant to the provisions of this
14 section. The practitioner shall otherwise treat the patient as set forth in this code.

15 (d) This article does not apply to an existing practitioner-patient relationship established
16 before January 1, 2018, where there is an established and current opioid treatment plan which is
17 reflected in the patient's medical records.

§16-54-8. Treatment of pain.

18 (a) When patients seek treatment for any of the myriad conditions that cause pain, a health
19 care practitioner shall refer or prescribe to a patient any of the following treatment alternatives,
20 based on the practitioner's clinical judgment and the availability of the treatment, before starting
21 a patient on an opioid: physical therapy, occupational therapy, acupuncture, massage therapy,
22 osteopathic manipulation, chronic pain management program, and chiropractic services, as
23 defined in §30-16-3 of this code.

24 (b) Nothing in this section should be construed to require that all of the treatment
25 alternatives set forth in §16-54-8(a) of this code are required to be exhausted prior to the patient
26 receiving a prescription for an opioid.

27 (c) At a minimum, an insurance provider who offers an insurance product in this state, the
28 Bureau for Medical Services, and the Public Employees Insurance Agency shall provide coverage
29 for 20 visits per event of physical therapy, occupational therapy, osteopathic manipulation, a
30 chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code,
31 when ordered by a health care practitioner to treat conditions that cause chronic pain.

32 (d) A patient may seek treatment for physical therapy, occupational therapy, osteopathic
33 manipulation, a chronic pain management program, and chiropractic services, as defined in §30-
34 16-3 of this code, prior to seeking treatment from a practitioner and a practitioner referral is not
35 required as a condition of coverage by the Bureau for Medical Services, the Public Employees
36 Insurance Agency, and any insurance provider who offers an insurance product in this state. Any
37 deductible, coinsurance, or co-pay required for any of these services may not be greater than the
38 deductible, coinsurance, or co-pay required for a primary care visit.

39 (e) Nothing in this section precludes a practitioner from simultaneously prescribing an
40 opioid and prescribing or recommending any of the procedures set forth in §16-54-8(a) of this
41 code.

§16-54-9. Discipline.

1 A violation of this article is grounds for disciplinary action by the board that regulates the
2 health care practitioner who commits the violation.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

**§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to
board pertaining to medical professional liability and professional incompetence
required; penalties; grounds for license denial and discipline of physicians and
podiatrist; investigations; physical and mental examinations; hearings; sanctions;
summary sanctions; reporting by the board; reapplication; civil and criminal
immunity; voluntary limitation of license; probable cause determination; referral to
law-enforcement authorities.**

1 (a) The board may independently initiate disciplinary proceedings as well as initiate
2 disciplinary proceedings based on information received from medical peer review committees,

3 physicians, podiatrists, hospital administrators, professional societies, the Board of Pharmacy,
4 and others.

5 The board may initiate investigations as to professional incompetence or other reasons
6 for which a licensed physician or podiatrist may be adjudged unqualified based upon criminal
7 convictions; complaints by citizens, pharmacists, physicians, podiatrists, peer review committees,
8 hospital administrators, professional societies, or others; or unfavorable outcomes arising out of
9 medical professional liability. The board shall initiate an investigation if it receives notice that
10 three or more judgments, or any combination of judgments and settlements resulting in five or
11 more unfavorable outcomes arising from medical professional liability, have been rendered or
12 made against the physician or podiatrist within a five-year period. The board may not consider
13 any judgments or settlements as conclusive evidence of professional incompetence or conclusive
14 lack of qualification to practice.

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

22 The chief executive officer of every hospital shall, within 60 days after the completion of
23 the hospital's formal disciplinary procedure and also within 60 days after the commencement of
24 and again after the conclusion of any resulting legal action, report in writing to the board the name
25 of any member of the medical staff or any other physician or podiatrist practicing in the hospital
26 whose hospital privileges have been revoked, restricted, reduced, or terminated for any cause,
27 including resignation, together with all pertinent information relating to such action. The chief
28 executive officer shall also report any other formal disciplinary action taken against any physician

29 or podiatrist by the hospital upon the recommendation of its medical staff relating to professional
30 ethics, medical incompetence, medical professional liability, moral turpitude or drug or alcohol
31 abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend
32 staff or section meetings need not be reported. Voluntary cessation of hospital privileges for
33 reasons unrelated to professional competence or ethics need not be reported.

34 Any managed care organization operating in this state which provides a formal peer review
35 process shall report in writing to the board, within 60 days after the completion of any formal peer
36 review process and also within 60 days after the commencement of and again after the conclusion
37 of any resulting legal action, the name of any physician or podiatrist whose credentialing has been
38 revoked or not renewed by the managed care organization. The managed care organization shall
39 also report in writing to the board any other disciplinary action taken against a physician or
40 podiatrist relating to professional ethics, professional liability, moral turpitude, or drug or alcohol
41 abuse within 60 days after completion of a formal peer review process which results in the action
42 taken by the managed care organization. For purposes of this subsection, "managed care
43 organization" means a plan that establishes, operates, or maintains a network of health care
44 providers who have entered into agreements with and been credentialed by the plan to provide
45 health care services to enrollees or insureds to whom the plan has the ultimate obligation to
46 arrange for the provision of or payment for health care services through organizational
47 arrangements for ongoing quality assurance, utilization review programs, or dispute resolutions.

48 Any professional society in this state comprised primarily of physicians or podiatrists which
49 takes formal disciplinary action against a member relating to professional ethics, professional
50 incompetence, medical professional liability, moral turpitude, or drug or alcohol abuse shall report
51 in writing to the board within 60 days of a final decision the name of the member, together with all
52 pertinent information relating to the action.

53 Every person, partnership, corporation, association, insurance company, professional
54 society, or other organization providing professional liability insurance to a physician or podiatrist

55 in this state, including the state Board of Risk and Insurance Management, shall submit to the
56 board the following information within 30 days from any judgment or settlement of a civil or medical
57 professional liability action excepting product liability actions: The name of the insured; the date
58 of any judgment or settlement; whether any appeal has been taken on the judgment and, if so, by
59 which party; the amount of any settlement or judgment against the insured; and other information
60 required by the board.

61 Within 30 days from the entry of an order by a court in a medical professional liability
62 action or other civil action in which a physician or podiatrist licensed by the board is determined
63 to have rendered health care services below the applicable standard of care, the clerk of the court
64 in which the order was entered shall forward a certified copy of the order to the board.

65 Within 30 days after a person known to be a physician or podiatrist licensed or otherwise
66 lawfully practicing medicine and surgery or podiatry in this state or applying to be licensed is
67 convicted of a felony under the laws of this state or of any crime under the laws of this state
68 involving alcohol or drugs in any way, including any controlled substance under state or federal
69 law, the clerk of the court of record in which the conviction was entered shall forward to the board
70 a certified true and correct abstract of record of the convicting court. The abstract shall include
71 the name and address of the physician or podiatrist or applicant, the nature of the offense
72 committed, and the final judgment and sentence of the court.

73 Upon a determination of the board that there is probable cause to believe that any person,
74 partnership, corporation, association, insurance company, professional society, or other
75 organization has failed or refused to make a report required by this subsection, the board shall
76 provide written notice to the alleged violator stating the nature of the alleged violation and the time
77 and place at which the alleged violator shall appear to show good cause why a civil penalty should
78 not be imposed. The hearing shall be conducted in accordance with §29A-5-1 *et seq.* of this code.
79 After reviewing the record of the hearing, if the board determines that a violation of this subsection
80 has occurred, the board shall assess a civil penalty of not less than \$1,000 nor more than \$10,000

81 against the violator. The board shall notify any person so assessed of the assessment in writing
82 and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount
83 of the assessment to the board within 30 days, the Attorney General may institute a civil action in
84 the Circuit Court of Kanawha County to recover the amount of the assessment. In any civil action,
85 the court's review of the board's action shall be conducted in accordance with §29A-5-4 of this
86 code. Notwithstanding any other provision of this article to the contrary, when there are conflicting
87 views by recognized experts as to whether any alleged conduct breaches an applicable standard
88 of care, the evidence must be clear and convincing before the board may find that the physician
89 or podiatrist has demonstrated a lack of professional competence to practice with a reasonable
90 degree of skill and safety for patients.

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

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

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

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

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

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

111 (3) False or deceptive advertising;

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

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

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

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

131 As used in this subdivision, "proprietary interest" does not include an ownership interest
132 in a building in which space is leased to a clinical laboratory or pharmacy at the prevailing rate

133 under a lease arrangement that is not conditional upon the income or gross receipts of the clinical
134 laboratory or pharmacy;

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

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

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

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

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

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

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

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

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

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

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

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

169 (20) Professional incompetence;

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

178 (22) Knowingly failing to report to the board any act of gross misconduct committed by
179 another licensee of the board.

180 (d) The board shall deny any application for a license or other authorization to practice
181 medicine and surgery or podiatry in this state to any applicant, and shall revoke the license of any
182 physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty

183 by any court of competent jurisdiction of any felony involving prescribing, selling, administering,
184 dispensing, mixing, or otherwise preparing any prescription drug, including any controlled
185 substance under state or federal law, for other than generally accepted therapeutic purposes.
186 Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is
187 sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the same
188 effect as a verdict or plea of guilt. Upon application of a physician that has had his or her license
189 revoked because of a drug related felony conviction, upon completion of any sentence of
190 confinement, parole, probation, or other court-ordered supervision and full satisfaction of any
191 fines, judgments, or other fees imposed by the sentencing court, the board may issue the
192 applicant a new license upon a finding that the physician is, except for the underlying conviction,
193 otherwise qualified to practice medicine: *Provided*, That the board may place whatever terms,
194 conditions, or limitations it deems appropriate upon a physician licensed pursuant to this
195 subsection.

196 (e) The board may refer any cases coming to its attention to an appropriate committee of
197 an appropriate professional organization for investigation and report. Except for complaints
198 related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by
199 bribery or fraudulent misrepresentation, any complaint filed more than two years after the
200 complainant knew, or in the exercise of reasonable diligence should have known, of the existence
201 of grounds for the complaint shall be dismissed: *Provided*, That in cases of conduct alleged to be
202 part of a pattern of similar misconduct or professional incapacity that, if continued, would pose
203 risks of a serious or substantial nature to the physician's or podiatrist's current patients, the
204 investigating body may conduct a limited investigation related to the physician's or podiatrist's
205 current capacity and qualification to practice and may recommend conditions, restrictions, or
206 limitations on the physician's or podiatrist's license to practice that it considers necessary for the
207 protection of the public. Any report shall contain recommendations for any necessary disciplinary
208 measures and shall be filed with the board within 90 days of any referral. The recommendations

209 shall be considered by the board and the case may be further investigated by the board. The
210 board after full investigation shall take whatever action it considers appropriate, as provided in
211 this section.

212 (f) The investigating body, as provided in §30-3-14(e) of this code, may request and the
213 board under any circumstances may require a physician or podiatrist or person applying for
214 licensure or other authorization to practice medicine and surgery or podiatry in this state to submit
215 to a physical or mental examination by a physician or physicians approved by the board. A
216 physician or podiatrist submitting to an examination has the right, at his or her expense, to
217 designate another physician to be present at the examination and make an independent report to
218 the investigating body or the board. The expense of the examination shall be paid by the board.
219 Any individual who applies for or accepts the privilege of practicing medicine and surgery or
220 podiatry in this state is considered to have given his or her consent to submit to all examinations
221 when requested to do so in writing by the board and to have waived all objections to the
222 admissibility of the testimony or examination report of any examining physician on the ground that
223 the testimony or report is privileged communication. If a person fails or refuses to submit to an
224 examination under circumstances which the board finds are not beyond his or her control, failure
225 or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry
226 competently and in compliance with the standards of acceptable and prevailing medical practice.

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

229 (h) In every disciplinary or licensure denial action, the board shall furnish the physician or
230 podiatrist or applicant with written notice setting out with particularity the reasons for its action.
231 Disciplinary and licensure denial hearings shall be conducted in accordance with §29A-5-1 *et seq.*
232 of this code. However, hearings shall be heard upon sworn testimony and the rules of evidence
233 for trial courts of record in this state shall apply to all hearings. A transcript of all hearings under
234 this section shall be made, and the respondent may obtain a copy of the transcript at his or her

235 expense. The physician or podiatrist has the right to defend against any charge by the introduction
236 of evidence, the right to be represented by counsel, the right to present and cross examine
237 witnesses and the right to have subpoenas and subpoenas duces tecum issued on his or her
238 behalf for the attendance of witnesses and the production of documents. The board shall make
239 all its final actions public. The order shall contain the terms of all action taken by the board.

240 (i) In disciplinary actions in which probable cause has been found by the board, the board
241 shall, within 20 days of the date of service of the written notice of charges or 60 days prior to the
242 date of the scheduled hearing, whichever is sooner, provide the respondent with the complete
243 identity, address, and telephone number of any person known to the board with knowledge about
244 the facts of any of the charges; provide a copy of any statements in the possession of or under
245 the control of the board; provide a list of proposed witnesses with addresses and telephone
246 numbers, with a brief summary of his or her anticipated testimony; provide disclosure of any trial
247 expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure;
248 provide inspection and copying of the results of any reports of physical and mental examinations
249 or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used
250 at the hearing: *Provided*, That the board shall not be required to furnish or produce any materials
251 which contain opinion work product information or would be a violation of the attorney-client
252 privilege. Within 20 days of the date of service of the written notice of charges, the board shall
253 disclose any exculpatory evidence with a continuing duty to do so throughout the disciplinary
254 process. Within 30 days of receipt of the board's mandatory discovery, the respondent shall
255 provide the board with the complete identity, address, and telephone number of any person known
256 to the respondent with knowledge about the facts of any of the charges; provide a list of proposed
257 witnesses with addresses and telephone numbers, to be called at hearing, with a brief summary
258 of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the
259 requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection

260 and copying of the results of any reports of physical and mental examinations or scientific tests
261 or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing.

262 (j) Whenever it finds any person unqualified because of any of the grounds set forth in
263 §30-3-14(c) of this code, the board may enter an order imposing one or more of the following:

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

266 (2) Administer a public reprimand;

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

270 (4) Revoke his or her license or other authorization to practice medicine and surgery or
271 podiatry or to prescribe or dispense controlled substances for any period of time, including for the
272 life of the licensee, that the board may find to be reasonable and necessary according to evidence
273 presented in a hearing before the board or its designee;

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

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

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

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

281 (k) Notwithstanding the provisions of §30-1-8 of this code, if the board determines the
282 evidence in its possession indicates that a physician's or podiatrist's continuation in practice or
283 unrestricted practice constitutes an immediate danger to the public, the board may take any of
284 the actions provided in §30-3-4(j) of this code on a temporary basis and without a hearing if
285 institution of proceedings for a hearing before the board are initiated simultaneously with the

286 temporary action and begin within 15 days of the action. The board shall render its decision within
287 five days of the conclusion of a hearing under this subsection.

288 (l) Any person against whom disciplinary action is taken pursuant to this article has the
289 right to judicial review as provided in §29A-5-1 *et seq.* and §29A-6-1 *et seq.* of this code: *Provided,*
290 That a circuit judge may also remand the matter to the board if it appears from competent
291 evidence presented to it in support of a motion for remand that there is newly discovered evidence
292 of such a character as ought to produce an opposite result at a second hearing on the merits
293 before the board and:

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

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

297 A person may not practice medicine and surgery or podiatry or deliver health care services
298 in violation of any disciplinary order revoking, suspending, or limiting his or her license while any
299 appeal is pending. Within 60 days, the board shall report its final action regarding restriction,
300 limitation, suspension, or revocation of the license of a physician or podiatrist, limitation on
301 practice privileges, or other disciplinary action against any physician or podiatrist to all appropriate
302 state agencies, appropriate licensed health facilities and hospitals, insurance companies or
303 associations writing medical malpractice insurance in this state, the American Medical
304 Association, the American Podiatry Association, professional societies of physicians or podiatrists
305 in the state, and any entity responsible for the fiscal administration of Medicare and Medicaid.

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

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

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

330 (p) In every case considered by the board under this article regarding discipline or
331 licensure, whether initiated by the board or upon complaint or information from any person or
332 organization, the board shall make a preliminary determination as to whether probable cause
333 exists to substantiate charges of disqualification due to any reason set forth in §30-3-14(c) of this
334 code. If probable cause is found to exist, all proceedings on the charges shall be open to the
335 public who are entitled to all reports, records, and nondeliberative materials introduced at the
336 hearing, including the record of the final action taken: *Provided*, That any medical records, which

337 were introduced at the hearing and which pertain to a person who has not expressly waived his
338 or her right to the confidentiality of the records, may not be open to the public nor is the public
339 entitled to the records.

340 (q) If the board receives notice that a physician or podiatrist has been subjected to
341 disciplinary action or has had his or her credentials suspended or revoked by the board, a hospital
342 or a professional society, as defined in §30-3-14(b) of this code, for three or more incidents during
343 a five-year period, the board shall require the physician or podiatrist to practice under the direction
344 of a physician or podiatrist designated by the board for a specified period of time to be established
345 by the board.

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

362 (s) A physician licensed under this article may not be disciplined for providing expedited
363 partner therapy in accordance with §16-4F-1 *et seq.* of this code.

364 (t) Whenever the board receives credible information that a licensee of the board is
365 engaging or has engaged in criminal activity or the commitment of a crime under state or federal
366 law, the board shall report the information, to the extent that sensitive or confidential information
367 may be publicly disclosed under law, to the appropriate state or federal law-enforcement authority
368 and/or prosecuting authority. This duty exists in addition to and is distinct from the reporting
369 required under federal law for reporting actions relating to health care providers to the United
370 States Department of Health and Human Services.

ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

§30-3A-1. Definitions.

1 For the purposes of this article, the words or terms defined in this section have the
2 meanings ascribed to them. These definitions are applicable unless a different meaning clearly
3 appears from the context.

4 “Accepted guideline” is a care or practice guideline for pain management developed by a
5 nationally recognized clinical or professional association or a specialty society or government-
6 sponsored agency that has developed practice or care guidelines based on original research or
7 on review of existing research and expert opinion. An accepted guideline also includes policy or
8 position statements relating to pain management issued by any West Virginia board included in
9 §30-1-1 *et seq.* of this code with jurisdiction over various health care practitioners. Guidelines
10 established primarily for purposes of coverage, payment, or reimbursement do not qualify as
11 accepted practice or care guidelines when offered to limit treatment options otherwise covered by
12 the provisions of this article.

13 “Board” or “licensing board” means the West Virginia Board of Medicine, the West Virginia
14 Board of Osteopathy, the West Virginia Board of Registered Nurses, the West Virginia Board of
15 Pharmacy, the West Virginia Board of Optometry, or the West Virginia Board of Dentistry.

16 “Nurse” means a registered nurse licensed in the State of West Virginia pursuant to the
17 provisions of §30-7-1 *et seq.* of this code.

18 “Pain” means an unpleasant sensory and emotional experience associated with actual or
19 potential tissue damage or described in terms of such damage.

20 “Pain-relieving controlled substance” includes, but is not limited to, an opioid or other drug
21 classified as a Schedule II through V controlled substance and recognized as effective for pain
22 relief, and excludes any drug that has no accepted medical use in the United States or lacks
23 accepted safety for use in treatment under medical supervision including, but not limited to, any
24 drug classified as a Schedule I controlled substance.

25 “Pharmacist” means a registered pharmacist licensed in the State of West Virginia
26 pursuant to the provisions of §30-5-1 *et seq.* of this code.

27 “Prescriber” shall mean:

28 (1) A physician licensed pursuant to the provisions of §30-3-1 *et seq.* or §30-14-1 *et seq.*
29 of this code;

30 (2) An advanced practice registered nurse with prescriptive authority as set forth in §30-
31 7-15a of this code;

32 (3) A dentist licensed pursuant to the provisions of §30-4-1 *et seq.* of this code; and

33 (4) An optometrist licensed pursuant to the provisions of §30-8-1 *et seq.* of this code.

**§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to
management of pain.**

1 (a) A prescriber is not subject to disciplinary sanctions by a licensing board or criminal
2 punishment by the state for prescribing, administering, or dispensing pain-relieving controlled
3 substances for the purpose of alleviating or controlling pain if:

4 (1) In the case of a dying patient experiencing pain, the prescriber practices in accordance
5 with an accepted guideline as defined in §30-3A-1 of this code and discharges his or her

6 professional obligation to relieve the dying patient's pain and promote the dignity and autonomy
7 of the dying patient; or

8 (2) In the case of a patient who is not dying and is experiencing pain, the prescriber
9 discharges his or her professional obligation to relieve the patient's pain, if the prescriber can
10 demonstrate by reference to an accepted guideline that his or her practice substantially complied
11 with that accepted guideline. Evidence of substantial compliance with an accepted guideline may
12 be rebutted only by the testimony of a clinical expert. Evidence of noncompliance with an accepted
13 guideline is not sufficient alone to support disciplinary or criminal action.

14 (b) A health care provider, as defined in §55-7B-2 of this code, with prescriptive authority
15 is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state
16 for declining to prescribe, or declining to continue to prescribe, any controlled substance to a
17 patient which the health care provider with prescriptive authority is treating if the health care
18 provider with prescriptive authority in the exercise of reasonable prudent judgment believes the
19 patient is misusing the controlled substance in an abusive manner or unlawfully diverting a
20 controlled substance legally prescribed for their use.

21 (c) A licensed registered professional nurse is not subject to disciplinary sanctions by a
22 licensing board or criminal punishment by the state for administering pain-relieving controlled
23 substances to alleviate or control pain, if administered in accordance with the orders of a licensed
24 physician.

25 (d) A licensed pharmacist is not subject to disciplinary sanctions by a licensing board or
26 criminal punishment by the state for dispensing a prescription for a pain-relieving controlled
27 substance to alleviate or control pain, if dispensed in accordance with the orders of a licensed
28 physician.

29 (e) For purposes of this section, the term "disciplinary sanctions" includes both remedial
30 and punitive sanctions imposed on a licensee by a licensing board, arising from either formal or
31 informal proceedings.

32 (f) The provisions of this section apply to the treatment of all patients for pain, regardless
33 of the patient's prior or current chemical dependency or addiction. The board may develop and
34 issue policies or guidelines establishing standards and procedures for the application of this article
35 to the care and treatment of persons who are chemically dependent or addicted.

§30-3A-3. Acts subject to discipline or prosecution.

1 (a) Nothing in this article shall prohibit disciplinary action or criminal prosecution of a
2 prescriber for:

3 (1) Failing to maintain complete, accurate, and current records documenting the physical
4 examination and medical history of the patient, the basis for the clinical diagnosis of the patient,
5 and the treatment plan for the patient;

6 (2) Writing a false or fictitious prescription for a controlled substance scheduled in §60A-
7 2-201 *et seq.* of this code; or

8 (3) Prescribing, administering, or dispensing a controlled substance in violation of the
9 provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21
10 U.S.C. §§801, *et seq.* or chapter §60A-1-101 *et seq.* of this code;

11 (4) Diverting controlled substances prescribed for a patient to the physician's own personal
12 use or

13 (5) Abnormal or unusual prescribing or dispensing patterns, or both as identified by the
14 Controlled Substance Monitoring Program set forth in §60A-9-1 *et seq.* of this code. These
15 prescribing and dispensing patterns may be discovered in the report filed with the appropriate
16 board as required by section §60A-9-1 *et seq.* of this code.

17 (b) Nothing in this article shall prohibit disciplinary action or criminal prosecution of a nurse
18 or pharmacist for:

19 (1) Administering or dispensing a controlled substance in violation of the provisions of the
20 federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§801, *et seq.*
21 or §60A-1-101 of this code; or

22 (2) Diverting controlled substances prescribed for a patient to the nurse's or pharmacist's
23 own personal use.

§30-3A-4. Abnormal or unusual prescribing practices.

1 (a) Upon receipt of the quarterly report set forth in §60A-9-1 *et seq.* of this code, the
2 licensing board shall notify the prescriber that he or she has been identified as a potentially
3 unusual or abnormal prescriber. The board may take appropriate action, including, but not limited
4 to, an investigation or disciplinary action based upon the findings provided in the report.

5 (b) A licensing board may upon receipt of credible and reliable information independent
6 of the quarterly report as set forth in §60A-9-1 *et seq.* of this code initiate an investigation into any
7 alleged abnormal prescribing or dispensing practices of a licensee.

8 (c) The licensing boards and prescribers shall have all rights and responsibilities in their
9 practice acts.

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

**§30-4-19. Complaints; investigations; due process procedure; grounds for disciplinary
action.**

1 (a) The board may initiate a complaint upon receipt of the quarterly report from the Board
2 of Pharmacy as required by §60A-9-1 *et seq.* of this code or upon receipt of credible information
3 and shall, upon the receipt of a written complaint of any person, cause an investigation to be
4 made to determine whether grounds exist for disciplinary action under this article or the legislative
5 rules promulgated pursuant to this article.

6 (b) After reviewing any information obtained through an investigation, the board shall
7 determine if probable cause exists that the licensee, certificate holder, or permittee has violated
8 §30-4-19(a) of this code or rules promulgated pursuant to this article.

9 (c) Upon a finding of probable cause to go forward with a complaint, the board shall provide
10 a copy of the complaint to the licensee, certificate holder, or permittee.

11 (d) Upon a finding that probable cause exists that the licensee, certificate holder, or
12 permittee has violated §30-4-19(g) of this code or rules promulgated pursuant to this article, the
13 board may enter into a consent decree or hold a hearing for disciplinary action against the
14 licensee, certificate holder, or permittee. Any hearing shall be held in accordance with the
15 provisions of this article and shall require a violation to be proven by a preponderance of the
16 evidence.

17 (e) A member of the complaint committee or the executive director of the board may issue
18 subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the
19 investigation of allegations against any person regulated by the article.

20 (f) Any member of the board or its executive director may sign a consent decree or other
21 legal document on behalf of the board.

22 (g) The board may, after notice and opportunity for hearing, deny or refuse to renew,
23 suspend, restrict, or revoke the license, certificate, or permit of, or impose probationary conditions
24 upon, or take disciplinary action against, any licensee, certificate holder, or permittee for any of
25 the following reasons:

26 (1) Obtaining a board authorization by fraud, misrepresentation, or concealment of
27 material facts;

28 (2) Being convicted of a felony or a misdemeanor crime of moral turpitude;

29 (3) Being guilty of unprofessional conduct which placed the public at risk, as defined by
30 legislative rule of the board;

31 (4) Intentional violation of a lawful order or legislative rule of the board;

32 (5) Having had a board authorization revoked or suspended, other disciplinary action
33 taken, or an application for a board authorization denied by the proper authorities of another
34 jurisdiction;

35 (6) Aiding or abetting unlicensed practice;

36 (7) Engaging in an act while acting in a professional capacity which has endangered or is
37 likely to endanger the health, welfare, or safety of the public;

38 (8) Having an incapacity that prevents a licensee from engaging in the practice of dentistry
39 or dental hygiene, with reasonable skill, competence, and safety to the public;

40 (9) Committing fraud in connection with the practice of dentistry or dental hygiene;

41 (10) Failing to report to the board one's surrender of a license or authorization to practice
42 dentistry or dental hygiene in another jurisdiction while under disciplinary investigation by any of
43 those authorities or bodies for conduct that would constitute grounds for action as defined in this
44 section;

45 (11) Failing to report to the board any adverse judgment, settlement, or award arising from
46 a malpractice claim arising related to conduct that would constitute grounds for action as defined
47 in this section;

48 (12) Being guilty of unprofessional conduct as contained in the American Dental
49 Association principles of ethics and code of professional conduct. The following acts are
50 conclusively presumed to be unprofessional conduct:

51 (A) Being guilty of any fraud or deception;

52 (B) Committing a criminal operation or being convicted of a crime involving moral turpitude;

53 (C) Abusing alcohol or drugs;

54 (D) Violating any professional confidence or disclosing any professional secret;

55 (E) Being grossly immoral;

56 (F) Harassing, abusing, intimidating, insulting, degrading, or humiliating a patient
57 physically, verbally, or through another form of communication;

58 (G) Obtaining any fee by fraud or misrepresentation;

59 (H) Employing directly or indirectly, or directing or permitting any suspended or unlicensed
60 person so employed, to perform operations of any kind or to treat lesions of the human teeth or
61 jaws, or correct malimposed formations thereof;

62 (I) Practicing or offering or undertaking to practice dentistry under any firm name or trade
63 name not approved by the board;

64 (J) Having a professional connection or association with, or lending his or her name to
65 another, for the illegal practice of dentistry, or professional connection or association with any
66 person, firm, or corporation holding himself or herself, themselves, or itself out in any manner
67 contrary to this article;

68 (K) Making use of any advertising relating to the use of any drug or medicine of unknown
69 formula;

70 (L) Advertising to practice dentistry or perform any operation thereunder without causing
71 pain;

72 (M) Advertising professional superiority or the performance of professional services in a
73 superior manner;

74 (N) Advertising to guarantee any dental service;

75 (O) Advertising in any manner that is false or misleading in any material respect;

76 (P) Soliciting subscriptions from individuals within or without the state for, or advertising
77 or offering to individuals within or without the state, a course or instruction or course materials in
78 any phase, part, or branch of dentistry or dental hygiene in any journal, newspaper, magazine, or
79 dental publication, or by means of radio, television, or United States mail, or in or by any other
80 means of contacting individuals: *Provided*, That the provisions of this paragraph may not be
81 construed so as to prohibit:

82 (i) An individual dentist or dental hygienist from presenting articles pertaining to
83 procedures or technique to state or national journals or accepted dental publications; or

84 (ii) Educational institutions approved by the board from offering courses or instruction or
85 course materials to individual dentists and dental hygienists from within or without the state; or

86 (Q) Engaging in any action or conduct which would have warranted the denial of the
87 license.

88 (13) Knowing or suspecting that a licensee is incapable of engaging in the practice of
89 dentistry or dental hygiene, with reasonable skill, competence, and safety to the public, and failing
90 to report any relevant information to the board;

91 (14) Using or disclosing protected health information in an unauthorized or unlawful
92 manner;

93 (15) Engaging in any conduct that subverts or attempts to subvert any licensing
94 examination or the administration of any licensing examination;

95 (16) Failing to furnish to the board or its representatives any information legally requested
96 by the board or failing to cooperate with or engaging in any conduct which obstructs an
97 investigation being conducted by the board;

98 (17) Announcing or otherwise holding himself or herself out to the public as a specialist or
99 as being specially qualified in any particular branch of dentistry or as giving special attention to
100 any branch of dentistry or as limiting his or her practice to any branch of dentistry without first
101 complying with the requirements established by the board for the specialty and having been
102 issued a certificate of qualification in the specialty by the board;

103 (18) Failing to report to the board within 72 hours of becoming aware of any life threatening
104 occurrence, serious injury, or death of a patient resulting from dental treatment or complications
105 following a dental procedure;

106 (19) Failing to report to the board any driving under the influence and/or driving while
107 intoxicated offense; or

108 (20) Violation of any of the terms or conditions of any order entered in any disciplinary
109 action.

110 (i) For the purposes of §30-4-19(g) of this code, disciplinary action may include:

111 (1) Reprimand;

112 (2) Probation;

113 (3) Restrictions;

- 114 (4) Suspension;
- 115 (5) Revocation;
- 116 (6) Administrative fine, not to exceed \$1,000 per day per violation;
- 117 (7) Mandatory attendance at continuing education seminars or other training;
- 118 (8) Practicing under supervision or other restriction; or
- 119 (9) Requiring the licensee or permittee to report to the board for periodic interviews for a
120 specified period of time.

121 (j) In addition to any other sanction imposed, the board may require a licensee or permittee
122 to pay the costs of the proceeding.

123 (k) The board may defer disciplinary action with regard to an impaired licensee who
124 voluntarily signs an agreement, in a form satisfactory to the board, agreeing not to practice dental
125 care and to enter an approved treatment and monitoring program in accordance with the board's
126 legislative rule: *Provided*, That this subsection does not apply to a licensee who has been
127 convicted of, pleads guilty to, or enters a plea of nolo contendere to an offense relating to a
128 controlled substance in any jurisdiction.

129 (l) A person authorized to practice under this article who reports or otherwise provides
130 evidence of the negligence, impairment, or incompetence of another member of this profession
131 to the board or to any peer review organization is not liable to any person for making the report if
132 the report is made without actual malice and in the reasonable belief that the report is warranted
133 by the facts known to him or her at the time.

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

§30-5-6. Powers and duties of the board.

1 (a) (1) The board has all the powers and duties set forth in this article, by rule, in §30-1-1
2 *et seq.* of this code and elsewhere in law, including the power to:

- 3 (2) Hold meetings;
- 4 (3) Establish additional requirements for a license, permit, and registration;
- 5 (4) Establish procedures for submitting, approving, and rejecting applications for a license,
- 6 permit, and registration;
- 7 (5) Determine the qualifications of any applicant for a license, permit, and registration;
- 8 (6) Establish a fee schedule;
- 9 (7) Issue, renew, deny, suspend, revoke, or reinstate a license, permit, and registration;
- 10 (8) Prepare, conduct, administer, and grade written, oral, or written and oral examinations
- 11 for a license and registration and establish what constitutes passage of the examination;
- 12 (9) Contract with third parties to administer the examinations required under the provisions
- 13 of this article;
- 14 (10) Maintain records of the examinations the board or a third party administers, including
- 15 the number of persons taking the examination and the pass and fail rate;
- 16 (11) Regulate mail order pharmacies;
- 17 (12) Maintain an office, and hire, discharge, establish the job requirements, and fix the
- 18 compensation of employees and contract with persons necessary to enforce the provisions of this
- 19 article. Inspectors shall be licensed pharmacists;
- 20 (13) Investigate alleged violations of the provisions of this article, legislative rules, orders,
- 21 and final decisions of the board;
- 22 (14) Conduct disciplinary hearings of persons regulated by the board;
- 23 (15) Determine disciplinary action and issue orders;
- 24 (16) Institute appropriate legal action for the enforcement of the provisions of this article;
- 25 (17) Maintain an accurate registry of names and addresses of all persons regulated by the
- 26 board;
- 27 (18) Keep accurate and complete records of its proceedings, and certify the same as may
- 28 be necessary and appropriate;

29 (19) Propose rules in accordance with the provisions of §29A-3-1 *et seq.* of this code to
30 implement the provisions of this article;

31 (20) Sue and be sued in its official name as an agency of this state;

32 (21) Confer with the Attorney General or his or her assistant in connection with legal
33 matters and questions; and

34 (22) Take all other actions necessary and proper to effectuate the purposes of this article.

35 (b) The board is exempt from state purchasing laws, legislative rules, and policies for the
36 purposes of spending grant money if the grant is in relation to substance use and controlled
37 substances.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-11. Denial, revocation, or suspension of license; grounds for discipline.

1 (a) The board shall have the power to deny, revoke, or suspend any license to practice
2 registered professional nursing issued or applied for in accordance with the provisions of this
3 article, or to otherwise discipline a licensee or applicant upon proof that he or she:

4 (1) Is or was guilty of fraud or deceit in procuring or attempting to procure a license to
5 practice registered professional nursing; or

6 (2) Has been convicted of a felony; or

7 (3) Is unfit or incompetent by reason of negligence, habits, or other causes; or

8 (4) Is habitually intemperate or is addicted to the use of habit-forming drugs; or

9 (5) Is mentally incompetent; or

10 (6) Is guilty of conduct derogatory to the morals or standing of the profession of registered
11 nursing; or

12 (7) Is practicing or attempting to practice registered professional nursing without a license
13 or reregistration; or

14 (8) Has demonstrated abnormal prescribing or dispensing practices pursuant to §30-3A-
15 4 of this code; or

16 (9) Has willfully or repeatedly violated any of the provisions of this article.

17 (b) An advanced practice registered nurse licensed under this article may not be
18 disciplined for providing expedited partner therapy in accordance with §16-4F-1 *et seq.* of this
19 code.

ARTICLE 8. OPTOMETRISTS.

§30-8-18. Complaints; investigations; due process procedure; grounds for disciplinary action.

1 (a) The board may upon its own motion based on credible information or based upon the
2 quarterly report from the Board of Pharmacy as required by §60A-9-1 *et seq.* of this code shall
3 upon the written complaint of any person cause an investigation to be made to determine whether
4 grounds exist for disciplinary action under this article or the legislative rules of the board.

5 (b) Upon initiation or receipt of the complaint, the board shall provide a copy of the
6 complaint to the licensee, certificate holder, or permittee.

7 (c) After reviewing any information obtained through an investigation, the board shall
8 determine if probable cause exists that the licensee or permittee has violated §30-8-18(g) of this
9 code or rules promulgated pursuant to this article.

10 (d) Upon a finding that probable cause exists that the licensee or permittee has violated
11 §30-8-18(g) of this code or rules promulgated pursuant to this article, the board may enter into a
12 consent decree or hold a hearing for the suspension or revocation of the license, certificate, or
13 permit or the imposition of sanctions against the licensee, certificate holder, or permittee. Any
14 hearing shall be held in accordance with the provisions of this article, and the provisions of §29A-
15 5-1 and §29A-6-1 *et seq.* of this code.

16 (e) Any member of the board or the executive secretary of the board may issue subpoenas
17 and subpoenas duces tecum on behalf of the board to obtain testimony and documents to aid in
18 the investigation of allegations against any person regulated by the article.

19 (f) Any member of the board or its executive secretary may sign a consent decree or other
20 legal document on behalf of the board.

21 (g) The board may, after notice and opportunity for hearing, deny or refuse to renew,
22 suspend, or revoke the license, certificate, or permit of, impose probationary conditions upon or
23 take disciplinary action against, any licensee, certificate holder, or permittee for any of the
24 following reasons once a violation has been proven by a preponderance of the evidence:

25 (1) Obtaining a license, certificate, or permit by fraud, misrepresentation or concealment
26 of material facts;

27 (2) Being convicted of a felony or other crime involving moral turpitude;

28 (3) Being guilty of unprofessional conduct which placed the public at risk;

29 (4) Intentional violation of a lawful order;

30 (5) Having had an authorization to practice optometry revoked, suspended, other
31 disciplinary action taken, by the proper authorities of another jurisdiction;

32 (6) Having had an application to practice optometry denied by the proper authorities of
33 another jurisdiction;

34 (7) Exceeded the scope of practice of optometry;

35 (8) Aiding or abetting unlicensed practice;

36 (9) Engaging in an act while acting in a professional capacity which has endangered or is
37 likely to endanger the health, welfare, or safety of the public; or

38 (10) False and deceptive advertising; this includes, but is not limited to, the following:

39 (A) Advertising "free examination of eyes", or words of similar import and meaning; or

40 (B) Advertising frames or mountings for glasses, contact lenses, or other optical devices
41 which does not accurately describe the same in all its component parts.

42 (h) For the purposes of §30-8-18(g) of this code disciplinary action may include:

43 (1) Reprimand;

44 (2) Probation;

15 (e) Any member of the board or the executive director of the board may issue subpoenas
16 and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of
17 allegations against any person regulated by this article.

18 (f) Any member of the board or its executive director may sign a consent decree or other
19 legal document on behalf of the board.

20 (g) The board may, after notice and opportunity for hearing, deny, refuse to renew,
21 suspend, or revoke the license, permit, registration, or certificate of, impose probationary
22 conditions upon or take disciplinary action against, any licensee, permittee, registrant, or
23 certificate holder for any of the following reasons:

24 (1) Obtaining a license, permit, registration, or certificate by fraud, misrepresentation, or
25 concealment of material facts;

26 (2) Being convicted of a felony or other crime involving moral turpitude;

27 (3) Being guilty of unprofessional conduct;

28 (4) Intentional violation of this article or lawful order;

29 (5) Having had a license or other authorization to practice revoked or suspended, other
30 disciplinary action taken, or an application for licensure or other authorization refused, revoked,
31 or suspended by the proper authorities of another jurisdiction, irrespective of intervening appeals
32 and stays; or

33 (6) Engaging in any act which has endangered or is likely to endanger the health, welfare,
34 or safety of the public.

35 (h) For the purposes of §30-10-19(g) of this code, disciplinary action may include:

36 (1) Reprimand;

37 (2) Probation;

38 (3) Administrative fine, not to exceed \$1,000 a day per violation;

39 (4) Mandatory attendance at continuing education seminars or other training;

40 (5) Practicing under supervision or other restriction;

41 (6) Requiring the licensee, permittee, registrant, or certificate holder to report to the board
42 for periodic interviews for a specified period of time; or

43 (7) Other corrective action considered by the board to be necessary to protect the public,
44 including advising other parties whose legitimate interests may be at risk.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12a. Initiation of suspension or revocation proceedings allowed and required; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; probable cause determinations; referrals to law-enforcement authorities.

1 (a) The board may independently initiate suspension or revocation proceedings as well as
2 initiate suspension or revocation proceedings based on information received from any person,
3 including but not limited to the Board of Pharmacy as required by §60A-9-1 *et seq.* of this code.

4 The board shall initiate investigations as to professional incompetence or other reasons
5 for which a licensed osteopathic physician and surgeon may be adjudged unqualified if the board
6 receives notice that three or more judgments or any combination of judgments and settlements
7 resulting in five or more unfavorable outcomes arising from medical professional liability have
8 been rendered or made against such osteopathic physician within a five-year period.

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

16 After the completion of a hospital's formal disciplinary procedure and after any resulting
17 legal action, the chief executive officer of such hospital shall report in writing to the board within

18 60 days the name of any member of the medical staff or any other osteopathic physician practicing
19 in the hospital whose hospital privileges have been revoked, restricted, reduced, or terminated
20 for any cause, including resignation, together with all pertinent information relating to such action.
21 The chief executive officer shall also report any other formal disciplinary action taken against any
22 osteopathic physician by the hospital upon the recommendation of its medical staff relating to
23 professional ethics, medical incompetence, medical malpractice, moral turpitude, or drug or
24 alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure
25 to attend staff or section meetings need not be reported.

26 Any professional society in this state comprised primarily of osteopathic physicians or
27 physicians and surgeons of other schools of medicine which takes formal disciplinary action
28 against a member relating to professional ethics, professional incompetence, professional
29 malpractice, moral turpitude, or drug or alcohol abuse, shall report in writing to the board within
30 60 days of a final decision the name of such member, together with all pertinent information
31 relating to such action.

32 Every person, partnership, corporation, association, insurance company, professional
33 society, or other organization providing professional liability insurance to an osteopathic physician
34 in this state shall submit to the board the following information within 30 days from any judgment,
35 dismissal, or settlement of a civil action or of any claim involving the insured: The date of any
36 judgment, dismissal, or settlement; whether any appeal has been taken on the judgment, and, if
37 so, by which party; the amount of any settlement or judgment against the insured; and such other
38 information required by the board.

39 Within 30 days after a person known to be an osteopathic physician licensed or otherwise
40 lawfully practicing medicine and surgery in this state or applying to be licensed is convicted of a
41 felony under the laws of this state, or of any crime under the laws of this state involving alcohol
42 or drugs in any way, including any controlled substance under state or federal law, the clerk of
43 the court of record in which the conviction was entered shall forward to the board a certified true

44 and correct abstract of record of the convicting court. The abstract shall include the name and
45 address of such osteopathic physician or applicant, the nature of the offense committed and the
46 final judgment and sentence of the court.

47 Upon a determination of the board that there is probable cause to believe that any person,
48 partnership, corporation, association, insurance company, professional society, or other
49 organization has failed or refused to make a report required by this subsection, the board shall
50 provide written notice to the alleged violator stating the nature of the alleged violation and the time
51 and place at which the alleged violator shall appear to show good cause why a civil penalty should
52 not be imposed. The hearing shall be conducted in accordance with the provisions of §29A-5-1
53 *et seq.* of this code. After reviewing the record of such hearing, if the board determines that a
54 violation of this subsection has occurred, the board shall assess a civil penalty of not less than
55 \$1,000 nor more than \$10,000 against such violator. The board shall notify anyone assessed of
56 the assessment in writing and the notice shall specify the reasons for the assessment. If the
57 violator fails to pay the amount of the assessment to the board within 30 days, the Attorney
58 General may institute a civil action in the Circuit Court of Kanawha County to recover the amount
59 of the assessment. In any such civil action, the court's review of the board's action shall be
60 conducted in accordance with the provisions of §29A-5-4 of this code.

61 Any person may report to the board relevant facts about the conduct of any osteopathic
62 physician in this state which in the opinion of such person amounts to professional malpractice or
63 professional incompetence.

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

66 The filing of a report with the board pursuant to any provision of this article, any
67 investigation by the board or any disposition of a case by the board does not preclude any action
68 by a hospital, other health care facility or professional society comprised primarily of osteopathic

69 physicians or physicians and surgeons of other schools of medicine to suspend, restrict, or revoke
70 the privileges or membership of such osteopathic physician.

71 (c) In every case considered by the board under this article regarding suspension,
72 revocation, or issuance of a license whether initiated by the board or upon complaint or
73 information from any person or organization, the board shall make a preliminary determination as
74 to whether probable cause exists to substantiate charges of cause to suspend, revoke, or refuse
75 to issue a license as set forth in §30-14-11(a) of this code. If such probable cause is found to
76 exist, all proceedings on such charges shall be open to the public who are entitled to all reports,
77 records, and nondeliberative materials introduced at such hearing, including the record of the final
78 action taken: *Provided*, That any medical records, which were introduced at such hearing and
79 which pertain to a person who has not expressly waived his or her right to the confidentiality of
80 such records, shall not be open to the public nor is the public entitled to such records. If a finding
81 is made that probable cause does not exist, the public has a right of access to the complaint or
82 other document setting forth the charges, the findings of fact and conclusions supporting such
83 finding that probable cause does not exist, if the subject osteopathic physician consents to such
84 access.

85 (d) If the board receives notice that an osteopathic physician has been subjected to
86 disciplinary action or has had his or her credentials suspended or revoked by the board, a medical
87 peer review committee, a hospital or professional society, as defined in §30-14-12(a) of this code,
88 for three or more incidents in a five-year period, the board shall require the osteopathic physician
89 to practice under the direction of another osteopathic physician for a specified period to be
90 established by the board.

91 (e) Whenever the board receives credible information that a licensee of the board is
92 engaging or has engaged in criminal activity or the commitment of a crime under state or federal
93 law, the board shall report the information, to the extent that sensitive or confidential information
94 may be publicly disclosed under law, to the appropriate state or federal law-enforcement authority

95 and/or prosecuting authority. This duty exists in addition to and is distinct from the reporting
96 required under federal law for reporting actions relating to health care providers to the United
97 States Department of Health and Human Services.

ARTICLE 36. ACUPUNCTURISTS.

§30-36-2. Definitions.

1 (a) Unless the context in which used clearly requires a different meaning, as used in this
2 article:

3 (1) "Acupuncture" means a form of health care, based on a theory of energetic physiology,
4 that describes the interrelationship of the body organs or functions with an associated point or
5 combination of points.

6 (2) "Board" means the West Virginia Acupuncture Board.

7 (3) "License" means a license issued by the board to practice acupuncture.

8 (4) "Moxibustion" means the burning of mugwort on or near the skin to stimulate the
9 acupuncture point.

10 (5) "Practice acupuncture" means the use of oriental medical therapies for the purpose of
11 normalizing energetic physiological functions including pain control, and for the promotion,
12 maintenance, and restoration of health.

13 (b) (1) "Practice acupuncture" includes:

14 (A) Stimulation of points of the body by the insertion of acupuncture needles;

15 (B) The application of moxibustion; and

16 (C) Manual, mechanical, thermal, or electrical therapies only when performed in
17 accordance with the principles of oriental acupuncture medical theories.

18 (2) The practice of acupuncture does not include the procedure of auricular acupuncture
19 when used in the context of a chemical dependency treatment program when the person is trained
20 and approved by the National Acupuncture Detoxification Association or an equivalent certifying
21 body.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.

1 **§60A-5-509. Unlawful retaliation against health care providers.**

2 (a) A health care provider has the right to exercise his or her professional judgment to
3 decline to administer, dispense, or prescribe narcotics without being subject to actual or
4 threatened acts of reprisal.

5 (b) It shall be unlawful for any person or entity to engage in any form of threats or reprisal,
6 or to engage in, or hire, or conspire with, others to commit acts or activities of any nature, the
7 purpose of which is to punish, embarrass, deny, or reduce privileges or compensation, or cause
8 economic loss or to aid, abet, incite, compel, or coerce any person to engage in such threats or
9 reprisal, against a health care provider as a result of, or in retaliation for, the refusal of that health
10 care provider to administer, dispense, or prescribe narcotics.

11 (c) Any person or entity who violates the foregoing shall be subject to a private right of
12 action by the affected health care provider and shall be liable in the amount of three times the
13 economic loss sustained as a direct and proximate result of the reprisal.

14 (d) A health care provider that prevails in an action brought pursuant to this section shall
15 be entitled to an award of costs and attorney fees.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-4. Required information.

1 (a) The following individuals shall report the required information to the Controlled
2 Substances Monitoring Program Database when:

3 (1) A medical services provider dispenses a controlled substance listed in Schedule II, III,
4 IV, V, or an opioid antagonist;

5 (2) A prescription for the controlled substance or opioid antagonist is filled by:

6 (A) A pharmacist or pharmacy in this state;

7 (B) A hospital, or other health care facility, for outpatient use; or

8 (C) A pharmacy or pharmacist licensed by the Board of Pharmacy, but situated outside
9 this state for delivery to a person residing in this state; and

10 (3) A pharmacist or pharmacy sells an opioid antagonist.

11 (b) The above individuals shall in a manner prescribed by rules promulgated by the Board
12 of Pharmacy pursuant to this article, report the following information, as applicable:

13 (1) The name, address, pharmacy prescription number, and Drug Enforcement
14 Administration controlled substance registration number of the dispensing pharmacy or the
15 dispensing physician or dentist;

16 (2) The full legal name, address, and birth date of the person for whom the prescription is
17 written;

18 (3) The name, address, and Drug Enforcement Administration controlled substances
19 registration number of the practitioner writing the prescription;

20 (4) The name and national drug code number of the Schedule II, III, and IV controlled
21 substance or opioid antagonist dispensed;

22 (5) The quantity and dosage of the Schedule II, III, and IV controlled substance or opioid
23 antagonist dispensed;

24 (6) The date the prescription was written and the date filled;

25 (7) The number of refills, if any, authorized by the prescription;

26 (8) If the prescription being dispensed is being picked up by someone other than the
27 patient on behalf of the patient, information about the person picking up the prescription as set
28 forth on the person's government-issued photo identification card shall be retained in either print
29 or electronic form until such time as otherwise directed by rule promulgated by the Board of
30 Pharmacy; and

31 (9) The source of payment for the controlled substance dispensed.

32 (c) Whenever a medical services provider treats a patient for an overdose that has
33 occurred as a result of illicit or prescribed medication, the medical service provider shall report

34 the full legal name, address, and birth date of the person who is being treated, including any
35 known ancillary evidence of the overdose. The Board of Pharmacy shall coordinate with the
36 Division of Justice and Community Services and the Office of Drug Control Policy regarding the
37 collection of overdose data.

38 (d) The Board of Pharmacy may prescribe by rule promulgated pursuant to this article the
39 form to be used in prescribing a Schedule II, III, and IV substance or opioid antagonist if, in the
40 determination of the Board of Pharmacy, the administration of the requirements of this section
41 would be facilitated.

42 (e) Products regulated by the provisions of §60A-10-1 *et seq.* of this code shall be subject
43 to reporting pursuant to the provisions of this article to the extent set forth in said article.

44 (f) Reporting required by this section is not required for a drug administered directly to a
45 patient by a practitioner. Reporting is, however, required by this section for a drug dispensed to a
46 patient by a practitioner. The quantity dispensed by a prescribing practitioner to his or her own
47 patient may not exceed an amount adequate to treat the patient for a maximum of 72 hours with
48 no greater than two 72-hour cycles dispensed in any 15-day period of time.

49 (g) The Board of Pharmacy shall notify a physician prescribing buprenorphine or
50 buprenorphine/naloxone within 60 days of the availability of an abuse deterrent or a practitioner-
51 administered form of buprenorphine or buprenorphine/naloxone if approved by the Food and Drug
52 Administration as provided in FDA Guidance to Industry. Upon receipt of the notice, a physician
53 may switch his or her patients using buprenorphine or buprenorphine/naloxone to the abuse
54 deterrent or a practitioner-administered form of the drug.

**§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability
for required reporting.**

1 (a)(1) The information required by this article to be kept by the Board of Pharmacy is
2 confidential and not subject to the provisions of §29B-1-1 *et seq.* of this code or obtainable as
3 discovery in civil matters absent a court order and is open to inspection only by inspectors and

4 agents of the Board of Pharmacy, members of the West Virginia State Police expressly authorized
5 by the Superintendent of the West Virginia State Police to have access to the information,
6 authorized agents of local law-enforcement agencies as members of a federally affiliated drug
7 task force, authorized agents of the federal Drug Enforcement Administration, duly authorized
8 agents of the Bureau for Medical Services, duly authorized agents of the Office of the Chief
9 Medical Examiner for use in post-mortem examinations, duly authorized agents of the Office of
10 Health Facility Licensure and Certification for use in certification, licensure, and regulation of
11 health facilities, duly authorized agents of licensing boards of practitioners in this state and other
12 states authorized to prescribe Schedules II, III, and IV controlled substances, prescribing
13 practitioners and pharmacists, a dean of any medical school or his or her designee located in this
14 state to access prescriber level data to monitor prescribing practices of faculty members,
15 prescribers, and residents enrolled in a degree program at the school where he or she serves as
16 dean, a physician reviewer designated by an employer of medical providers to monitor prescriber
17 level information of prescribing practices of physicians, advance practice registered nurses, or
18 physician assistants in their employ, and a chief medical officer of a hospital or a physician
19 designated by the chief executive officer of a hospital who does not have a chief medical officer,
20 for prescribers who have admitting privileges to the hospital or prescriber level information, and
21 persons with an enforceable court order or regulatory agency administrative subpoena. All law-
22 enforcement personnel who have access to the Controlled Substances Monitoring Program
23 Database shall be granted access in accordance with applicable state laws and the Board of
24 Pharmacy's rules, shall be certified as a West Virginia law-enforcement officer and shall have
25 successfully completed training approved by the Board of Pharmacy. All information released by
26 the Board of Pharmacy must be related to a specific patient or a specific individual or entity under
27 investigation by any of the above parties except that practitioners who prescribe or dispense
28 controlled substances may request specific data related to their Drug Enforcement Administration
29 controlled substance registration number or for the purpose of providing treatment to a patient:

30 *Provided*, That the West Virginia Controlled Substances Monitoring Program Database Review
31 Committee established in §30A-9-5(b) of this code is authorized to query the database to comply
32 with §30A-9-5(b) of this code.

33 (2) Subject to the provisions of §60A-9-5(a)(1) of this code, the Board of Pharmacy shall
34 also review the West Virginia Controlled Substances Monitoring Program Database and issue
35 reports that identify abnormal or unusual practices of patients and practitioners with prescriptive
36 authority who exceed parameters as determined by the advisory committee established in this
37 section. The Board of Pharmacy shall communicate with practitioners and dispensers to more
38 effectively manage the medications of their patients in the manner recommended by the advisory
39 committee. All other reports produced by the Board of Pharmacy shall be kept confidential. The
40 Board of Pharmacy shall maintain the information required by this article for a period of not less
41 than five years. Notwithstanding any other provisions of this code to the contrary, data obtained
42 under the provisions of this article may be used for compilation of educational, scholarly, or
43 statistical purposes, and may be shared with the West Virginia Department of Health and Human
44 Resources for those purposes, as long as the identities of persons or entities and any personally
45 identifiable information, including protected health information, contained therein shall be
46 redacted, scrubbed, or otherwise irreversibly destroyed in a manner that will preserve the
47 confidential nature of the information. No individual or entity required to report under §60A-9-4 of
48 this code may be subject to a claim for civil damages or other civil relief for the reporting of
49 information to the Board of Pharmacy as required under and in accordance with the provisions of
50 this article.

51 (3) The Board of Pharmacy shall establish an advisory committee to develop, implement,
52 and recommend parameters to be used in identifying abnormal or unusual usage patterns of
53 patients and practitioners with prescriptive authority in this state. This advisory committee shall:

54 (A) Consist of the following members: A physician licensed by the West Virginia Board of
55 Medicine; a dentist licensed by the West Virginia Board of Dental Examiners; a physician licensed

56 by the West Virginia Board of Osteopathic Medicine; a licensed physician certified by the
57 American Board of Pain Medicine; a licensed physician board certified in medical oncology
58 recommended by the West Virginia State Medical Association; a licensed physician board
59 certified in palliative care recommended by the West Virginia Center on End of Life Care; a
60 pharmacist licensed by the West Virginia Board of Pharmacy; a licensed physician member of the
61 West Virginia Academy of Family Physicians; an expert in drug diversion; and such other
62 members as determined by the Board of Pharmacy.

63 (B) Recommend parameters to identify abnormal or unusual usage patterns of controlled
64 substances for patients in order to prepare reports as requested in accordance with §60A-9-
65 5(a)(2) of this code.

66 (C) Make recommendations for training, research, and other areas that are determined by
67 the committee to have the potential to reduce inappropriate use of prescription drugs in this state,
68 including, but not limited to, studying issues related to diversion of controlled substances used for
69 the management of opioid addiction.

70 (D) Monitor the ability of medical services providers, health care facilities, pharmacists,
71 and pharmacies to meet the 24-hour reporting requirement for the Controlled Substances
72 Monitoring Program set forth in §60A-9-3 of this code, and report on the feasibility of requiring
73 real-time reporting.

74 (E) Establish outreach programs with local law enforcement to provide education to local
75 law enforcement on the requirements and use of the Controlled Substances Monitoring Program
76 Database established in this article.

77 (b) The Board of Pharmacy shall create a West Virginia Controlled Substances Monitoring
78 Program Database Review Committee of individuals consisting of two prosecuting attorneys from
79 West Virginia counties, two physicians with specialties which require extensive use of controlled
80 substances and a pharmacist who is trained in the use and abuse of controlled substances. The
81 review committee may determine that an additional physician who is an expert in the field under

82 investigation be added to the team when the facts of a case indicate that the additional expertise
83 is required. The review committee, working independently, may query the database based on
84 parameters established by the advisory committee. The review committee may make
85 determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns
86 indicated by outliers in the system or abnormal or unusual usage patterns of controlled
87 substances by patients which the review committee has reasonable cause to believe necessitates
88 further action by law enforcement or the licensing board having jurisdiction over the practitioners
89 or dispensers under consideration. The licensing board having jurisdiction over the practitioner or
90 dispenser under consideration shall report back to the Board of Pharmacy regarding any findings,
91 investigation, or discipline resulting from the findings of the review committee within 30 days of
92 resolution of any action taken by the licensing board resulting from the information provided by
93 the Board of Pharmacy. The review committee shall also review notices provided by the chief
94 medical examiner pursuant to §61-12-10(h) of this code and determine on a case-by-case basis
95 whether a practitioner who prescribed or dispensed a controlled substance resulting in or
96 contributing to the drug overdose may have breached professional or occupational standards or
97 committed a criminal act when prescribing the controlled substance at issue to the decedent. Only
98 in those cases in which there is reasonable cause to believe a breach of professional or
99 occupational standards or a criminal act may have occurred, the review committee shall notify the
100 appropriate professional licensing agency having jurisdiction over the applicable practitioner or
101 dispenser and appropriate law-enforcement agencies and provide pertinent information from the
102 database for their consideration. The number of cases identified shall be determined by the review
103 committee based on a number that can be adequately reviewed by the review committee. The
104 information obtained and developed may not be shared except as provided in this article and is
105 not subject to the provisions of §29B-1-1 *et seq.* of this code or obtainable as discovering in civil
106 matters absent a court order.

107 (c) The Board of Pharmacy is responsible for establishing and providing administrative
108 support for the advisory committee and the West Virginia Controlled Substances Monitoring
109 Program Database Review Committee. The advisory committee and the review committee shall
110 elect a chair by majority vote. Members of the advisory committee and the review committee may
111 not be compensated in their capacity as members but shall be reimbursed for reasonable
112 expenses incurred in the performance of their duties.

113 (d) The Board of Pharmacy shall promulgate rules with advice and consent of the advisory
114 committee, after consultation with the licensing boards set forth in §60A-9-5(d)(4) of this code and
115 in accordance with the provisions of §29A-3-1 *et seq.* of this code. The Legislature finds that the
116 changes made to this section during the course of the 2018 regular session of the Legislature
117 constitutes an emergency and the Board of Pharmacy shall promulgate emergency rules pursuant
118 to the provisions of §29A-3-15 of this code to incorporate these modifications. The legislative rules
119 must include, but shall not be limited to, the following matters:

120 (1) Identifying parameters used in identifying abnormal or unusual prescribing or
121 dispensing patterns;

122 (2) Processing parameters and developing reports of abnormal or unusual prescribing or
123 dispensing patterns for patients, practitioners, and dispensers;

124 (3) Establishing the information to be contained in reports and the process by which the
125 reports will be generated and disseminated;

126 (4) Dissemination of these reports at least quarterly to:

127 (A) The West Virginia Board of Medicine codified in §30-3-1 *et seq.* of this code;

128 (B) The West Virginia Board of Osteopathic Medicine codified in §30-14-1 *et seq.* of this
129 code;

130 (C) The West Virginia Board of Examiners for Registered Professional Nurses codified in
131 §30-7-1 *et seq.* of this code;

132 (D) The West Virginia Board of Dentistry codified in §30-4-1 *et seq.* of this code;

133 (E) The West Virginia Board of Optometry codified in §30-8-1 *et seq.* of this code; and

134 (F) The West Virginia Board of Veterinary Medicine codified in §30-10-1 *et seq.* of this
135 code; and

136 (5) Setting up processes and procedures to ensure that the privacy, confidentiality, and
137 security of information collected, recorded, transmitted, and maintained by the review committee
138 is not disclosed except as provided in this section.

139 (e) Persons or entities with access to the West Virginia Controlled Substances Monitoring
140 Program Database pursuant to this section may, pursuant to rules promulgated by the Board of
141 Pharmacy, delegate appropriate personnel to have access to said database.

142 (f) Good faith reliance by a practitioner on information contained in the West Virginia
143 Controlled Substances Monitoring Program Database in prescribing or dispensing or refusing or
144 declining to prescribe or dispense a Schedule II, III, or IV controlled substance shall constitute an
145 absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing
146 or declining to prescribe or dispense.

147 (g) A prescribing or dispensing practitioner may notify law enforcement of a patient who,
148 in the prescribing or dispensing practitioner's judgment, may be in violation of §60A-4-410 of this
149 code, based on information obtained and reviewed from the Controlled Substances Monitoring
150 Program Database. A prescribing or dispensing practitioner who makes a notification pursuant to
151 this subsection is immune from any civil, administrative, or criminal liability that otherwise might
152 be incurred or imposed because of the notification if the notification is made in good faith.

153 (h) Nothing in the article may be construed to require a practitioner to access the West
154 Virginia Controlled Substances Monitoring Program Database except as provided in §60A-9-5 of
155 this code.

156 (i) The Board of Pharmacy shall provide an annual report on the West Virginia Controlled
157 Substances Monitoring Program to the Legislative Oversight Commission on Health and Human

158 Resources Accountability with recommendations for needed legislation no later than January 1 of
159 each year.

**§60A-9-5a. Practitioner requirements to access database and conduct annual search of the
database; required rulemaking.**

1 (a) All practitioners, as that term is defined in §60A-2-101 of this code who prescribe or
2 dispense Schedule II, III, or IV controlled substances shall register with the West Virginia
3 Controlled Substances Monitoring Program and obtain and maintain online or other electronic
4 access to the program database: *Provided*, That compliance with the provisions of this subsection
5 must be accomplished within 30 days of the practitioner obtaining a new license: *Provided*,
6 *however*, That the Board of Pharmacy may renew a practitioner's license without proof that the
7 practitioner meet the requirements of this subsection.

8 (b) All persons with prescriptive or dispensing authority and in possession of a valid Drug
9 Enforcement Administration registration identification number and who are licensed by the Board
10 of Medicine as set forth in §30-3-1 *et seq.* of this code, the Board of Registered Professional
11 Nurses as set forth in §30-7-1 *et seq.* of this code, the Board of Dental Examiners as set forth in
12 §30-7-1 *et seq.* of this code, the Board of Osteopathic Medicine as set forth in §30-14-1 *et seq.*
13 of this code, the West Virginia Board of Veterinary Medicine as set forth in §30-10-1 *et seq.* of
14 this code, and the West Virginia Board of Optometrists as set forth in §30-8-1 *et seq.* of this code,
15 upon initially prescribing or dispensing any Schedule II controlled substance, any opioid or any
16 benzodiazepine to a patient who is not suffering from a terminal illness, and at least annually
17 thereafter should the practitioner or dispenser continue to treat the patient with a controlled
18 substance, shall access the West Virginia Controlled Substances Monitoring Program Database
19 for information regarding specific patients. The information obtained from accessing the West
20 Virginia Controlled Substances Monitoring Program Database for the patient shall be documented
21 in the patient's medical record maintained by a private prescriber or any inpatient facility licensed

22 pursuant to the provisions of chapter 16 of this code. A pain-relieving controlled substance shall
23 be defined as set forth in §30-3A-1 of this code.

24 (c) The various boards mentioned in §60A-9-5(b) of this code shall promulgate both
25 emergency and legislative rules pursuant to the provisions of §29A-3-1 *et seq.* of this code to
26 effectuate the provisions of this article.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2018.

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Governor