

1 ENROLLED

2 COMMITTEE SUBSTITUTE

3 FOR

4 H. B. 4239

5 (By Delegates Morgan and Perdue)

6
7 [Passed March 10, 2012; in effect from passage.]
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9

10 AN ACT to amend and reenact §30-14-3 of the Code of West Virginia,
11 1931, as amended, relating to West Virginia Board of
12 Osteopathy; increasing board membership; increasing the term
13 length; adding certain requirements to qualify to serve on the
14 board.

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

16 That §30-14-1, §30-14-2, §30-14-3 and §30-14-12b of the Code
17 of West Virginia, 1931, as amended, be amended and reenacted to
18 read as follows:

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

20 **§30-14-1. License required.**

21 It is unlawful for any person to practice or offer to practice
22 medicine and surgery as an osteopathic physician and surgeon in
23 this state without a license or permit issued by the West Virginia
24 Board of Osteopathic Medicine: *Provided*, That any license
25 heretofore issued under the laws of this state, authorizing its

1 holder to practice osteopathy and surgery, shall in no way be
2 affected by the enactment of this article; except that the holder
3 of every such license shall be subject to all of the provisions of
4 this article respecting the requirements and obligations herein
5 prescribed for the continuance in force of such license.

6 **§30-14-2. Definitions.**

7 (a) "Accredited osteopathic college" means a college of
8 osteopathy and surgery which requires as a minimum prerequisite for
9 admission preprofessional training of at least two years of
10 academic work in specified scientific subjects, as prescribed by
11 the board or by the college accrediting agency of the American
12 Osteopathic Association, in an accredited college of arts and
13 sciences and which requires for graduation a course of study
14 approved by the board in accordance with the minimum standards
15 established by the American Osteopathic Association;

16 (b) "Approved program of post-graduate clinical training"
17 means a program of clinical training approved by, or subject of
18 approval by, the American Osteopathic Association or approved by
19 the Accreditation Council for Graduate Medical Education for the
20 purposes of intern or resident training;

21 (c) "Board" means the West Virginia Board of Osteopathic
22 Medicine: *Provided*, That where used elsewhere in the Code, the West
23 Virginia Board of Osteopathy and Board of Osteopathy shall also
24 mean the West Virginia Board of Osteopathic Medicine;

25 (d) "License" means legal authorization issued by the board to
26 a fully qualified osteopathic physician to engage in the regular

1 practice of osteopathic medicine and surgery;

2 (e) "Osteopathy" means that system of the healing art which
3 places the chief emphasis on the structural integrity of the body
4 mechanism as being the most important single factor in maintaining
5 the well-being of the organism in health and disease;

6 (f) "Permit" means a limited, legal authorization issued by
7 the board to an osteopathic physician to practice osteopathic
8 medicine and surgery in this state while serving under special
9 circumstances of public need or while undergoing post-graduate
10 clinical training as a prerequisite to licensure;

11 (g) "Reciprocal endorsement" means a duly authenticated
12 verification of the board, addressed to a board or agency of
13 another country, state, territory, province or the District of
14 Columbia, vouching that a license issued to an osteopathic
15 physician and surgeon pursuant to the laws of this state is
16 currently valid and not suspended or revoked for any cause or
17 causes specified in this article.

18 **§30-14-3. Board of Osteopathic Medicine.**

19 (a) The West Virginia Board of Osteopathy is continued and
20 effective July 1, 2012 shall be known as the West Virginia Board of
21 Osteopathic Medicine. The members of the board shall continue to
22 serve until a successor is appointed and may be reappointed.

23 (b) The Governor shall appoint, by and with advice and consent
24 of the Senate, two additional members and stagger their initial
25 terms:

26 (1) One person who is a licensed osteopathic physician or

1 surgeon; and

2 (2) One person who is a licensed osteopathic physician
3 assistant.

4 (c) The board consists of the following seven members, who are
5 appointed to staggered terms by the Governor with the advice and
6 consent of the Senate:

7 (1) Four licensed osteopathic physicians and surgeons;

8 (2) One licensed osteopathic physician assistant; and

9 (3) Two citizen members, who are not associated with the
10 practice of osteopathic medicine.

11 (d) After the initial appointment, a board member's term shall
12 be for 5 years.

13 (e) The West Virginia Osteopathic Medical Association may
14 submit recommendations to the Governor for the appointment of an
15 osteopathic physician board member, and the West Virginia
16 Association of Physician Assistants may submit recommendations to
17 the Governor for the appointment of an osteopathic physician
18 assistant board member.

19 (f) Each licensed member of the board, at the time of his or
20 her appointment, must have held a license in this state for a
21 period of not less than five years immediately preceding the
22 appointment.

23 (g) Each member of the board must be a U.S. citizen and a
24 resident of this state for a period of not less than five years
25 immediately preceding the appointment and while serving as a member
26 of the board.

1 (h) A member may not serve more than two consecutive full
2 terms. A member having served two consecutive full terms may not be
3 appointed for one year after completion of his or her second full
4 term. A member may continue to serve until a successor has been
5 appointed and has qualified.

6 (i) A vacancy on the board shall be filled by appointment by
7 the Governor for the unexpired term of the member whose office is
8 vacant and the appointment shall be made within sixty days of the
9 vacancy.

10 (j) The Governor may remove any member from the board for
11 neglect of duty, incompetency or official misconduct.

12 (k) A member of the board immediately and automatically
13 forfeits membership to the board if his or her license to practice
14 is suspended or revoked, he or she is convicted of a felony under
15 the laws of any jurisdiction, or he or she becomes a nonresident of
16 this state.

17 (l) The board shall elect annually one of its members as a
18 chairperson and one of its members as a secretary who shall serve
19 at the will of the board.

20 (m) Each member of the board is entitled to compensation and
21 expense reimbursement in accordance with article one of this
22 chapter.

23 (n) A simple majority of the membership serving on the board
24 at a given time constitutes a quorum.

25 (o) The board shall hold at least two meetings each year.
26 Other meetings may be held at the call of the chairperson or upon

1 the written request of two members, at the time and place as
2 designated in the call or request.

3 (p) Prior to commencing his or her duties as a member of the
4 board, each member shall take and subscribe to the oath required by
5 section five, article four of the Constitution of this state.

6 (q) The members of the board when acting in good faith,
7 without malice and within the scope of their duties as board
8 members shall enjoy immunity from individual civil liability.

9 **§30-14-12b. Special volunteer medical license; civil immunity for**
10 **voluntary services rendered to indigents.**

11 (a) There is hereby established a special volunteer medical
12 license for physicians retired or retiring from the active practice
13 of osteopathy who wish to donate their expertise for the medical
14 care and treatment of indigent and needy patients in the clinic
15 setting of clinics organized, in whole or in part, for the delivery
16 of health care services without charge. The special volunteer
17 medical license shall be issued by the West Virginia Board of
18 Osteopathic Medicine to physicians licensed or otherwise eligible
19 for licensure under this article and the rules promulgated
20 hereunder without the payment of any application fee, license fee
21 or renewal fee, shall be issued for a fiscal year or part thereof,
22 and shall be renewable annually. The board shall develop
23 application forms for the special license provided for in this
24 subsection which shall contain the physician's acknowledgment that:
25 (1) The physician's practice under the special volunteer medical
26 license will be exclusively and totally devoted to providing

1 medical care to needy and indigent persons in West Virginia; (2)
2 the physician will not receive any payment or compensation, either
3 direct or indirect, or have the expectation of any payment or
4 compensation, for any medical services rendered under the special
5 volunteer medical license; (3) the physician will supply any
6 supporting documentation that the board may reasonably require; and
7 (4) the physician agrees to continue to participate in continuing
8 medical education as required of physicians in active practice.

9 (b) Any physician who renders any medical service to indigent
10 and needy patients of clinics organized, in whole or in part, for
11 the delivery of health care services without charge under a special
12 volunteer medical license authorized under subsection (a) of this
13 section without payment or compensation or the expectation or
14 promise of payment or compensation is immune from liability for any
15 civil action arising out of any act or omission resulting from the
16 rendering of the medical service at the clinic unless the act or
17 omission was the result of the physician's gross negligence or
18 willful misconduct. In order for the immunity under this subsection
19 to apply, there must be a written agreement between the physician
20 and the clinic pursuant to which the physician will provide
21 voluntary noncompensated medical services under the control of the
22 clinic to patients of the clinic before the rendering of any
23 services by the physician at the clinic: *Provided*, That any clinic
24 entering into such written agreement shall be required to maintain
25 liability coverage of not less than one million dollars per
26 occurrence.

1 (c) Notwithstanding the provisions of subsection (a) of this
2 section, a clinic organized, in whole or in part, for the delivery
3 of health care services without charge shall not be relieved from
4 imputed liability for the negligent acts of a physician rendering
5 voluntary medical services at or for the clinic under a special
6 volunteer medical license authorized under subsection (a) of this
7 section.

8 (d) For purposes of this section, "otherwise eligible for
9 licensure" means the satisfaction of all the requirements for
10 licensure as listed in section ten of this article and in the
11 legislative rules promulgated hereunder, except the fee
12 requirements of subsections (b) and (d) of said section and of the
13 legislative rule promulgated by the board relating to fees.

14 (e) Nothing in this section may be construed as requiring the
15 board to issue a special volunteer medical license to any physician
16 whose medical license is or has been subject to any disciplinary
17 action or to any physician who has surrendered a medical license or
18 caused such license to lapse, expire and become invalid in lieu of
19 having a complaint initiated or other action taken against his or
20 her medical license, or who has elected to place a medical license
21 in inactive status in lieu of having a complaint initiated or other
22 action taken against his or her medical license, or who have been
23 denied a medical license.

24 (f) Any policy or contract of liability insurance providing
25 coverage for liability sold, issued or delivered in this state to
26 any physician covered under the provisions of this article shall be

1 read so as to contain a provision or endorsement whereby the
2 company issuing such policy waives or agrees not to assert as a
3 defense on behalf of the policyholder or any beneficiary thereof,
4 to any claim covered by the terms of such policy within the policy
5 limits, the immunity from liability of the insured by reason of the
6 care and treatment of needy and indigent patients by a physician
7 who holds a special volunteer medical license.