

1 **H. B. 2502**

2

3 (By Delegates Hunt, Barill, Phillips, R., Tomblin,  
4 Eldridge, Stowers, Hamilton, Perry, Poling, D., Ferro and Sobonya)

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6 [Introduced February 15, 2013; referred to the  
7 Committee on Health and Human Resources then the  
8 Judiciary.]

9

10 A BILL to amend and reenact §30-3-14 of the Code of West Virginia,  
11 1931, as amended; and to amend and reenact §30-14-11 of said  
12 code, all relating to professional discipline of physicians,  
13 podiatrists and osteopathic physicians and surgeons generally;  
14 and including oral or written inquiry of a patient about  
15 possession, ownership or storage of firearms as a reason for  
16 invoking disciplinary proceedings.

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

18 That §30-3-14 of the Code of West Virginia, 1931, as amended,  
19 be amended and reenacted; and that §30-14-11 of said code be  
20 amended and reenacted, all to read as follows:

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

22 **§30-3-14. Professional discipline of physicians and podiatrists;**  
23 **reporting of information to board pertaining to**  
24 **medical professional liability and professional**  
25 **incompetence required; penalties; grounds for license**

1           **denial and discipline of physicians and podiatrists;**  
2           **investigations; physical and mental examinations;**  
3           **hearings; sanctions; summary sanctions; reporting by**  
4           **the board; reapplication; civil and criminal**  
5           **immunity; voluntary limitation of license; probable**  
6           **cause determinations.**

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

12           The board may initiate investigations as to professional  
13 incompetence or other reasons for which a licensed physician or  
14 podiatrist may be adjudged unqualified based upon criminal  
15 convictions, complaints by citizens, pharmacists, physicians,  
16 podiatrists, peer review committees, hospital administrators,  
17 professional societies or others or unfavorable outcomes arising  
18 out of medical professional liability. The board shall initiate  
19 an investigation if it receives notice that three or more  
20 judgments, or any combination of judgments and settlements  
21 resulting in five or more unfavorable outcomes arising from medical  
22 professional liability, have been rendered or made against the  
23 physician or podiatrist within a five-year period. The board may  
24 not consider any judgments or settlements as conclusive evidence of

1 professional incompetence or conclusive lack of qualification to  
2 practice.

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

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

1 podiatrist by the hospital upon the recommendation of its medical  
2 staff relating to professional ethics, medical incompetence,  
3 medical professional liability, moral turpitude or drug or alcohol  
4 abuse. Temporary suspension for failure to maintain records on a  
5 timely basis or failure to attend staff or section meetings need  
6 not be reported. Voluntary cessation of hospital privileges for  
7 reasons unrelated to professional competence or ethics need not be  
8 reported.

9       Any managed care organization operating in this state which  
10 provides a formal peer review process shall report in writing to  
11 the board, within sixty days after the completion of any formal  
12 peer review process and also within sixty days after the  
13 commencement of and ~~again~~ after the conclusion of any resulting  
14 legal action, the name of any physician or podiatrist whose  
15 credentialing has been revoked or not renewed by the managed care  
16 organization. The managed care organization shall also report in  
17 writing to the board any other disciplinary action taken against a  
18 physician or podiatrist relating to professional ethics,  
19 professional liability, moral turpitude or drug or alcohol abuse  
20 within sixty days after completion of a formal peer review process  
21 which results in the action taken by the managed care organization.  
22 For purposes of this subsection, "managed care organization" means  
23 a plan that establishes, operates or maintains a network of health  
24 care providers who have entered into agreements with and been

1 credentialed by the plan to provide health care services to  
2 enrollees or insureds to whom the plan has the ultimate obligation  
3 to arrange for the provision of or payment for health care services  
4 through organizational arrangements for ongoing quality assurance,  
5 utilization review programs or dispute resolutions.

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

13 Every person, partnership, corporation, association, insurance  
14 company, professional society or other organization providing  
15 professional liability insurance to a physician or podiatrist in  
16 this state, including the state Board of Risk and Insurance  
17 Management, shall submit to the board the following information  
18 within thirty days from ~~any~~ a judgment or settlement of a civil or  
19 medical professional liability action excepting product liability  
20 actions:

21 (1) The name of the insured;

22 (2) The date of ~~any~~ judgment or settlement;

23 (3) Whether ~~any~~ an appeal has been taken on the judgment and,  
24 if so, by which party;

1       (4) The amount of ~~any~~ settlement or judgment against the  
2 insured; and

3       (5) Other information required by the board.

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

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

22       Upon a determination of the board that there is probable cause  
23 to believe that ~~any a~~ person, partnership, corporation,  
24 association, insurance company, professional society or other

1 organization has failed or refused to make a report required by  
2 this subsection, the board shall provide written notice to the  
3 alleged violator stating the nature of the alleged violation and  
4 the time and place at which the alleged violator shall appear to  
5 show good cause why a civil penalty should not be imposed. The  
6 hearing shall be conducted in accordance with the provisions of  
7 article five, chapter twenty-nine-a of this code. After reviewing  
8 the record of the hearing, if the board determines that a violation  
9 of this subsection has occurred, the board shall assess a civil  
10 penalty of not less than \$1,000 nor more than \$10,000 against the  
11 violator. The board shall notify any person so assessed of the  
12 assessment in writing and the notice shall specify the reasons for  
13 the assessment. If the violator fails to pay the amount of the  
14 assessment to the board within thirty days, the Attorney General  
15 may institute a civil action in the circuit court of Kanawha County  
16 to recover the amount of the assessment. In ~~any~~ a civil action,  
17 the court's review of the board's action shall be conducted in  
18 accordance with the provisions of section four, article five,  
19 chapter twenty-nine-a of this code. Notwithstanding any other  
20 provision of this article to the contrary, when there are  
21 conflicting views by recognized experts as to whether ~~any~~ alleged  
22 conduct breaches an applicable standard of care, the evidence must  
23 be clear and convincing before the board may find that the  
24 physician or podiatrist has demonstrated a lack of professional

1 competence to practice with a reasonable degree of skill and safety  
2 for patients.

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

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

10 The filing of a report with the board pursuant to ~~any~~ a  
11 provision of this article, ~~any~~ an investigation by the board or ~~any~~  
12 a disposition of a case by the board does not preclude ~~any~~ an  
13 action by a hospital, other health care facility or professional  
14 society comprised primarily of physicians or podiatrists to  
15 suspend, restrict or revoke the privileges or membership of the  
16 physician or podiatrist.

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

23 (1) Attempting to obtain, obtaining, renewing or attempting to  
24 renew a license to practice medicine and surgery or podiatry by



1 bribery, fraudulent misrepresentation or through known error of the  
2 board;

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

7 (3) False or deceptive advertising;

8 (4) Aiding, assisting, procuring or advising ~~any~~ an  
9 unauthorized person to practice medicine and surgery or podiatry  
10 contrary to law;

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

19 (6) Requesting, receiving or paying directly or indirectly a  
20 payment, rebate, refund, commission, credit or other form of profit  
21 or valuable consideration for the referral of patients to ~~any~~ a  
22 person or entity in connection with providing medical or other  
23 health care services or clinical laboratory services, supplies of  
24 any kind, drugs, medication or any other medical goods, services or

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

3       (7) Unprofessional conduct by ~~any~~ a physician or podiatrist in  
4 referring a patient to ~~any~~ a clinical laboratory or pharmacy in  
5 which the physician or podiatrist has a proprietary interest unless  
6 the physician or podiatrist discloses in writing such interest to  
7 the patient. The written disclosure shall indicate that the  
8 patient may choose any clinical laboratory for purposes of having  
9 any laboratory work or assignment performed or any pharmacy for  
10 purposes of purchasing any prescribed drug or any other medical  
11 goods or devices used in connection with medical or other health  
12 care services;

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

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

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

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

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

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

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

22 (14) Performing ~~any~~ a procedure or prescribing ~~any~~ a therapy  
23 that, by the accepted standards of medical practice in the  
24 community, would constitute experimentation on human subjects

1 without first obtaining full, informed and written consent;

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

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

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

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

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

19 (20) Professional incompetence; ~~or~~

20 (21) The inability to practice medicine and surgery or  
21 podiatry with reasonable skill and safety due to physical or mental  
22 impairment, including deterioration through the aging process, loss  
23 of motor skill or abuse of drugs or alcohol. A physician or  
24 podiatrist adversely affected under this subdivision shall be

1 afforded an opportunity at reasonable intervals to demonstrate that  
2 he or she may resume the competent practice of medicine and surgery  
3 or podiatry with reasonable skill and safety to patients. In ~~any~~  
4 a proceeding under this subdivision, neither the record of  
5 proceedings nor any orders entered by the board shall be used  
6 against the physician or podiatrist in any other proceeding; or

7 (22) Making an oral or written inquiry of a patient concerning  
8 the possession, ownership or storage of firearms where the inquiry  
9 has no relationship to the practice of medicine or the medical  
10 condition of the patient but is for the purpose of gathering  
11 statistics or to justify patient counseling, unless the inquiry is  
12 the subject of a request or related to a medical complaint made by  
13 the patient.

14 (d) The board shall deny ~~any~~ an application for a license or  
15 other authorization to practice medicine and surgery or podiatry in  
16 this state to ~~any~~ an applicant who, and shall revoke the license of  
17 ~~any~~ a physician or podiatrist licensed or otherwise lawfully  
18 practicing within this state who, is found guilty by ~~any~~ a court of  
19 competent jurisdiction of ~~any~~ a felony involving prescribing,  
20 selling, administering, dispensing, mixing or otherwise preparing  
21 ~~any~~ a prescription drug, including ~~any~~ a controlled substance under  
22 state or federal law, for other than generally accepted therapeutic  
23 purposes. Presentation to the board of a certified copy of the  
24 guilty verdict or plea rendered in the court is sufficient proof

1 ~~thereof~~ for the purposes of this article. A plea of nolo  
2 contendere has the same effect as a verdict or plea of guilt. Upon  
3 application of a physician that has had his or her license revoked  
4 because of a drug related felony conviction, upon completion of ~~any~~  
5 a sentence of confinement, parole, probation or other court-ordered  
6 supervision and full satisfaction of any fines, judgments or other  
7 fees imposed by the sentencing court, the board may issue the  
8 applicant a new license upon a finding that the physician is,  
9 except for the underlying conviction, otherwise qualified to  
10 practice medicine ~~Provided, That The board~~ and may place whatever  
11 terms, conditions or limitations it deems appropriate upon a  
12 physician licensed pursuant to this subsection.

13 (e) The board may refer ~~any~~ cases coming to its attention to  
14 an appropriate committee of an appropriate professional  
15 organization for investigation and report. Except for complaints  
16 related to obtaining initial licensure to practice medicine and  
17 surgery or podiatry in this state by bribery or fraudulent  
18 misrepresentation, ~~any~~ a complaint filed more than two years after  
19 the complainant knew or, in the exercise of reasonable diligence,  
20 should have known of the existence of grounds for the complaint,  
21 shall be dismissed: *Provided*, That in cases of conduct alleged to  
22 be part of a pattern of similar misconduct or professional  
23 incapacity that, if continued, would pose risks of a serious or  
24 substantial nature to the physician's or podiatrist's current

1 patients, the investigating body may conduct a limited  
2 investigation related to the physician's or podiatrist's current  
3 capacity and qualification to practice and may recommend  
4 conditions, restrictions or limitations on the physician's or  
5 podiatrist's license to practice that it considers necessary for  
6 the protection of the public. Any report shall contain  
7 recommendations for any necessary disciplinary measures and shall  
8 be filed with the board within ninety days of any referral. The  
9 recommendations shall be considered by the board and the case may  
10 be further investigated by the board. The board, after full  
11 investigation, shall take whatever action it considers appropriate  
12 as provided in this section.

13 (f) The investigating body, as provided in subsection (e) of  
14 this section, may request and the board, under any circumstances,  
15 may require a physician or podiatrist or person applying for  
16 licensure or other authorization to practice medicine and surgery  
17 or podiatry in this state to submit to a physical or mental  
18 examination by a physician or physicians approved by the board. A  
19 physician or podiatrist submitting to an examination has the right,  
20 at his or her expense, to designate another physician to be present  
21 at the examination and make an independent report to the  
22 investigating body or the board. The expense of the examination  
23 shall be paid by the board. Any individual who applies for or  
24 accepts the privilege of practicing medicine and surgery or

1 podiatry in this state is considered to have given his or her  
2 consent to submit to all examinations when requested to do so in  
3 writing by the board and to have waived all objections to the  
4 admissibility of the testimony or examination report of any  
5 examining physician on the ground that the testimony or report is  
6 privileged communication. If a person fails or refuses to submit  
7 to an examination under circumstances which the board finds are not  
8 beyond his or her control, failure or refusal is prima facie  
9 evidence of his or her inability to practice medicine and surgery  
10 or podiatry competently and in compliance with the standards of  
11 acceptable and prevailing medical practice.

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

15 (h) In every disciplinary or licensure denial action, the  
16 board shall furnish the physician or podiatrist or applicant with  
17 written notice setting out with particularity the reasons for its  
18 action. Disciplinary and licensure denial hearings shall be  
19 conducted in accordance with the provisions of article five,  
20 chapter twenty-nine-a of this code. However, hearings shall be  
21 heard upon sworn testimony and the rules of evidence for trial  
22 courts of record in this state shall apply to all hearings. A  
23 transcript of all hearings under this section shall be made and the  
24 respondent may obtain a copy of the transcript at his or her



1 expense. The physician or podiatrist has the right to defend  
2 against any charge by the introduction of evidence, the right to be  
3 represented by counsel, the right to present and cross-examine  
4 witnesses and the right to have subpoenas and subpoenas duces tecum  
5 issued on his or her behalf for the attendance of witnesses and the  
6 production of documents. The board shall make all its final  
7 actions public. The order shall contain the terms of all action  
8 taken by the board.

9 (i) In disciplinary actions in which probable cause has been  
10 found by the board, the board shall, within twenty days of the date  
11 of service of the written notice of charges or sixty days prior to  
12 the date of the scheduled hearing, whichever is sooner, provide the  
13 respondent with the complete identity, address and telephone number  
14 of any person known to the board with knowledge about the facts of  
15 any of the charges; provide a copy of any statements in the  
16 possession of or under the control of the board; provide a list of  
17 proposed witnesses with addresses and telephone numbers with a  
18 brief summary of his or her anticipated testimony; provide  
19 disclosure of any trial expert pursuant to the requirements of Rule  
20 26(b)(4) of the West Virginia Rules of Civil Procedure; provide  
21 inspection and copying of the results of any reports of physical  
22 and mental examinations or scientific tests or experiments; and  
23 provide a list and copy of any proposed exhibit to be used at the  
24 hearing. ~~Provided, That~~ The board shall not be required to furnish

1 or produce any materials which contain opinion work product  
2 information or would be a violation of the attorney-client  
3 privilege. Within twenty days of the date of service of the  
4 written notice of charges, the board shall disclose any exculpatory  
5 evidence with a continuing duty to do so throughout the  
6 disciplinary process. Within thirty days of receipt of the board's  
7 mandatory discovery, the respondent shall provide the board with  
8 the complete identity, address and telephone number of any person  
9 known to the respondent with knowledge about the facts of any of  
10 the charges; provide a list of proposed witnesses with addresses  
11 and telephone numbers, to be called at hearing, with a brief  
12 summary of his or her anticipated testimony; provide disclosure of  
13 any trial expert pursuant to the requirements of Rule 26(b)(4) of  
14 the West Virginia Rules of Civil Procedure; provide inspection and  
15 copying of the results of any reports of physical and mental  
16 examinations or scientific tests or experiments; and provide a list  
17 and copy of any proposed exhibit to be used at the hearing.

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

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

23 (2) Administer a public reprimand;

24 (3) Suspend, limit or restrict his or her license or other

1 authorization to practice medicine and surgery or podiatry for not  
2 more than five years, including limiting the practice of that  
3 person to, or by the exclusion of, one or more areas of practice,  
4 including limitations on practice privileges;

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

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

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

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

18 (8) Assess a civil fine of not less than \$1000 nor more than  
19 \$10,000.

20 (k) Notwithstanding the provisions of section eight, article  
21 one, chapter thirty of this code, if the board determines the  
22 evidence in its possession indicates that a physician's or  
23 podiatrist's continuation in practice or unrestricted practice  
24 constitutes an immediate danger to the public, the board may take

1 any of the actions provided in subsection (j) of this section on a  
2 temporary basis and without a hearing if institution of proceedings  
3 for a hearing before the board are initiated simultaneously with  
4 the temporary action and begin within fifteen days of the action.  
5 The board shall render its decision within five days of the  
6 conclusion of a hearing under this subsection.

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

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

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

21 A person may not practice medicine and surgery or podiatry or  
22 deliver health care services in violation of ~~any~~ a disciplinary  
23 order revoking, suspending or limiting his or her license while ~~any~~  
24 an appeal is pending. Within sixty days, the board shall report

1 its final action regarding restriction, limitation, suspension or  
2 revocation of the license of a physician or podiatrist, limitation  
3 on practice privileges or other disciplinary action against ~~any~~ a  
4 physician or podiatrist to all appropriate state agencies,  
5 appropriate licensed health facilities and hospitals, insurance  
6 companies or associations writing medical malpractice insurance in  
7 this state, the American Medical Association, the American Podiatry  
8 Association, professional societies of physicians or podiatrists in  
9 the state and any entity responsible for the fiscal administration  
10 of Medicare and Medicaid.

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

18 (n) Any entity, organization or person, including the board,  
19 any member of the board, its agents or employees and any entity or  
20 organization or its members referred to in this article, any  
21 insurer, its agents or employees, a medical peer review committee  
22 and a hospital governing board, its members or any committee  
23 appointed by it acting without malice and without gross negligence  
24 in making any report or other information available to the board or

1 a medical peer review committee pursuant to law and any person  
2 acting without malice and without gross negligence who assists in  
3 the organization, investigation or preparation of any such report  
4 or information or assists the board or a hospital governing body or  
5 any committee in carrying out any of its duties or functions  
6 provided by law is immune from civil or criminal liability, except  
7 that the unlawful disclosure of confidential information possessed  
8 by the board is a misdemeanor as provided in this article.

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

20 (p) In every case considered by the board under this article  
21 regarding discipline or licensure, whether initiated by the board  
22 or upon complaint or information from any person or organization,  
23 the board shall make a preliminary determination as to whether  
24 probable cause exists to substantiate charges of disqualification

1 due to any reason set forth in subsection (c) of this section. If  
2 probable cause is found to exist, all proceedings on the charges  
3 shall be open to the public who are entitled to all reports,  
4 records and nondeliberative materials introduced at the hearing  
5 including the record of the final action taken: *Provided, That any*  
6 medical records which were introduced at the hearing and which  
7 pertain to a person who has not expressly waived his or her right  
8 to the confidentiality of the records, may not be open to the  
9 public nor is the public entitled to the records.

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

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

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

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

19 **§30-14-11. Refusal, suspension or revocation of license;**  
 20 **suspension or revocation of certificate of**  
 21 **authorization.**

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

24 (1) Conviction of a felony, as shown by a certified copy of



1 the record of the trial court;

2 (2) Conviction of a misdemeanor involving moral turpitude;

3 (3) Violation of any provision of this article regulating the  
4 practice of osteopathic physicians and surgeons;

5 (4) Fraud, misrepresentation or deceit in procuring or  
6 attempting to procure admission to practice;

7 (5) Gross malpractice;

8 (6) Advertising by means of knowingly false or deceptive  
9 statements;

10 (7) Advertising, practicing or attempting to practice under a  
11 name other than one's own;

12 (8) Habitual drunkenness or habitual addiction to the use of  
13 morphine, cocaine or other habit-forming drugs;

14 (9) Making an oral or written inquiry of a patient concerning  
15 the possession, ownership, or storage of firearms, where the  
16 inquiry has no relationship to the practice of osteopathic medicine  
17 or the medical condition of the patient but is for the purpose of  
18 gathering statistics or to justify patient counseling unless the  
19 inquiry is the subject of a request or related to a medical  
20 complaint made by the patient.

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

NOTE: The purpose of this bill is to include oral or written inquiry of a patient about possession, ownership or storage of firearms as a reason for invoking disciplinary proceedings against physicians, podiatrists and osteopathic physicians and surgeons.

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