

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 606

BY SENATORS WELD, WOELFEL, TAKUBO, STOLLINGS,

AND PLYMALE

[Passed March 11, 2022; in effect 90 days from passage]

1 AN ACT to amend and reenact §30-3-14 of the Code of West Virginia, 1931, as amended, relating
2 to reporting requirements under the West Virginia Medical Practice Act; imposing a duty
3 on persons licensed or authorized by the West Virginia Board of Medicine to report certain
4 incidents to the Board; providing reporting deadlines; providing failure to report constitutes
5 unprofessional conduct and grounds for disciplinary action; providing exception to
6 reporting requirement for certain physicians; providing for immunity from civil liability for
7 reports in good-faith and without fraud or malice; providing reports made in bad-faith,
8 fraudulently, or maliciously constitute unprofessional conduct and grounds for disciplinary
9 action; modifying grounds for denial of application and discipline; and providing rule-
10 making authority.

Be it enacted by the Legislature of West Virginia:

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 podiatrists; 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; rulemaking.

1 (a) (1) 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 (2) 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) (1) Upon request of the board, any medical peer review committee in this state shall
16 report any information that may relate to the practice or performance of any physician or podiatrist
17 known to that medical peer review committee. Copies of the requests for information from a
18 medical peer review committee may be provided to the subject physician or podiatrist if, in the
19 discretion of the board, the provision of such copies will not jeopardize the board's investigation.
20 If copies are provided, the subject physician or podiatrist is allowed 15 days to comment on the
21 requested information and the comments shall be considered by the board.

22 (2) The chief executive officer of every hospital shall, within 60 days after the completion
23 of the hospital's formal disciplinary procedure and also within 60 days after the commencement
24 of and again after the conclusion of any resulting legal action, report in writing to the board the
25 name of any member of the medical staff or any other physician or podiatrist practicing in the
26 hospital whose hospital privileges have been revoked, restricted, reduced, or terminated for any
27 cause, including resignation, together with all pertinent information relating to such action. The
28 chief executive officer shall also report any other formal disciplinary action taken against any
29 physician or podiatrist by the hospital upon the recommendation of its medical staff relating to
30 professional ethics, medical incompetence, medical professional liability, moral turpitude or drug
31 or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure
32 to attend staff or section meetings need not be reported. Voluntary cessation of hospital privileges
33 for reasons unrelated to professional competence or ethics need not be reported.

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

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

54 (5) Any person licensed or authorized by the board to provide health care services to
55 patients in this state shall submit a written report to the board of any of the following incidents the
56 person reasonably believes to have occurred involving a person licensed or authorized by the
57 board to provide health care services to patients in this state:

58 (A) Exercising influence within a provider-physician relationship for the purpose of
59 engaging a patient in sexual activity;

60 (B) Engaging in sexual misconduct with a patient;

61 (C) Violating established medical or professional protocols regarding transferring
62 controlled substances or prescribing controlled substances;

63 (D) Engaging in conduct which jeopardizes patient safety; or

64 (E) Other gross misconduct.

65 All reports required by this subdivision shall be submitted to the board within 30 days of
66 the reportable incident, or if the licensee or other authorized person with a duty to report gained
67 knowledge of the incident after it occurred, within 30 days of the licensee or other authorized
68 person's knowledge of the incident. Failure of a licensee or other authorized person to report any
69 such incidents to the board constitutes unprofessional conduct and is grounds for disciplinary
70 action by the board. A physician who is licensed by the board and who obtains responsive
71 information exclusively while functioning as the executive director or employee of a board-
72 approved professional health program shall only be required to report in conformity with §30-3-
73 9(h) of this code.

74 (6) Every person, partnership, corporation, association, insurance company, professional
75 society, or other organization providing professional liability insurance to a physician or podiatrist
76 in this state, including the state Board of Risk and Insurance Management, shall submit to the
77 board the following information within 30 days from any judgment or settlement of a civil or medical
78 professional liability action excepting product liability actions: the name of the insured; the date of
79 any judgment or settlement; whether any appeal has been taken on the judgment and, if so, by
80 which party; the amount of any settlement or judgment against the insured; and other information
81 required by the board.

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

86 (8) Within 30 days after a person known to be a physician or podiatrist licensed or
87 otherwise lawfully practicing medicine and surgery or podiatry in this state or applying to be
88 licensed is convicted of a felony under the laws of this state or of any crime under the laws of this
89 state involving alcohol or drugs in any way, including any controlled substance under state or
90 federal law, the clerk of the court of record in which the conviction was entered shall forward to
91 the board a certified true and correct abstract of record of the convicting court. The abstract shall
92 include the name and address of the physician or podiatrist or applicant, the nature of the offense
93 committed, and the final judgment and sentence of the court.

94 (9) Upon a determination of the board that there is probable cause to believe that any
95 person, partnership, corporation, association, insurance company, professional society, or other
96 organization has failed or refused to make a report required by this subsection, the board shall
97 provide written notice to the alleged violator stating the nature of the alleged violation and the time
98 and place at which the alleged violator shall appear to show good cause why a civil penalty should
99 not be imposed. The hearing shall be conducted in accordance with §29A-5-1 *et seq.* of this code.
100 After reviewing the record of the hearing, if the board determines that a violation of this subsection
101 has occurred, the board shall assess a civil penalty of not less than \$1,000 nor more than \$10,000
102 against the violator. The board shall notify any person so assessed of the assessment in writing
103 and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount
104 of the assessment to the board within 30 days, the Attorney General may institute a civil action in
105 the Circuit Court of Kanawha County to recover the amount of the assessment. In any civil action,
106 the court's review of the board's action shall be conducted in accordance with §29A-5-4 of this
107 code. Notwithstanding any other provision of this article to the contrary, when there are conflicting
108 views by recognized experts as to whether any alleged conduct breaches an applicable standard
109 of care, the evidence shall be clear and convincing before the board may find that the physician
110 or podiatrist has demonstrated a lack of professional competence to practice with a reasonable
111 degree of skill and safety for patients.

112 (10) Any person may report to the board relevant facts about the conduct of any physician
113 or podiatrist in this state which in the opinion of that person amounts to medical professional
114 liability or professional incompetence.

115 (11) The board shall provide forms for filing reports pursuant to this section. Reports
116 submitted in other forms shall be accepted by the board.

117 (12) The filing of a report with the board pursuant to any provision of this article, any
118 investigation by the board, or any disposition of a case by the board does not preclude any action
119 by a hospital, other health care facility, or professional society comprised primarily of physicians
120 or podiatrists to suspend, restrict, or revoke the privileges or membership of the physician or
121 podiatrist.

122 (13) Any person who reports pursuant to this subsection, in good-faith and without fraud
123 or malice, is immune from civil liability. Reports made in bad-faith, fraudulently, or maliciously
124 constitute unprofessional conduct and, if made by persons licensed or authorized to practice by
125 the board, are grounds for disciplinary action pursuant to § 30-3-14(c) of this code.

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

130 (1) Attempting to obtain, obtaining, renewing, or attempting to renew a license or other
131 authorization to practice medicine and surgery or podiatry by bribery, fraudulent
132 misrepresentation, or through known error of the board;

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

136 (3) False or deceptive advertising;

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

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

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

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

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

160 (8) Exercising influence within a patient-physician relationship for the purpose of engaging
161 a patient in sexual activity or engaging in other sexual misconduct;

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

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

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

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

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

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

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

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

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

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

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

194 (20) Professional incompetence;

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

203 (22) Knowingly failing to report to the board any act of gross misconduct committed by
204 another licensee of the board or failing to comply with any reporting requirement set forth in §30-
205 3-14(b) of this code.

206 (d) The board shall deny any application for a license or other authorization to practice
207 medicine and surgery or podiatry in this state to any applicant, and shall revoke the license of any
208 physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty
209 by any court of competent jurisdiction of any felony involving prescribing, selling, administering,
210 dispensing, mixing, or otherwise preparing any prescription drug, including any controlled
211 substance under state or federal law, for other than generally accepted therapeutic purposes.
212 Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is
213 sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the same

214 effect as a verdict or plea of guilt. Upon application of a physician that has had his or her license
215 revoked because of a drug-related felony conviction, upon completion of any sentence of
216 confinement, parole, probation, or other court-ordered supervision, and full satisfaction of any
217 fines, judgments, or other fees imposed by the sentencing court, the board may issue the
218 applicant a new license upon a finding that the physician is, except for the underlying conviction,
219 otherwise qualified to practice medicine: *Provided*, That the board may place whatever terms,
220 conditions, or limitations it deems appropriate upon a physician licensed pursuant to this
221 subsection.

222 (e) The board may refer any cases coming to its attention to an appropriate committee of
223 an appropriate professional organization for investigation and report. Except for complaints
224 related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by
225 bribery or fraudulent misrepresentation, any complaint filed more than two years after the
226 complainant knew, or in the exercise of reasonable diligence should have known, of the existence
227 of grounds for the complaint shall be dismissed: *Provided*, That in cases of conduct alleged to be
228 part of a pattern of similar misconduct or professional incapacity that, if continued, would pose
229 risks of a serious or substantial nature to the physician's or podiatrist's current patients, the
230 investigating body may conduct a limited investigation related to the physician's or podiatrist's
231 current capacity and qualification to practice and may recommend conditions, restrictions, or
232 limitations on the physician's or podiatrist's license to practice that it considers necessary for the
233 protection of the public. Any report shall contain recommendations for any necessary disciplinary
234 measures and shall be filed with the board within 90 days of any referral. The recommendations
235 shall be considered by the board and the case may be further investigated by the board. The
236 board after full investigation shall take whatever action it considers appropriate, as provided in
237 this section.

238 (f) The investigating body, as provided in §30-3-14(e) of this code, may request and the
239 board under any circumstances may require a physician or podiatrist or person applying for

240 licensure or other authorization to practice medicine and surgery or podiatry in this state to submit
241 to a physical or mental examination by a physician or physicians approved by the board. A
242 physician or podiatrist submitting to an examination has the right, at his or her expense, to
243 designate another physician to be present at the examination and make an independent report to
244 the investigating body or the board. The expense of the examination shall be paid by the board.
245 Any individual who applies for or accepts the privilege of practicing medicine and surgery or
246 podiatry in this state is considered to have given his or her consent to submit to all examinations
247 when requested to do so in writing by the board and to have waived all objections to the
248 admissibility of the testimony or examination report of any examining physician on the ground that
249 the testimony or report is privileged communication. If a person fails or refuses to submit to an
250 examination under circumstances which the board finds are not beyond his or her control, failure
251 or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry
252 competently and in compliance with the standards of acceptable and prevailing medical practice.

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

255 (h) In every disciplinary or licensure denial action, the board shall furnish the physician or
256 podiatrist or applicant with written notice setting out with particularity the reasons for its action.
257 Disciplinary and licensure denial hearings shall be conducted in accordance with §29A-5-1 *et seq.*
258 of this code. However, hearings shall be heard upon sworn testimony and the rules of evidence
259 for trial courts of record in this state shall apply to all hearings. A transcript of all hearings under
260 this section shall be made, and the respondent may obtain a copy of the transcript at his or her
261 expense. The physician or podiatrist has the right to defend against any charge by the introduction
262 of evidence, the right to be represented by counsel, the right to present and cross examine
263 witnesses and the right to have subpoenas and subpoenas duces tecum issued on his or her
264 behalf for the attendance of witnesses and the production of documents. The board shall make
265 all its final actions public. The order shall contain the terms of all action taken by the board.

266 (i) In disciplinary actions in which probable cause has been found by the board, the board
267 shall, within 20 days of the date of service of the written notice of charges or 60 days prior to the
268 date of the scheduled hearing, whichever is sooner, provide the respondent with the complete
269 identity, address, and telephone number of any person known to the board with knowledge about
270 the facts of any of the charges; provide a copy of any statements in the possession of or under
271 the control of the board; provide a list of proposed witnesses with addresses and telephone
272 numbers, with a brief summary of his or her anticipated testimony; provide disclosure of any trial
273 expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure;
274 provide inspection and copying of the results of any reports of physical and mental examinations
275 or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used
276 at the hearing: *Provided*, That the board may not be required to furnish or produce any materials
277 which contain opinion work product information or would be a violation of the attorney-client
278 privilege. Within 20 days of the date of service of the written notice of charges, the board shall
279 disclose any exculpatory evidence with a continuing duty to do so throughout the disciplinary
280 process. Within 30 days of receipt of the board's mandatory discovery, the respondent shall
281 provide the board with the complete identity, address, and telephone number of any person known
282 to the respondent with knowledge about the facts of any of the charges; provide a list of proposed
283 witnesses, with addresses and telephone numbers, to be called at hearing, with a brief summary
284 of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the
285 requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection
286 and copying of the results of any reports of physical and mental examinations or scientific tests
287 or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing.

288 (j) Whenever it finds any person unqualified because of any of the grounds set forth in
289 §30-3-14(c) of this code, the board may enter an order imposing one or more of the following:

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

292 (2) Administer a public reprimand;

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

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

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

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

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

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

307 (k) Notwithstanding the provisions of §30-1-8 of this code, if the board determines the
308 evidence in its possession indicates that a physician's or podiatrist's continuation in practice or
309 unrestricted practice constitutes an immediate danger to the public, the board may take any of
310 the actions provided in §30-3-4(j) of this code on a temporary basis and without a hearing if
311 institution of proceedings for a hearing before the board are initiated simultaneously with the
312 temporary action and begin within 15 days of the action. The board shall render its decision within
313 five days of the conclusion of a hearing under this subsection.

314 (l) Any person against whom disciplinary action is taken pursuant to this article has the
315 right to judicial review as provided in §29A-5-1 *et seq.* and §29A-6-1 *et seq.* of this code: *Provided,*
316 That a circuit judge may also remand the matter to the board if it appears from competent
317 evidence presented to it in support of a motion for remand that there is newly discovered evidence

318 of such a character as ought to produce an opposite result at a second hearing on the merits
319 before the board and:

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

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

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

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

337 (n) Any entity, organization, or person, including the board, any member of the board, its
338 agents or employees, and any entity or organization or its members referred to in this article, any
339 insurer, its agents or employees, a medical peer review committee and a hospital governing
340 board, its members or any committee appointed by it acting without malice and without gross
341 negligence in making any report or other information available to the board or a medical peer
342 review committee pursuant to law and any person acting without malice and without gross
343 negligence who assists in the organization, investigation, or preparation of any such report or

344 information or assists the board or a hospital governing body or any committee in carrying out any
345 of its duties or functions provided by law is immune from civil or criminal liability, except that the
346 unlawful disclosure of confidential information possessed by the board is a misdemeanor as
347 provided in this article.

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

356 (p) In every case considered by the board under this article regarding discipline or
357 licensure, whether initiated by the board or upon complaint or information from any person or
358 organization, the board shall make a preliminary determination as to whether probable cause
359 exists to substantiate charges of disqualification due to any reason set forth in §30-3-14(c) of this
360 code. If probable cause is found to exist, all proceedings on the charges shall be open to the
361 public who are entitled to all reports, records, and nondeliberative materials introduced at the
362 hearing, including the record of the final action taken: *Provided*, That any medical records, which
363 were introduced at the hearing and which pertain to a person who has not expressly waived his
364 or her right to the confidentiality of the records, may not be open to the public nor is the public
365 entitled to the records.

366 (q) If the board receives notice that a physician or podiatrist has been subjected to
367 disciplinary action or has had his or her credentials suspended or revoked by the board, a hospital,
368 or a professional society, as defined in §30-3-14(b) of this code, for three or more incidents during
369 a five-year period, the board shall require the physician or podiatrist to practice under the direction

370 of a physician or podiatrist designated by the board for a specified period of time to be established
371 by the board.

372 (r) Notwithstanding any other provisions of this article, the board may, at any time, on its
373 own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or
374 by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the
375 West Virginia State Bar's mediator referral service of certified mediators with expertise in
376 professional disciplinary matters. The board and the physician or podiatrist may choose a
377 mediator from that list. If the board and the physician or podiatrist are unable to agree on a
378 mediator, the board shall designate a mediator from the list by neutral rotation. The mediation
379 may not be considered a proceeding open to the public, and any reports and records introduced
380 at the mediation shall not become part of the public record. The mediator and all participants in
381 the mediation shall maintain and preserve the confidentiality of all mediation proceedings and
382 records. The mediator may not be subpoenaed or called to testify or otherwise be subject to
383 process requiring disclosure of confidential information in any proceeding relating to or arising out
384 of the disciplinary or licensure matter mediated: *Provided*, That any confidentiality agreement and
385 any written agreement made and signed by the parties as a result of mediation may be used in
386 any proceedings subsequently instituted to enforce the written agreement. The agreements may
387 be used in other proceedings if the parties agree in writing.

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

390 (t) Whenever the board receives credible information that a licensee of the board is
391 engaging or has engaged in criminal activity or the commitment of a crime under state or federal
392 law, the board shall report the information, to the extent that sensitive or confidential information
393 may be publicly disclosed under law, to the appropriate state or federal law-enforcement authority
394 and/or prosecuting authority. This duty exists in addition to and is distinct from the reporting

395 required under federal law for reporting actions relating to health care providers to the United
396 States Department of Health and Human Services.

397 (u) The board shall propose rules for legislative approval in accordance with the provisions
398 of §29A-3-1 *et seq.* of this code which define sexual misconduct and identify prohibited
399 professional misconduct, including sexual misconduct, for which an application may be denied
400 and/or a license or other authorization to practice may be subject to disciplinary action by the
401 board pursuant to this section.

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, 2022.

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Governor