

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 606

BY SENATORS WELD, WOELFEL, TAKUBO, STOLLINGS,

AND PLYMALE

[Originating in the Committee on the Judiciary;

reported on February 28, 2022]

1 A BILL 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 ~~In the event that~~ If copies are provided, the subject physician or podiatrist is allowed 15 days to
21 comment on the requested information and ~~such the~~ the comments ~~must~~ shall be considered by the
22 board.

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27 hospital whose hospital privileges have been revoked, restricted, reduced, or terminated for any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

34 for reasons unrelated to professional competence or ethics need not be reported.

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39 credentialing has been revoked or not renewed by the managed care organization.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

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

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

59 (A) Exercising influence within a provider-physician relationship for the purpose of

60 engaging a patient in sexual activity;

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

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

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

65 (E) Other gross misconduct.

66 All reports required by this subdivision shall be submitted to the board within 30 days of
67 the reportable incident, or if the licensee or other authorized person with a duty to report gained
68 knowledge of the incident after it occurred, within 30 days of the licensee or other authorized
69 person's knowledge of the incident. Failure of a licensee or other authorized person to report any
70 such incidents to the board constitutes unprofessional conduct and is grounds for disciplinary
71 action by the board. A physician who is licensed by the board and who obtains responsive
72 information exclusively while functioning as the executive director or employee of a board-
73 approved professional health program shall only be required to report in conformity with §30-3-
74 9(h) of this code.

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

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

86 in which the order was entered shall forward a certified copy of the order to the board.

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

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

112 reasonable degree of skill and safety for patients.

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

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

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

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

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

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

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

137 (3) False or deceptive advertising;

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

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

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

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

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

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

163 (9) Making a deceptive, untrue, or fraudulent representation in the practice of medicine

164 and surgery or podiatry;

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

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

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

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

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

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

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

189 (17) Violating any provision of this article or a rule or order of the board or failing to comply

190 with a subpoena or subpoena duces tecum issued by the board;

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

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

195 (20) Professional incompetence;

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

204 (22) Knowingly failing to report to the board any act of gross misconduct committed by
205 another licensee of the board or failing to comply with any reporting requirement set forth in §30-
206 3-14(b) of this code.

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

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

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

239 (f) The investigating body, as provided in §30-3-14(e) of this code, may request and the
240 board under any circumstances may require a physician or podiatrist or person applying for
241 licensure or other authorization to practice medicine and surgery or podiatry in this state to submit

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

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

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

267 (i) In disciplinary actions in which probable cause has been found by the board, the board

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

289 (j) Whenever it finds any person unqualified because of any of the grounds set forth in
290 §30-3-14(c) of this code, the board may enter an order imposing one or more of the following:

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

293 (2) Administer a public reprimand;

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

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

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

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

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

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

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

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

320 before the board and:

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

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

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

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

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

346 of its duties or functions provided by law is immune from civil or criminal liability, except that the
347 unlawful disclosure of confidential information possessed by the board is a misdemeanor as
348 provided in this article.

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

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

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

372 by the board.

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

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

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

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