



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 an  
19 investigation if it receives notice that three or more judgments,  
20 or any combination of judgments and settlements resulting in five  
21 or more unfavorable outcomes arising from medical professional  
22 liability have been rendered or made against the physician or  
23 podiatrist within a five-year period. The board may not consider

1 any judgments or settlements as conclusive evidence of professional  
2 incompetence or conclusive lack of qualification to practice.

3       (b) Upon request of the board, any medical peer review  
4 committee in this state shall report any information that may  
5 relate to the practice or performance of any 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 copies are  
11 provided, the subject physician or podiatrist is allowed fifteen  
12 days to comment on the requested information and such comments must  
13 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 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 judgment or settlement of a civil or  
19 medical professional liability action excepting product liability  
20 actions: The name of the insured; the date of any judgment or  
21 settlement; whether any appeal has been taken on the judgment and,  
22 if so, by which party; the amount of any settlement or judgment  
23 against the insured; and other information required by the board.

24 Within thirty days from the entry of an order by a court in a

1 medical professional liability action or other civil action in  
2 which a physician or podiatrist licensed by the board is determined  
3 to have rendered health care services below the applicable standard  
4 of care, the clerk of the court in which the order was entered  
5 shall forward a certified copy of the order to the board.

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

18       Upon a determination of the board that there is probable cause  
19 to believe that any person, partnership, corporation, association,  
20 insurance company, professional society or other organization has  
21 failed or refused to make a report required by this subsection, the  
22 board shall provide written notice to the alleged violator stating  
23 the nature of the alleged violation and the time and place at which  
24 the alleged violator shall appear to show good cause why a civil

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

23 Any person may report to the board relevant facts about the  
24 conduct of any physician or podiatrist in this state which in the

1 opinion of that person amounts to medical professional liability or  
2 professional incompetence.

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

6         The filing of a report with the board pursuant to any  
7 provision of this article, any investigation by the board or any  
8 disposition of a case by the board does not preclude any action by  
9 a hospital, other health care facility or professional society  
10 comprised primarily of physicians or podiatrists to suspend,  
11 restrict or revoke the privileges or membership of the physician or  
12 podiatrist: Provided, That notwithstanding any provision to the  
13 contrary, the board may independently initiate disciplinary  
14 proceedings based on a report or information from an agent or  
15 investigator of the Board of Pharmacy, related to data from the  
16 controlled substance monitoring program.

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 in any jurisdiction, which  
4 offense is a felony, involves moral turpitude or directly relates  
5 to the practice of medicine. Any plea of nolo contendere is a  
6 conviction for the purposes of this subdivision;

7 (3) False or deceptive advertising;

8 (4) Aiding, assisting, procuring or advising any unauthorized  
9 person to practice medicine and surgery or podiatry contrary to  
10 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  
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 physician or podiatrist in  
4 referring a patient to any clinical laboratory or pharmacy in which  
5 the physician or podiatrist has a proprietary interest unless the  
6 physician or podiatrist discloses in writing such interest to the  
7 patient. The written disclosure shall indicate that the patient  
8 may choose any clinical laboratory for purposes of having any  
9 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 procedure or prescribing any therapy that,  
23 by the accepted standards of medical practice in the community,  
24 would constitute experimentation on human subjects without first

1 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 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.

7 (d) The board shall deny any application for a license or  
8 other authorization to practice medicine and surgery or podiatry in  
9 this state to any applicant who, and shall revoke the license of  
10 any physician or podiatrist licensed or otherwise lawfully  
11 practicing within this state who, is found guilty by any court of  
12 competent jurisdiction of any felony involving prescribing,  
13 selling, administering, dispensing, mixing or otherwise preparing  
14 any prescription drug, including any controlled substance under  
15 state or federal law, for other than generally accepted therapeutic  
16 purposes. Presentation to the board of a certified copy of the  
17 guilty verdict or plea rendered in the court is sufficient proof  
18 thereof for the purposes of this article. A plea of nolo  
19 contendere has the same effect as a verdict or plea of guilt. Upon  
20 application of a physician that has had his or her license revoked  
21 because of a drug related felony conviction, upon completion of any  
22 sentence of confinement, parole, probation or other court-ordered  
23 supervision and full satisfaction of any fines, judgments or other  
24 fees imposed by the sentencing court, the board may issue the

1 applicant a new license upon a finding that the physician is,  
2 except for the underlying conviction, otherwise qualified to  
3 practice medicine: *Provided*, That the board may place whatever  
4 terms, conditions or limitations it deems appropriate upon a  
5 physician licensed pursuant to this subsection.

6 (e) The board may refer any cases coming to its attention to  
7 an appropriate committee of an appropriate professional  
8 organization for investigation and report. Except for complaints  
9 related to obtaining initial licensure to practice medicine and  
10 surgery or podiatry in this state by bribery or fraudulent  
11 misrepresentation, any complaint filed more than two years after  
12 the complainant knew, or in the exercise of reasonable diligence  
13 should have known, of the existence of grounds for the complaint  
14 shall be dismissed: *Provided*, That in cases of conduct alleged to  
15 be part of a pattern of similar misconduct or professional  
16 incapacity that, if continued, would pose risks of a serious or  
17 substantial nature to the physician's or podiatrist's current  
18 patients, the investigating body may conduct a limited  
19 investigation related to the physician's or podiatrist's current  
20 capacity and qualification to practice and may recommend  
21 conditions, restrictions or limitations on the physician's or  
22 podiatrist's license to practice that it considers necessary for  
23 the protection of the public. Any report shall contain  
24 recommendations for any necessary disciplinary measures and shall

1 be filed with the board within ninety days of any referral. The  
2 recommendations shall be considered by the board and the case may  
3 be further investigated by the board. The board after full  
4 investigation shall take whatever action it considers appropriate,  
5 as provided in this section.

6 (f) The investigating body, as provided in subsection (e) of  
7 this section, may request and the board under any circumstances may  
8 require a physician or podiatrist or person applying for licensure  
9 or other authorization to practice medicine and surgery or podiatry  
10 in this state to submit to a physical or mental examination by a  
11 physician or physicians approved by the board. A physician or  
12 podiatrist submitting to an examination has the right, at his or  
13 her expense, to designate another physician to be present at the  
14 examination and make an independent report to the investigating  
15 body or the board. The expense of the examination shall be paid by  
16 the board. Any individual who applies for or accepts the privilege  
17 of practicing medicine and surgery or podiatry in this state is  
18 considered to have given his or her consent to submit to all  
19 examinations when requested to do so in writing by the board and to  
20 have waived all objections to the admissibility of the testimony or  
21 examination report of any examining physician on the ground that  
22 the testimony or report is privileged communication. If a person  
23 fails or refuses to submit to an examination under circumstances  
24 which the board finds are not beyond his or her control, failure or

1 refusal is prima facie evidence of his or her inability to practice  
2 medicine and surgery or podiatry competently and in compliance with  
3 the standards of acceptable and prevailing medical practice.

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

7 (h) In every disciplinary or licensure denial action, the  
8 board shall furnish the physician or podiatrist or applicant with  
9 written notice setting out with particularity the reasons for its  
10 action. Disciplinary and licensure denial hearings shall be  
11 conducted in accordance with the provisions of article five,  
12 chapter twenty-nine-a of this code. However, hearings shall be  
13 heard upon sworn testimony and the rules of evidence for trial  
14 courts of record in this state shall apply to all hearings. A  
15 transcript of all hearings under this section shall be made, and  
16 the respondent may obtain a copy of the transcript at his or her  
17 expense. The physician or podiatrist has the right to defend  
18 against any charge by the introduction of evidence, the right to be  
19 represented by counsel, the right to present and cross-examine  
20 witnesses and the right to have subpoenas and subpoenas duces tecum  
21 issued on his or her behalf for the attendance of witnesses and the  
22 production of documents. The board shall make all its final  
23 actions public. The order shall contain the terms of all action  
24 taken by the board.

1           (i) In disciplinary actions in which probable cause has been  
2 found by the board, the board shall, within twenty days of the date  
3 of service of the written notice of charges or sixty days prior to  
4 the date of the scheduled hearing, whichever is sooner, provide the  
5 respondent with the complete identity, address and telephone number  
6 of any person known to the board with knowledge about the facts of  
7 any of the charges; provide a copy of any statements in the  
8 possession of or under the control of the board; provide a list of  
9 proposed witnesses with addresses and telephone numbers, with a  
10 brief summary of his or her anticipated testimony; provide  
11 disclosure of any trial expert pursuant to the requirements of Rule  
12 26(b)(4) of the West Virginia Rules of Civil Procedure; provide  
13 inspection and copying of the results of any reports of physical  
14 and mental examinations or scientific tests or experiments; and  
15 provide a list and copy of any proposed exhibit to be used at the  
16 hearing: *Provided*, That the board shall not be required to furnish  
17 or produce any materials which contain opinion work product  
18 information or would be a violation of the attorney-client  
19 privilege. Within twenty days of the date of service of the  
20 written notice of charges, the board shall disclose any exculpatory  
21 evidence with a continuing duty to do so throughout the  
22 disciplinary process. Within thirty days of receipt of the board's  
23 mandatory discovery, the respondent shall provide the board with  
24 the complete identity, address and telephone number of any person

1 known to the respondent with knowledge about the facts of any of  
2 the charges; provide a list of proposed witnesses with addresses  
3 and telephone numbers, to be called at hearing, with a brief  
4 summary of his or her anticipated testimony; provide disclosure of  
5 any trial expert pursuant to the requirements of Rule 26(b)(4) of  
6 the West Virginia Rules of Civil Procedure; provide inspection and  
7 copying of the results of any reports of physical and mental  
8 examinations or scientific tests or experiments; and provide a list  
9 and copy of any proposed exhibit to be used at the hearing.

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

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

15 (2) Administer a public reprimand;

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

21 (4) Revoke his or her license or other authorization to  
22 practice medicine and surgery or podiatry or to prescribe or  
23 dispense controlled substances for a period not to exceed ten  
24 years;

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

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

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

10          (8) Assess a civil fine of not less than \$1,000 nor more than  
11 \$10,000.

12          (k) Notwithstanding the provisions of section eight, article  
13 one, chapter thirty of this code, if the board determines the  
14 evidence in its possession indicates that a physician's or  
15 podiatrist's continuation in practice or unrestricted practice  
16 constitutes an immediate danger to the public, the board may take  
17 any of the actions provided in subsection (j) of this section on a  
18 temporary basis and without a hearing if institution of proceedings  
19 for a hearing before the board are initiated simultaneously with  
20 the temporary action and begin within fifteen days of the action.  
21 The board shall render its decision within five days of the  
22 conclusion of a hearing under this subsection.

23          (l) Any person against whom disciplinary action is taken  
24 pursuant to the provisions of this article has the right to

1 judicial review as provided in articles five and six, chapter  
2 twenty-nine-a of this code: *Provided*, That a circuit judge may  
3 also remand the matter to the board if it appears from competent  
4 evidence presented to it in support of a motion for remand that  
5 there is newly discovered evidence of such a character as ought to  
6 produce an opposite result at a second hearing on the merits before  
7 the board and:

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

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

13       A person may not practice medicine and surgery or podiatry or  
14 deliver health care services in violation of any disciplinary order  
15 revoking, suspending or limiting his or her license while any  
16 appeal is pending. Within sixty days, the board shall report its  
17 final action regarding restriction, limitation, suspension or  
18 revocation of the license of a physician or podiatrist, limitation  
19 on practice privileges or other disciplinary action against any  
20 physician or podiatrist to all appropriate state agencies,  
21 appropriate licensed health facilities and hospitals, insurance  
22 companies or associations writing medical malpractice insurance in  
23 this state, the American Medical Association, the American Podiatry  
24 Association, professional societies of physicians or podiatrists in

1 the state and any entity responsible for the fiscal administration  
2 of Medicare and Medicaid.

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

10 (n) Any entity, organization or person, including the board,  
11 any member of the board, its agents or employees and any entity or  
12 organization or its members referred to in this article, any  
13 insurer, its agents or employees, a medical peer review committee  
14 and a hospital governing board, its members or any committee  
15 appointed by it acting without malice and without gross negligence  
16 in making any report or other information available to the board or  
17 a medical peer review committee pursuant to law and any person  
18 acting without malice and without gross negligence who assists in  
19 the organization, investigation or preparation of any such report  
20 or information or assists the board or a hospital governing body or  
21 any committee in carrying out any of its duties or functions  
22 provided by law is immune from civil or criminal liability, except  
23 that the unlawful disclosure of confidential information possessed  
24 by the board is a misdemeanor as provided in this article.

1           (o) A physician or podiatrist may request in writing to the  
2 board a limitation on or the surrendering of his or her license to  
3 practice medicine and surgery or podiatry or other appropriate  
4 sanction as provided in this section. The board may grant the  
5 request and, if it considers it appropriate, may waive the  
6 commencement or continuation of other proceedings under this  
7 section. A physician or podiatrist whose license is limited or  
8 surrendered or against whom other action is taken under this  
9 subsection may, at reasonable intervals, petition for removal of  
10 any restriction or limitation on or for reinstatement of his or her  
11 license to practice medicine and surgery or podiatry.

12           (p) In every case considered by the board under this article  
13 regarding discipline or licensure, whether initiated by the board  
14 or upon complaint or information from any person or organization,  
15 the board shall make a preliminary determination as to whether  
16 probable cause exists to substantiate charges of disqualification  
17 due to any reason set forth in subsection (c) of this section. If  
18 probable cause is found to exist, all proceedings on the charges  
19 shall be open to the public who are entitled to all reports,  
20 records and nondeliberative materials introduced at the hearing,  
21 including the record of the final action taken: *Provided*, That any  
22 medical records, which were introduced at the hearing and which  
23 pertain to a person who has not expressly waived his or her right  
24 to the confidentiality of the records, may not be open to the

1 public nor is the public entitled to the records.

2 (q) If the board receives notice that a physician or  
3 podiatrist has been subjected to disciplinary action or has had his  
4 or her credentials suspended or revoked by the board, a hospital or  
5 a professional society, as defined in subsection (b) of this  
6 section, for three or more incidents during a five-year period, the  
7 board shall require the physician or podiatrist to practice under  
8 the direction of a physician or podiatrist designated by the board  
9 for a specified period of time to be established by the board.

10 (r) Notwithstanding any other provisions of this article, the  
11 board may, at any time, on its own motion, or upon motion by the  
12 complainant, or upon motion by the physician or podiatrist, or by  
13 stipulation of the parties, refer the matter to mediation. The  
14 board shall obtain a list from the West Virginia State Bar's  
15 mediator referral service of certified mediators with expertise in  
16 professional disciplinary matters. The Board and the physician or  
17 podiatrist may choose a mediator from that list. If the board and  
18 the physician or podiatrist are unable to agree on a mediator, the  
19 board shall designate a mediator from the list by neutral rotation.  
20 The mediation shall not be considered a proceeding open to the  
21 public and any reports and records introduced at the mediation  
22 shall not become part of the public record. The mediator and all  
23 participants in the mediation shall maintain and preserve the  
24 confidentiality of all mediation proceedings and records. The

1 mediator may not be subpoenaed or called to testify or otherwise be  
2 subject to process requiring disclosure of confidential information  
3 in any proceeding relating to or arising out of the disciplinary or  
4 licensure matter mediated: *Provided*, That any confidentiality  
5 agreement and any written agreement made and signed by the parties  
6 as a result of mediation may be used in any proceedings  
7 subsequently instituted to enforce the written agreement. The  
8 agreements may be used in other proceedings if the parties agree in  
9 writing.

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

11 **§30-14-12a. Initiation of suspension or revocation proceedings**  
12 **allowed and required; reporting of information to**  
13 **board pertaining to professional malpractice and**  
14 **professional incompetence required; penalties;**  
15 **probable cause determinations.**

16 (a) The board may independently initiate suspension or  
17 revocation proceedings as well as initiate suspension or revocation  
18 proceedings based on information received from any person.

19 The board shall initiate investigations as to professional  
20 incompetence or other reasons for which a licensed osteopathic  
21 physician and surgeon may be adjudged unqualified if the board  
22 receives notice that three or more judgments or any combination of  
23 judgments and settlements resulting in five or more unfavorable

1 outcomes arising from medical professional liability have been  
2 rendered or made against such osteopathic physician within a  
3 five-year period.

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

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

1 recommendation of its medical staff relating to professional  
2 ethics, medical incompetence, medical malpractice, moral turpitude  
3 or drug or alcohol abuse. Temporary suspension for failure to  
4 maintain records on a timely basis or failure to attend staff or  
5 section meetings need not be reported.

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

14 Every person, partnership, corporation, association, insurance  
15 company, professional society or other organization providing  
16 professional liability insurance to an osteopathic physician in  
17 this state shall submit to the board the following information  
18 within thirty days from any judgment, dismissal or settlement of a  
19 civil action or of any claim involving the insured: The date of  
20 any judgment, dismissal or settlement; whether any appeal has been  
21 taken on the judgment, and, if so, by which party; the amount of  
22 any settlement or judgment against the insured; and such other  
23 information required by the board.

24 Within thirty days after a person known to be an osteopathic

1 physician licensed or otherwise lawfully practicing medicine and  
2 surgery in this state or applying to be licensed is convicted of a  
3 felony under the laws of this state, or of any crime under the laws  
4 of this state involving alcohol or drugs in any way, including any  
5 controlled substance under state or federal law, the clerk of the  
6 court of record in which the conviction was entered shall forward  
7 to the board a certified true and correct abstract of record of the  
8 convicting court. The abstract shall include the name and address  
9 of such osteopathic physician or applicant, the nature of the  
10 offense committed and the final judgment and sentence of the court.

11       Upon a determination of the board that there is probable cause  
12 to believe that any person, partnership, corporation, association,  
13 insurance company, professional society or other organization has  
14 failed or refused to make a report required by this subsection, the  
15 board shall provide written notice to the alleged violator stating  
16 the nature of the alleged violation and the time and place at which  
17 the alleged violator shall appear to show good cause why a civil  
18 penalty should not be imposed. The hearing shall be conducted in  
19 accordance with the provisions of article five, chapter  
20 twenty-nine-a of this code. After reviewing the record of such  
21 hearing, if the board determines that a violation of this  
22 subsection has occurred, the board shall assess a civil penalty of  
23 not less than \$1,000 nor more than \$10,000 against such violator.  
24 The board shall notify anyone assessed of the assessment in writing

1 and the notice shall specify the reasons for the assessment. If  
2 the violator fails to pay the amount of the assessment to the board  
3 within thirty days, the Attorney General may institute a civil  
4 action in the circuit court of Kanawha County to recover the amount  
5 of the assessment. In any such civil action, the court's review of  
6 the board's action shall be conducted in accordance with the  
7 provisions of section four, article five, chapter twenty-nine-a of  
8 this code.

9 Any person may report to the board relevant facts about the  
10 conduct of any osteopathic physician in this state which in the  
11 opinion of such person amounts to professional malpractice or  
12 professional incompetence.

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

16 The filing of a report with the board pursuant to any  
17 provision of this article, any investigation by the board or any  
18 disposition of a case by the board does not preclude any action by  
19 a hospital, other health care facility or professional society  
20 comprised primarily of osteopathic physicians or physicians and  
21 surgeons of other schools of medicine to suspend, restrict or  
22 revoke the privileges or membership of such osteopathic physician:  
23 Provided, That notwithstanding any provision to the contrary, the  
24 board may independently initiate disciplinary proceedings based on

1 a report or information from an agent or investigator of the Board  
2 of Pharmacy, related to data from the controlled substance  
3 monitoring program.

4 (c) In every case considered by the board under this article  
5 regarding suspension, revocation or issuance of a license whether  
6 initiated by the board or upon complaint or information from any  
7 person or organization, the board shall make a preliminary  
8 determination as to whether probable cause exists to substantiate  
9 charges of cause to suspend, revoke or refuse to issue a license as  
10 set forth in subsection (a), section eleven of this article. If  
11 such probable cause is found to exist, all proceedings on such  
12 charges shall be open to the public who are entitled to all  
13 reports, records, and nondeliberative materials introduced at such  
14 hearing, including the record of the final action taken: *Provided,*  
15 That any medical records, which were introduced at such hearing and  
16 which pertain to a person who has not expressly waived his or her  
17 right to the confidentiality of such records, shall not be open to  
18 the public nor is the public entitled to such records. If a  
19 finding is made that probable cause does not exist, the public has  
20 a right of access to the complaint or other document setting forth  
21 the charges, the findings of fact and conclusions supporting such  
22 finding that probable cause does not exist, if the subject  
23 osteopathic physician consents to such access.

24 (d) If the board receives notice that an osteopathic physician

1 has been subjected to disciplinary action or has had his or her  
2 credentials suspended or revoked by the board, a medical peer  
3 review committee, a hospital or professional society, as defined in  
4 subsection (b) of this section, for three or more incidents in a  
5 five-year period, the board shall require the osteopathic physician  
6 to practice under the direction of another osteopathic physician  
7 for a specified period to be established by the board.

NOTE: The purpose of this bill is to provide for the Board of  
Medicine and the Board of Osteopathy to independently initiate  
disciplinary proceedings based on certain information.

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