

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



SECOND ENROLLMENT

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4239

(By Delegates Morgan and Perdue)



Amended and again passed, in an effort to meet
the objections of the Governor, March 16, 2012

To Take Effect From Passage

S E C O N D
E N R O L L M E N T

COMMITTEE SUBSTITUTE

FOR

H. B. 4239

(BY DELEGATES MORGAN AND PERDUE)

[Amended and again passed, in an effort to meet
the objections of the Governor, March 16, 2012;
to take effect from passage.]

AN ACT to amend and reenact §30-14-1, §30-14-2, §30-14-3 and §30-14-12b of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Board of Osteopathy; renaming the board the West Virginia Board of Osteopathic Medicine; providing definitions; increasing board membership; providing board composition; increasing the board membership term length; adding term limits; authorizing certain associations to make recommendations on board membership; and adding certain requirements to qualify to serve on the board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-1. License required.

1 It is unlawful for any person to practice or offer to
2 practice medicine and surgery as an osteopathic physician
3 and surgeon in this state without a license or permit issued by
4 the West Virginia Board of Osteopathic Medicine: *Provided,*
5 That any license heretofore issued under the laws of this
6 state, authorizing its holder to practice osteopathy and
7 surgery, shall in no way be affected by the enactment of this
8 article; except that the holder of every such license shall be
9 subject to all of the provisions of this article respecting the
10 requirements and obligations herein prescribed for the
11 continuance in force of such license.

§30-14-2. Definitions.

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

11 (b) “Approved program of post-graduate clinical
12 training” means a program of clinical training approved by,
13 or subject of approval by, the American Osteopathic
14 Association or approved by the Accreditation Council for
15 Graduate Medical Education for the purposes of intern or
16 resident training;

17 (c) “Board” means the West Virginia Board of
18 Osteopathic Medicine: *Provided*, That where used elsewhere
19 in the Code, the West Virginia Board of Osteopathy and
20 Board of Osteopathy shall also mean the West Virginia Board
21 of Osteopathic Medicine;

22 (d) “License” means legal authorization issued by the
23 board to a fully qualified osteopathic physician to engage in
24 the regular practice of osteopathic medicine and surgery;

25 (e) “Osteopathy” means that system of the healing art
26 which places the chief emphasis on the structural integrity of
27 the body mechanism as being the most important single factor
28 in maintaining the well-being of the organism in health and
29 disease;

30 (f) “Permit” means a limited, legal authorization issued
31 by the board to an osteopathic physician to practice
32 osteopathic medicine and surgery in this state while serving
33 under special circumstances of public need or while
34 undergoing post-graduate clinical training as a prerequisite to
35 licensure;

36 (g) “Reciprocal endorsement” means a duly authenticated
37 verification of the board, addressed to a board or agency of
38 another country, state, territory, province or the District of
39 Columbia, vouching that a license issued to an osteopathic
40 physician and surgeon pursuant to the laws of this state is
41 currently valid and not suspended or revoked for any cause
42 or causes specified in this article.

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

1 (a) The West Virginia Board of Osteopathy is continued
2 and effective July 1, 2012 shall be known as the West
3 Virginia Board of Osteopathic Medicine. The members of

4 the board shall continue to serve until a successor is
5 appointed and may be reappointed.

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

9 (1) One person who is a licensed osteopathic physician or
10 surgeon; and

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

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

16 (1) Four licensed osteopathic physicians and surgeons;

17 (2) One licensed osteopathic physician assistant; and

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

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

22 (e) The West Virginia Osteopathic Medical Association
23 may submit recommendations to the Governor for the
24 appointment of an osteopathic physician board member, and
25 the West Virginia Association of Physician Assistants may
26 submit recommendations to the Governor for the appointment
27 of an osteopathic physician assistant board member.

28 (f) Each licensed member of the board, at the time of his
29 or her appointment, must have held a license in this state for

30 a period of not less than five years immediately preceding the
31 appointment.

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

36 (h) A member may not serve more than two consecutive
37 full terms. A member having served two consecutive full
38 terms may not be appointed for one year after completion of
39 his or her second full term. A member may continue to serve
40 until a successor has been appointed and has qualified.

41 (i) A vacancy on the board shall be filled by appointment
42 by the Governor for the unexpired term of the member whose
43 office is vacant and the appointment shall be made within
44 sixty days of the vacancy.

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

48 (k) A member of the board immediately and
49 automatically forfeits membership to the board if his or her
50 license to practice is suspended or revoked, he or she is
51 convicted of a felony under the laws of any jurisdiction, or he
52 or she becomes a nonresident of this state.

53 (l) The board shall elect annually one of its members as
54 a chairperson and one of its members as a secretary who shall
55 serve at the will of the board.

56 (m) Each member of the board is entitled to compensation
57 and expense reimbursement in accordance with article one of
58 this chapter.

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

61 (o) The board shall hold at least two meetings each year.
62 Other meetings may be held at the call of the chairperson or
63 upon the written request of two members, at the time and
64 place as designated in the call or request.

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

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

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

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

17 special volunteer medical license will be exclusively and
18 totally devoted to providing medical care to needy and
19 indigent persons in West Virginia; (2) the physician will not
20 receive any payment or compensation, either direct or
21 indirect, or have the expectation of any payment or
22 compensation, for any medical services rendered under the
23 special volunteer medical license; (3) the physician will
24 supply any supporting documentation that the board may
25 reasonably require; and (4) the physician agrees to continue
26 to participate in continuing medical education as required of
27 physicians in active practice.

28 (b) Any physician who renders any medical service to
29 indigent and needy patients of clinics organized, in whole or
30 in part, for the delivery of health care services without charge
31 under a special volunteer medical license authorized under
32 subsection (a) of this section without payment or
33 compensation or the expectation or promise of payment or
34 compensation is immune from liability for any civil action
35 arising out of any act or omission resulting from the
36 rendering of the medical service at the clinic unless the act or
37 omission was the result of the physician's gross negligence
38 or willful misconduct. In order for the immunity under this
39 subsection to apply, there must be a written agreement
40 between the physician and the clinic pursuant to which the
41 physician will provide voluntary noncompensated medical
42 services under the control of the clinic to patients of the clinic
43 before the rendering of any services by the physician at the
44 clinic: *Provided*, That any clinic entering into such written
45 agreement shall be required to maintain liability coverage of
46 not less than one million dollars per occurrence.

47 (c) Notwithstanding the provisions of subsection (a) of
48 this section, a clinic organized, in whole or in part, for the
49 delivery of health care services without charge shall not be
50 relieved from imputed liability for the negligent acts of a

51 physician rendering voluntary medical services at or for the
52 clinic under a special volunteer medical license authorized
53 under subsection (a) of this section.

54 (d) For purposes of this section, “otherwise eligible for
55 licensure” means the satisfaction of all the requirements for
56 licensure as listed in section ten of this article and in the
57 legislative rules promulgated hereunder, except the fee
58 requirements of subsections (b) and (d) of said section and of
59 the legislative rule promulgated by the board relating to fees.

60 (e) Nothing in this section may be construed as requiring
61 the board to issue a special volunteer medical license to any
62 physician whose medical license is or has been subject to any
63 disciplinary action or to any physician who has surrendered
64 a medical license or caused such license to lapse, expire and
65 become invalid in lieu of having a complaint initiated or other
66 action taken against his or her medical license, or who has
67 elected to place a medical license in inactive status in lieu of
68 having a complaint initiated or other action taken against his
69 or her medical license, or who have been denied a medical
70 license.

71 (f) Any policy or contract of liability insurance providing
72 coverage for liability sold, issued or delivered in this state to
73 any physician covered under the provisions of this article
74 shall be read so as to contain a provision or endorsement
75 whereby the company issuing such policy waives or agrees
76 not to assert as a defense on behalf of the policyholder or any
77 beneficiary thereof, to any claim covered by the terms of such
78 policy within the policy limits, the immunity from liability of
79 the insured by reason of the care and treatment of needy and
80 indigent patients by a physician who holds a special volunteer
81 medical license.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor