

E N G R O S S E D

Senate Bill No. 10

(By Senators Jenkins and Plymale)

[Introduced February 13, 2013;
referred to the Committee on Government Organization;
and then to the Committee on the Judiciary.]

A BILL to amend and reenact §30-3-14 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-4-21 of said code; and to amend and reenact §30-14-12a of said code, all relating to the Board of Medicine, Board of Dental Examiners and the Board of Osteopathy; and permitting the boards to independently initiate disciplinary proceedings in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §30-3-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §30-4-21 of said code be amended and reenacted; and that §30-14-12a of said code be amended and reenacted, all to read as follows:

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 determinations.

1 (a) The board may independently initiate disciplinary
2 proceedings as well as initiate disciplinary proceedings based
3 on information received from medical peer review
4 committees, physicians, podiatrists, hospital administrators,
5 professional societies and others.

6 The board may initiate investigations as to professional
7 incompetence or other reasons for which a licensed physician
8 or podiatrist may be adjudged unqualified based upon

9 criminal convictions; complaints by citizens, pharmacists,
10 physicians, podiatrists, peer review committees, hospital
11 administrators, professional societies or others; or
12 unfavorable outcomes arising out of medical professional
13 liability. The board shall initiate an investigation if it
14 receives notice that three or more judgments or any
15 combination of judgments and settlements resulting in five or
16 more unfavorable outcomes arising from medical
17 professional liability have been rendered or made against the
18 physician or podiatrist within a five-year period. The board
19 may not consider any judgments or settlements as conclusive
20 evidence of professional incompetence or conclusive lack of
21 qualification to practice.

22 (b) Upon request of the board, any medical peer review
23 committee in this state shall report any information that may
24 relate to the practice or performance of any physician or
25 podiatrist known to that medical peer review committee.
26 Copies of the requests for information from a medical peer
27 review committee may be provided to the subject physician

28 or podiatrist if, in the discretion of the board, the provision of
29 ~~such~~ copies will not jeopardize the board's investigation. In
30 the event that copies are provided, the subject physician or
31 podiatrist is allowed fifteen days to comment on the
32 requested information and ~~such~~ the comments must be
33 considered by the board.

34 The chief executive officer of every hospital shall, within
35 sixty days after the completion of the hospital's formal
36 disciplinary procedure and also within sixty days after the
37 commencement of and again after the conclusion of any
38 resulting legal action, report in writing to the board the name
39 of any member of the medical staff or any other physician or
40 podiatrist practicing in the hospital whose hospital privileges
41 have been revoked, restricted, reduced or terminated for any
42 cause, including resignation, together with all pertinent
43 information relating to such action. The chief executive
44 officer shall also report any other formal disciplinary action
45 taken against any physician or podiatrist by the hospital upon
46 the recommendation of its medical staff relating to

47 professional ethics, medical incompetence, medical
48 professional liability, moral turpitude or drug or alcohol
49 abuse. Temporary suspension for failure to maintain records
50 on a timely basis or failure to attend staff or section meetings
51 need not be reported. Voluntary cessation of hospital
52 privileges for reasons unrelated to professional competence
53 or ethics need not be reported.

54 ~~Any~~ A managed care organization operating in this state
55 which provides a formal peer review process shall report in
56 writing to the board, within sixty days after the completion of
57 any formal peer review process and also within sixty days
58 after the commencement of and again after the conclusion of
59 any resulting legal action, the name of any physician or
60 podiatrist whose credentialing has been revoked or not
61 renewed by the managed care organization. The managed
62 care organization shall also report in writing to the board any
63 other disciplinary action taken against a physician or
64 podiatrist relating to professional ethics, professional
65 liability, moral turpitude or drug or alcohol abuse within

66 sixty days after completion of a formal peer review process
67 which results in the action taken by the managed care
68 organization. For purposes of this subsection, “managed care
69 organization” means a plan that establishes, operates or
70 maintains a network of health care providers who have
71 entered into agreements with and been credentialed by the
72 plan to provide health care services to enrollees or insureds
73 to whom the plan has the ultimate obligation to arrange for
74 the provision of or payment for health care services through
75 organizational arrangements for ongoing quality assurance,
76 utilization review programs or dispute resolutions.

77 Any professional society in this state comprised primarily
78 of physicians or podiatrists which takes formal disciplinary
79 action against a member relating to professional ethics,
80 professional incompetence, medical professional liability,
81 moral turpitude or drug or alcohol abuse shall report in
82 writing to the board within sixty days of a final decision the
83 name of the member, together with all pertinent information
84 relating to the action.

85 Every person, partnership, corporation, association,
86 insurance company, professional society or other organization
87 providing professional liability insurance to a physician or
88 podiatrist in this state, including the State Board of Risk and
89 Insurance Management, shall submit to the board the following
90 information within thirty days from ~~any~~ a judgment or
91 settlement of a civil or medical professional liability action
92 excepting product liability actions: The name of the insured;
93 the date of ~~any~~ judgment or settlement; whether ~~any~~ an appeal
94 has been taken on the judgment and, if so, by which party; the
95 amount of ~~any~~ settlement or judgment against the insured; and
96 other information required by the board.

97 Within thirty days from the entry of an order by a court
98 in a medical professional liability action or other civil action
99 in which a physician or podiatrist licensed by the board is
100 determined to have rendered health care services below the
101 applicable standard of care, the clerk of the court in which
102 the order was entered shall forward a certified copy of the
103 order to the board.

104 Within thirty days after a person known to be a physician
105 or podiatrist licensed or otherwise lawfully practicing
106 medicine and surgery or podiatry in this state or applying to
107 be licensed is convicted of a felony under the laws of this
108 state or of ~~any~~ a crime under the laws of this state involving
109 alcohol or drugs in any way, including ~~any~~ a controlled
110 substance under state or federal law, the clerk of the court of
111 record in which the conviction was entered shall forward to
112 the board a certified true and correct abstract of record of the
113 convicting court. The abstract shall include the name and
114 address of the physician or podiatrist or applicant, the nature
115 of the offense committed and the final judgment and sentence
116 of the court.

117 Upon a determination of the board that there is probable
118 cause to believe that any person, partnership, corporation,
119 association, insurance company, professional society or other
120 organization has failed or refused to make a report required
121 by this subsection, the board shall provide written notice to
122 the alleged violator stating the nature of the alleged violation

123 and the time and place at which the alleged violator shall
124 appear to show good cause why a civil penalty should not be
125 imposed. The hearing shall be conducted in accordance with
126 the provisions of article five, chapter twenty-nine-a of this
127 code. After reviewing the record of the hearing, if the board
128 determines that a violation of this subsection has occurred,
129 the board shall assess a civil penalty of not less than \$1,000
130 nor more than \$10,000 against the violator. The board shall
131 notify ~~any~~ the person so assessed of the assessment in writing
132 and the notice shall specify the reasons for the assessment.
133 If the violator fails to pay the amount of the assessment to the
134 board within thirty days, the Attorney General may institute
135 a civil action in the circuit court of Kanawha County to
136 recover the amount of the assessment. In ~~any~~ a civil action,
137 the court's review of the board's action shall be conducted in
138 accordance with the provisions of section four, article five,
139 chapter twenty-nine-a of this code. Notwithstanding any
140 other provision of this article to the contrary, when there are
141 conflicting views by recognized experts as to whether ~~any~~

142 alleged conduct breaches an applicable standard of care, the
143 evidence must be clear and convincing before the board may
144 find that the physician or podiatrist has demonstrated a lack
145 of professional competence to practice with a reasonable
146 degree of skill and safety for patients.

147 Any person may report to the board relevant facts about
148 the conduct of any physician or podiatrist in this state which
149 in the opinion of that person amounts to medical professional
150 liability or professional incompetence.

151 The board shall provide forms for filing reports pursuant
152 to this section. Reports submitted in other forms shall be
153 accepted by the board.

154 The filing of a report with the board pursuant to ~~any~~ a
155 provision of this article, ~~any~~ an investigation by the board or
156 ~~any~~ a disposition of a case by the board does not preclude
157 ~~any~~ an action by a hospital, other health care facility or
158 professional society comprised primarily of physicians or
159 podiatrists to suspend, restrict or revoke the privileges or
160 membership of the physician or podiatrist. Notwithstanding

161 any provision of this code to the contrary, the board may
162 independently initiate disciplinary proceedings based on a
163 report or information from an agent or investigator of the
164 Board of Pharmacy related to data from the Controlled
165 Substances Monitoring Program.

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

172 (1) Attempting to obtain, obtaining, renewing or
173 attempting to renew a license to practice medicine and
174 surgery or podiatry by bribery, fraudulent misrepresentation
175 or through known error of the board;

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

181 (3) False or deceptive advertising;

182 (4) Aiding, assisting, procuring or advising ~~any~~ an
183 unauthorized person to practice medicine and surgery or
184 podiatry contrary to law;

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

193 (6) Requesting, receiving or paying directly or indirectly
194 a payment, rebate, refund, commission, credit or other form
195 of profit or valuable consideration for the referral of patients
196 to ~~any~~ a person or entity in connection with providing
197 medical or other health care services or clinical laboratory
198 services, supplies of any kind, drugs, medication or ~~any~~ other
199 medical goods, services or devices used in connection with
200 medical or other health care services;

201 (7) Unprofessional conduct by ~~any~~ a physician or
202 podiatrist in referring a patient to ~~any~~ a clinical laboratory or
203 pharmacy in which the physician or podiatrist has a
204 proprietary interest unless the physician or podiatrist
205 discloses in writing ~~such~~ the interest to the patient. The
206 written disclosure shall indicate that the patient may choose
207 any clinical laboratory for purposes of having ~~any~~ laboratory
208 work or assignment performed or any pharmacy for purposes
209 of purchasing ~~any~~ a prescribed drug or ~~any~~ other medical
210 goods or devices used in connection with medical or other
211 health care services;

212 As used in this subdivision, “proprietary interest” does
213 not include an ownership interest in a building in which
214 space is leased to a clinical laboratory or pharmacy at the
215 prevailing rate under a lease arrangement that is not
216 conditional upon the income or gross receipts of the clinical
217 laboratory or pharmacy;

218 (8) Exercising influence within a patient-physician
219 relationship for the purpose of engaging a patient in sexual
220 activity;

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

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

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

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

235 (13) Prescribing, dispensing, administering, mixing or
236 otherwise preparing a prescription drug, including ~~any~~ a
237 controlled substance under state or federal law, other than in
238 good faith and in a therapeutic manner in accordance with
239 accepted medical standards and in the course of the

240 physician's or podiatrist's professional practice. *Provided,*
241 ~~That~~ A physician who discharges his or her professional
242 obligation to relieve the pain and suffering and promote the
243 dignity and autonomy of dying patients in his or her care and,
244 in so doing, exceeds the average dosage of a pain relieving
245 controlled substance, as defined in Schedules II and III of the
246 Uniform Controlled Substance Act, does not violate this
247 article;

248 (14) Performing any a procedure or prescribing any a
249 therapy that, by the accepted standards of medical practice in
250 the community, would constitute experimentation on human
251 subjects without first obtaining full, informed and written
252 consent;

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

257 (16) Delegating professional responsibilities to a person
258 when the physician or podiatrist delegating the

259 responsibilities knows or has reason to know that the person
260 is not qualified by training, experience or licensure to
261 perform them;

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

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

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

271 (20) Professional incompetence; or

272 (21) The inability to practice medicine and surgery or
273 podiatry with reasonable skill and safety due to physical or
274 mental impairment, including deterioration through the aging
275 process, loss of motor skill or abuse of drugs or alcohol. A
276 physician or podiatrist adversely affected under this
277 subdivision shall be afforded an opportunity at reasonable

278 intervals to demonstrate that he or she may resume the
279 competent practice of medicine and surgery or podiatry with
280 reasonable skill and safety to patients. In any proceeding
281 under this subdivision, neither the record of proceedings nor
282 any orders entered by the board shall be used against the
283 physician or podiatrist in any other proceeding.

284 (d) The board shall deny ~~any~~ an application for a license
285 or other authorization to practice medicine and surgery or
286 podiatry in this state ~~to any applicant who~~, and shall revoke
287 the license of ~~any~~ a physician or podiatrist licensed or
288 otherwise lawfully practicing within this state who is found
289 guilty by ~~any~~ a court of competent jurisdiction of ~~any~~ a
290 felony involving prescribing, selling, administering,
291 dispensing, mixing or otherwise preparing ~~any~~ a prescription
292 drug, including ~~any~~ a controlled substance under state or
293 federal law, for other than generally accepted therapeutic
294 purposes. Presentation to the board of a certified copy of the
295 guilty verdict or plea rendered in the court is sufficient proof
296 ~~thereof~~ for the purposes of this article. A plea of nolo

297 contendere has the same effect as a verdict or plea of guilt.
298 Upon application of a physician that has had his or her
299 license revoked because of a drug related felony conviction,
300 upon completion of any sentence of confinement, parole,
301 probation or other court-ordered supervision and full
302 satisfaction of ~~any~~ fines, judgments or other fees imposed by
303 the sentencing court, the board may issue the applicant a new
304 license upon a finding that the physician is, except for the
305 underlying conviction, otherwise qualified to practice
306 medicine. ~~Provided, That~~ The board may place whatever
307 terms, conditions or limitations it deems appropriate upon a
308 physician licensed pursuant to this subsection.

309 (e) The board may refer ~~any~~ cases coming to its attention
310 to an appropriate committee of an appropriate professional
311 organization for investigation and report. Except for
312 complaints related to obtaining initial licensure to practice
313 medicine and surgery or podiatry in this state by bribery or
314 fraudulent misrepresentation, ~~any~~ a complaint filed more than
315 two years after the complainant knew or, in the exercise of

316 reasonable diligence, should have known of the existence of
317 grounds for the complaint, shall be dismissed. *Provided;*
318 ~~That~~ In cases of conduct alleged to be part of a pattern of
319 similar misconduct or professional incapacity that, if
320 continued, would pose risks of a serious or substantial nature
321 to the physician's or podiatrist's current patients, the
322 investigating body may conduct a limited investigation
323 related to the physician's or podiatrist's current capacity and
324 qualification to practice and may recommend conditions,
325 restrictions or limitations on the physician's or podiatrist's
326 license to practice that it considers necessary for the
327 protection of the public. Any report shall contain
328 recommendations for any necessary disciplinary measures
329 and shall be filed with the board within ninety days of any
330 referral. The recommendations shall be considered by the
331 board and the case may be further investigated by the board.
332 The board, after full investigation, shall take whatever action
333 it considers appropriate, as provided in this section.

334 (f) The investigating body, as provided in subsection (e)
335 of this section, may request and the board, under any
336 circumstances, may require a physician or podiatrist or
337 person applying for licensure or other authorization to
338 practice medicine and surgery or podiatry in this state to
339 submit to a physical or mental examination by a physician or
340 physicians approved by the board. A physician or podiatrist
341 submitting to an examination has the right, at his or her
342 expense, to designate another physician to be present at the
343 examination and make an independent report to the
344 investigating body or the board. The expense of the
345 examination shall be paid by the board. ~~Any~~ An individual
346 who applies for or accepts the privilege of practicing
347 medicine and surgery or podiatry in this state is considered
348 to have given his or her consent to submit to all examinations
349 when requested to do so in writing by the board and to have
350 waived all objections to the admissibility of the testimony or
351 examination report of any examining physician on the ground
352 that the testimony or report is privileged communication. If

353 a person fails or refuses to submit to an examination under
354 circumstances which the board finds are not beyond his or
355 her control, failure or refusal is prima facie evidence of his or
356 her inability to practice medicine and surgery or podiatry
357 competently and in compliance with the standards of
358 acceptable and prevailing medical practice.

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

362 (h) In every disciplinary or licensure denial action, the
363 board shall furnish the physician or podiatrist or applicant
364 with written notice setting out with particularity the reasons
365 for its action. Disciplinary and licensure denial hearings
366 shall be conducted in accordance with the provisions of
367 article five, chapter twenty-nine-a of this code. However,
368 hearings shall be heard upon sworn testimony and the rules
369 of evidence for trial courts of record in this state shall apply
370 to all hearings. A transcript of all hearings under this section
371 shall be made and the respondent may obtain a copy of the

372 transcript at his or her expense. The physician or podiatrist
373 has the right to defend against any a charge by the
374 introduction of evidence, the right to be represented by
375 counsel, the right to present and cross-examine witnesses and
376 the right to have subpoenas and subpoenas duces tecum
377 issued on his or her behalf for the attendance of witnesses
378 and the production of documents. The board shall make all
379 its final actions public. The order shall contain the terms of
380 all action taken by the board.

381 (i) In disciplinary actions in which probable cause has been
382 found by the board, the board shall, within twenty days of the
383 date of service of the written notice of charges or sixty days
384 prior to the date of the scheduled hearing, whichever is sooner,
385 provide the respondent with the complete identity, address and
386 telephone number of any person known to the board with
387 knowledge about the facts of any of the charges; provide a
388 copy of any statements in the possession of or under the
389 control of the board; provide a list of proposed witnesses with
390 addresses and telephone numbers, with a brief summary of his

391 or her anticipated testimony; provide disclosure of any trial
392 expert pursuant to the requirements of Rule 26(b)(4) of the
393 West Virginia Rules of Civil Procedure; provide inspection
394 and copying of the results of any reports of physical and
395 mental examinations or scientific tests or experiments; and
396 provide a list and copy of any proposed exhibit to be used at
397 the hearing. ~~Provided, That The board shall not be~~ The board
398 is not required to furnish or produce any materials which
399 contain opinion work product information or would be a
400 violation of the attorney-client privilege. Within twenty days
401 of the date of service of the written notice of charges, the board
402 shall disclose any exculpatory evidence with a continuing duty
403 to do so throughout the disciplinary process. Within thirty
404 days of receipt of the board's mandatory discovery, the
405 respondent shall provide the board with the complete identity,
406 address and telephone number of any person known to the
407 respondent with knowledge about the facts of any of the
408 charges; provide a list of proposed witnesses, with addresses
409 and telephone numbers, to be called at hearing, with a brief

410 summary of his or her anticipated testimony; provide
411 disclosure of any trial expert pursuant to the requirements of
412 Rule 26(b)(4) of the West Virginia Rules of Civil Procedure;
413 provide inspection and copying of the results of any reports of
414 physical and mental examinations or scientific tests or
415 experiments; and provide a list and copy of any proposed
416 exhibit to be used at the hearing.

417 (j) Whenever it finds ~~any~~ a person unqualified because of
418 any of the grounds set forth in subsection (c) of this section,
419 the board may enter an order imposing one or more of the
420 following:

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

423 (2) Administer a public reprimand;

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

429 (4) Revoke his or her license or other authorization to
430 practice medicine and surgery or podiatry or to prescribe or
431 dispense controlled substances for a period not to exceed ten
432 years;

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

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

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

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

444 (k) Notwithstanding the provisions of section eight,
445 article one, chapter thirty of this code, if the board determines
446 the evidence in its possession indicates that a physician's or
447 podiatrist's continuation in practice or unrestricted practice

448 constitutes an immediate danger to the public, the board may
449 take any of the actions provided in subsection (j) of this
450 section on a temporary basis and without a hearing if
451 institution of proceedings for a hearing ~~before~~ approved by
452 the board are initiated simultaneously with the temporary
453 action and begin within fifteen days of the action. The board
454 shall render its decision within ~~five~~ ten days of the
455 conclusion of a hearing under this subsection.

456 (l) ~~Any~~ A person against whom disciplinary action is
457 taken pursuant to the provisions of this article has the right to
458 judicial review as provided in articles five and six, chapter
459 twenty-nine-a of this code: *Provided*, That a circuit judge
460 may also remand the matter to the board if it appears from
461 competent evidence presented to it in support of a motion for
462 remand that there is newly discovered evidence of such a
463 character as ought to produce an opposite result at a second
464 hearing on the merits before the board and:

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

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

471 A person may not practice medicine and surgery or
472 podiatry or deliver health care services in violation of ~~any~~ a
473 disciplinary order revoking, suspending or limiting his or her
474 license while ~~any~~ an appeal is pending. Within sixty days,
475 the board shall report its final action regarding restriction,
476 limitation, suspension or revocation of the license of a
477 physician or podiatrist, limitation on practice privileges or
478 other disciplinary action against ~~any~~ a physician or podiatrist
479 to all appropriate state agencies, appropriate licensed health
480 facilities and hospitals, insurance companies or associations
481 writing medical malpractice insurance in this state, the
482 American Medical Association, the American Podiatry
483 Association, professional societies of physicians or
484 podiatrists in the state and any entity responsible for the
485 fiscal administration of Medicare and Medicaid.

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

494 (n) Any entity, organization or person, including the
495 board, any member of the board, its agents or employees and
496 any entity or organization or its members referred to in this
497 article, any insurer, its agents or employees, a medical peer
498 review committee and a hospital governing board, its
499 members or any committee appointed by it acting without
500 malice and without gross negligence in making any report or
501 other information available to the board or a medical peer
502 review committee pursuant to law and any person acting
503 without malice and without gross negligence who assists in
504 the organization, investigation or preparation of any such

505 report or information or assists the board or a hospital
506 governing body or any committee in carrying out any of its
507 duties or functions provided by law is immune from civil or
508 criminal liability, except that the unlawful disclosure of
509 confidential information possessed by the board is a
510 misdemeanor as provided in this article.

511 (o) A physician or podiatrist may request in writing to the
512 board a limitation on or the surrendering of his or her license
513 to practice medicine and surgery or podiatry or other
514 appropriate sanction as provided in this section. The board
515 may grant the request and, if it considers it appropriate, may
516 waive the commencement or continuation of other
517 proceedings under this section. A physician or podiatrist
518 whose license is limited or surrendered or against whom
519 other action is taken under this subsection may, at reasonable
520 intervals, petition for removal of any restriction or limitation
521 on or for reinstatement of his or her license to practice
522 medicine and surgery or podiatry.

523 (p) In every case considered by the board under this
524 article regarding discipline or licensure, whether initiated by
525 the board or upon complaint or information from ~~any~~ a
526 person or organization, the board shall make a preliminary
527 determination as to whether probable cause exists to
528 substantiate charges of disqualification due to any reason set
529 forth in subsection (c) of this section. If probable cause is
530 found to exist, all proceedings on the charges shall be open
531 to the public who are entitled to all reports, records and
532 nondeliberative materials introduced at the hearing including
533 the record of the final action taken: *Provided*, That any
534 medical records, which were introduced at the hearing and
535 which pertain to a person who has not expressly waived his
536 or her right to the confidentiality of the records, may not be
537 open to the public nor is the public entitled to the records.

538 (q) If the board receives notice that a physician or
539 podiatrist has been subjected to disciplinary action or has had
540 his or her credentials suspended or revoked by the board, a
541 hospital or a professional society, as defined in subsection (b)

542 of this section, for three or more incidents during a five-year
543 period, the board shall require the physician or podiatrist to
544 practice under the direction of a physician or podiatrist
545 designated by the board for a specified period of time to be
546 established by the board.

547 (r) Notwithstanding any other provisions of this article,
548 the board may, at any time, ~~on~~ either on its own motion, ~~or~~
549 ~~upon~~ motion by the complainant, ~~or upon~~ motion by the
550 physician or podiatrist or by stipulation of the parties, refer
551 the matter to mediation. The board shall obtain a list from
552 the West Virginia State Bar's mediator referral service of
553 certified mediators with expertise in professional disciplinary
554 matters. The board and the physician or podiatrist may
555 choose a mediator from that list. If the board and the
556 physician or podiatrist are unable to agree on a mediator, the
557 board shall designate a mediator from the list by neutral
558 rotation. The mediation ~~shall not be considered~~ is not a
559 proceeding open to the public and any reports and records

560 introduced at the mediation ~~shall~~ do not become part of the
561 public record. The mediator and all participants in the
562 mediation shall maintain and preserve the confidentiality of
563 all mediation proceedings and records. The mediator may
564 not be subpoenaed or called to testify or otherwise be subject
565 to process requiring disclosure of confidential information in
566 ~~any~~ a proceeding relating to or arising out of the disciplinary
567 or licensure matter mediated: *Provided*, That any
568 confidentiality agreement and any written agreement made
569 and signed by the parties as a result of mediation may be used
570 in any proceedings subsequently instituted to enforce the
571 written agreement. The agreements may be used in other
572 proceedings if the parties agree in writing.

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-21. Complaints; investigations.

- 1 (a) Upon receipt of a written complaint filed against ~~any~~
- 2 a dentist or dental hygienist, the board shall provide a copy
- 3 of the complaint to the dentist or dental hygienist as specified
- 4 by legislative rule promulgated by the board.

5 (b) The board may investigate the complaint. If the board
6 finds upon investigation that probable cause exists that the
7 dentist or dental hygienist has violated ~~any~~ a provision of this
8 article or the rules, the board shall serve the dentist or dental
9 hygienist with a written statement of charges and a notice
10 specifying the date, time and place of hearing. The hearing
11 shall be held in accordance with section twenty-two of this
12 article.

13 (c) Notwithstanding any provision of this code to the
14 contrary, the board may independently initiate disciplinary
15 proceedings based on a report or information from an agent
16 or investigator of the Board of Pharmacy related to data from
17 the Controlled Substance Monitoring Program.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12a. Initiation of suspension or revocation proceedings

**allowed and required; reporting of information to
board pertaining to professional malpractice and
professional incompetence required; penalties;
probable cause determinations.**

1 (a) The board may independently initiate suspension or
2 revocation proceedings as well as initiate suspension or
3 revocation proceedings based on information received from
4 any person.

5 The board shall initiate investigations as to professional
6 incompetence or other reasons for which a licensed
7 osteopathic physician and surgeon may be adjudged
8 unqualified if the board receives notice that three or more
9 judgments or any combination of judgments and settlements
10 resulting in five or more unfavorable outcomes arising from
11 medical professional liability have been rendered or made
12 against such osteopathic physician within a five-year period.

13 (b) Upon request of the board, ~~any~~ a medical peer review
14 committee in this state shall report any information that may
15 relate to the practice or performance of ~~any~~ an osteopathic
16 physician known to that medical peer review committee.
17 Copies of such requests for information from a medical peer
18 review committee may be provided to the subject osteopathic
19 physician if, in the discretion of the board, the provision of

20 such copies will not jeopardize the board's investigation. In
21 the event that copies are provided, the subject osteopathic
22 physician has fifteen days to comment on the requested
23 information and ~~such~~ the comments must be considered by
24 the board.

25 After the completion of a hospital's formal disciplinary
26 procedure and after any resulting legal action, the chief
27 executive officer of ~~such~~ the hospital shall report in writing
28 to the board within sixty days the name of any member of the
29 medical staff or ~~any~~ other osteopathic physician practicing in
30 the hospital whose hospital privileges have been revoked,
31 restricted, reduced or terminated for any cause, including
32 resignation, together with all pertinent information relating to
33 such action. The chief executive officer shall also report any
34 other formal disciplinary action taken against ~~any~~ an
35 osteopathic physician by the hospital upon the
36 recommendation of its medical staff relating to professional
37 ethics, medical incompetence, medical malpractice, moral
38 turpitude or drug or alcohol abuse. Temporary suspension

39 for failure to maintain records on a timely basis or failure to
40 attend staff or section meetings need not be reported.

41 Any professional society in this state comprised primarily
42 of osteopathic physicians or physicians and surgeons of other
43 schools of medicine which takes formal disciplinary action
44 against a member relating to professional ethics, professional
45 incompetence, professional malpractice, moral turpitude or
46 drug or alcohol abuse, shall report in writing to the board
47 within sixty days of a final decision the name of such
48 member, together with all pertinent information relating to
49 such action.

50 Every person, partnership, corporation, association,
51 insurance company, professional society or other
52 organization providing professional liability insurance to an
53 osteopathic physician in this state shall submit to the board
54 the following information within thirty days from any
55 judgment, dismissal or settlement of a civil action or of any
56 claim involving the insured: The date of ~~any~~ judgment,
57 dismissal or settlement; whether ~~any~~ an appeal has been

58 taken on the judgment, and, if so, by which party; the amount
59 of ~~any~~ settlement or judgment against the insured; and ~~such~~
60 other information required by the board.

61 Within thirty days after a person known to be an
62 osteopathic physician licensed or otherwise lawfully
63 practicing medicine and surgery in this state, or applying to
64 be licensed, is convicted of a felony under the laws of this
65 state or of any crime under the laws of this state involving
66 alcohol or drugs ~~in any way~~, including ~~any~~ a controlled
67 substance under state or federal law, the clerk of the court of
68 record in which the conviction was entered shall forward to
69 the board a certified true and correct abstract of record of the
70 convicting court. The abstract shall include the name and
71 address of ~~such~~ the osteopathic physician or applicant, the
72 nature of the offense committed and the final judgment and
73 sentence of the court.

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

77 organization has failed or refused to make a report required
78 by this subsection, the board shall provide written notice to
79 the alleged violator stating the nature of the alleged violation
80 and the time and place at which the alleged violator shall
81 appear to show good cause why a civil penalty should not be
82 imposed. The hearing shall be conducted in accordance with
83 the provisions of article five, chapter twenty-nine-a of this
84 code. After reviewing the record of such hearing, if the
85 board determines that a violation of this subsection has
86 occurred, the board shall assess a civil penalty of not less
87 than \$1,000 nor more than \$10,000 against such violator.
88 The board shall notify anyone assessed of the assessment in
89 writing and the notice shall specify the reasons for the
90 assessment. If the violator fails to pay the amount of the
91 assessment to the board within thirty days, the Attorney
92 General may institute a civil action in the circuit court of
93 Kanawha County to recover the amount of the assessment.
94 In any such civil action, the court's review of the board's
95 action shall be conducted in accordance with the provisions

96 of section four, article five, chapter twenty-nine-a of this
97 code.

98 Any person may report to the board relevant facts about
99 the conduct of any osteopathic physician in this state which
100 in the opinion of such person amounts to professional
101 malpractice or professional incompetence.

102 The board shall provide forms for filing reports pursuant
103 to this section. Reports submitted in other forms shall be
104 accepted by the board.

105 The filing of a report with the board pursuant to ~~any a~~
106 provision of this article, ~~any an~~ an investigation by the board or
107 ~~any a~~ disposition of a case by the board does not preclude
108 any action by a hospital, other health care facility or
109 professional society comprised primarily of osteopathic
110 physicians or physicians and surgeons of other schools of
111 medicine to suspend, restrict or revoke the privileges or
112 membership of such osteopathic physician. Notwithstanding
113 any provision of this code to the contrary, the board may
114 independently initiate disciplinary proceedings based on a

115 report or information from an agent or investigator of the
116 Board of Pharmacy related to data from the Controlled
117 Substances Monitoring Program.

118 (c) In every case considered by the board under this
119 article regarding suspension, revocation or issuance of a
120 license, whether initiated by the board or upon complaint or
121 information from any person or organization, the board shall
122 make a preliminary determination as to whether probable
123 cause exists to substantiate charges of cause to suspend,
124 revoke or refuse to issue a license as set forth in subsection
125 (a), section eleven of this article. If ~~such~~ probable cause is
126 found to exist, all proceedings on ~~such~~ the charges ~~shall be~~
127 are open to the public who are entitled to all reports, records
128 and nondeliberative materials introduced at such hearing,
129 including the record of the final action taken: *Provided*, That
130 any medical records, which were introduced at ~~such~~ the
131 hearing and ~~which~~ pertain to a person who has not expressly
132 waived his or her right to the confidentiality of ~~such~~ the
133 records, shall not be open to the public nor is the public

134 entitled to such records. If a finding is made that probable
135 cause does not exist, the public has a right of access to the
136 complaint or other document setting forth the charges and the
137 findings of fact and conclusions supporting ~~such finding that~~
138 ~~probable cause does not exist, if~~ the finding so long as the
139 subject osteopathic physician consents to such access.

140 (d) If the board receives notice that an osteopathic
141 physician has been subjected to disciplinary action or has had
142 his or her credentials suspended or revoked by the board, a
143 medical peer review committee, a hospital or professional
144 society, as defined in subsection (b) of this section, for three
145 or more incidents in a five-year period, the board shall
146 require the osteopathic physician to practice under the
147 direction of another osteopathic physician for a specified
148 period to be established by the board.