

# Senate Bill No. 10

(By Senators Jenkins and Plymale)

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

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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  
16 or 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  
29 of ~~such~~ copies will not jeopardize the board's investigation.  
30 In 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  
57 of 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  
87 organization providing professional liability insurance to a  
88 physician or podiatrist in this state, including the State Board  
89 of Risk and Insurance Management, shall submit to the board  
90 the following information within thirty days from ~~any~~ a  
91 judgment or settlement of a civil or medical professional  
92 liability action excepting product liability actions: The name  
93 of the insured; the date of ~~any~~ judgment or settlement;  
94 whether ~~any~~ an appeal has been taken on the judgment and,  
95 if so, by which party; the amount of ~~any~~ settlement or  
96 judgment against the insured; and other information required  
97 by the board.

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

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



116 of the offense committed and the final judgment and  
117 sentence of the court.

118       Upon a determination of the board that there is probable  
119 cause to believe that any person, partnership, corporation,  
120 association, insurance company, professional society or other  
121 organization has failed or refused to make a report required  
122 by this subsection, the board shall provide written notice to  
123 the alleged violator stating the nature of the alleged violation  
124 and the time and place at which the alleged violator shall  
125 appear to show good cause why a civil penalty should not be  
126 imposed. The hearing shall be conducted in accordance with  
127 the provisions of article five, chapter twenty-nine-a of this  
128 code. After reviewing the record of the hearing, if the board  
129 determines that a violation of this subsection has occurred,  
130 the board shall assess a civil penalty of not less than \$1,000  
131 nor more than \$10,000 against the violator. The board shall  
132 notify ~~any~~ the person so assessed of the assessment in writing  
133 and the notice shall specify the reasons for the assessment.

134 If the violator fails to pay the amount of the assessment to the  
135 board within thirty days, the Attorney General may institute  
136 a civil action in the circuit court of Kanawha County to  
137 recover the amount of the assessment. In ~~any~~ a civil action,  
138 the court's review of the board's action shall be conducted in  
139 accordance with the provisions of section four, article five,  
140 chapter twenty-nine-a of this code. Notwithstanding any  
141 other provision of this article to the contrary, when there are  
142 conflicting views by recognized experts as to whether ~~any~~  
143 alleged conduct breaches an applicable standard of care, the  
144 evidence must be clear and convincing before the board may  
145 find that the physician or podiatrist has demonstrated a lack  
146 of professional competence to practice with a reasonable  
147 degree of skill and safety for patients.

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

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

155 The filing of a report with the board pursuant to ~~any~~ a  
156 provision of this article, ~~any~~ an investigation by the board or  
157 ~~any~~ a disposition of a case by the board does not preclude  
158 ~~any~~ an action by a hospital, other health care facility or  
159 professional society comprised primarily of physicians or  
160 podiatrists to suspend, restrict or revoke the privileges or  
161 membership of the physician or podiatrist. Notwithstanding  
162 any provision of this code to the contrary, the board may  
163 independently initiate disciplinary proceedings based on a  
164 report or information from an agent or investigator of the  
165 Board of Pharmacy related to data from the Controlled  
166 Substances Monitoring Program.

167 (c) The board may deny an application for license or  
168 other authorization to practice medicine and surgery or  
169 podiatry in this state and may discipline a physician or

170 podiatrist licensed or otherwise lawfully practicing in this  
171 state who, after a hearing, has been adjudged by the board as  
172 unqualified due to any of the following reasons:

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

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

182 (3) False or deceptive advertising;

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

186 (5) Making or filing a report that the person knows to be  
187 false; intentionally or negligently failing to file a report or

188 record required by state or federal law; willfully impeding or  
189 obstructing the filing of a report or record required by state  
190 or federal law; or inducing another person to do any of the  
191 foregoing. The reports and records covered in this  
192 subdivision mean only those that are signed in the capacity  
193 as a licensed physician or podiatrist;

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

202 (7) Unprofessional conduct by ~~any~~ a physician or  
203 podiatrist in referring a patient to ~~any~~ a clinical laboratory or  
204 pharmacy in which the physician or podiatrist has a  
205 proprietary interest unless the physician or podiatrist

206 discloses in writing ~~such~~ the interest to the patient. The  
207 written disclosure shall indicate that the patient may choose  
208 any clinical laboratory for purposes of having ~~any~~ laboratory  
209 work or assignment performed or any pharmacy for purposes  
210 of purchasing ~~any~~ a prescribed drug or ~~any~~ other medical  
211 goods or devices used in connection with medical or other  
212 health care services;

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

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

222 (9) Making a deceptive, untrue or fraudulent representation  
223 in the practice of medicine and surgery or 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  
229 rendered, 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  
315 than two years after the complainant knew or, in the exercise  
316 of reasonable diligence, should have known of the existence  
317 of 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  
352 ground that the testimony or report is privileged  
353 communication. If a person fails or refuses to submit to an  
354 examination under circumstances which the board finds are  
355 not beyond his or her control, failure or refusal is prima facie  
356 evidence of his or her inability to practice medicine and  
357 surgery or podiatry competently and in compliance with the  
358 standards of 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  
382 been found by the board, the board shall, within twenty days  
383 of the date of service of the written notice of charges or sixty  
384 days prior to the date of the scheduled hearing, whichever is  
385 sooner, provide the respondent with the complete identity,

386 address and telephone number of any person known to the  
387 board with knowledge about the facts of any of the charges;  
388 provide a copy of any statements in the possession of or  
389 under the control of the board; provide a list of proposed  
390 witnesses with addresses and telephone numbers, with a brief  
391 summary of his or her anticipated testimony; provide  
392 disclosure of any trial expert pursuant to the requirements of  
393 Rule 26(b)(4) of the West Virginia Rules of Civil Procedure;  
394 provide inspection and copying of the results of any reports  
395 of physical and mental examinations or scientific tests or  
396 experiments; and provide a list and copy of any proposed  
397 exhibit to be used at the hearing. ~~Provided, That The board~~  
398 ~~shall not be~~ The board is not required to furnish or produce  
399 ~~any~~ materials which contain opinion work product  
400 information or would be a violation of the attorney-client  
401 privilege. Within twenty days of the date of service of the  
402 written notice of charges, the board shall disclose any  
403 exculpatory evidence with a continuing duty to do so



404 throughout the disciplinary process. Within thirty days of  
405 receipt of the board's mandatory discovery, the respondent  
406 shall provide the board with the complete identity, address  
407 and telephone number of any person known to the  
408 respondent with knowledge about the facts of any of the  
409 charges; provide a list of proposed witnesses, with addresses  
410 and telephone numbers, to be called at hearing, with a brief  
411 summary of his or her anticipated testimony; provide  
412 disclosure of any trial expert pursuant to the requirements of  
413 Rule 26(b)(4) of the West Virginia Rules of Civil Procedure;  
414 provide inspection and copying of the results of any reports  
415 of physical and mental examinations or scientific tests or  
416 experiments; and provide a list and copy of any proposed  
417 exhibit to be used at the hearing.

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

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

424 (2) Administer a public reprimand;

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

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

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

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

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

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

445 (k) Notwithstanding the provisions of section eight,  
446 article one, chapter thirty of this code, if the board  
447 determines the evidence in its possession indicates that a  
448 physician's or podiatrist's continuation in practice or  
449 unrestricted practice constitutes an immediate danger to the  
450 public, the board may take any of the actions provided in  
451 subsection (j) of this section on a temporary basis and  
452 without a hearing if institution of proceedings for a hearing  
453 before the board are initiated simultaneously with the  
454 temporary action and begin within fifteen days of the action.  
455 The board shall render its decision within five days of the  
456 conclusion of a hearing under this subsection.

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

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

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

472 A person may not practice medicine and surgery or  
473 podiatry or deliver health care services in violation of ~~any~~ a  
474 disciplinary order revoking, suspending or limiting his or her

475 license while ~~any~~ an appeal is pending. Within sixty days,  
476 the board shall report its final action regarding restriction,  
477 limitation, suspension or revocation of the license of a  
478 physician or podiatrist, limitation on practice privileges or  
479 other disciplinary action against ~~any~~ a physician or podiatrist  
480 to all appropriate state agencies, appropriate licensed health  
481 facilities and hospitals, insurance companies or associations  
482 writing medical malpractice insurance in this state, the  
483 American Medical Association, the American Podiatry  
484 Association, professional societies of physicians or  
485 podiatrists in the state and any entity responsible for the  
486 fiscal administration of Medicare and Medicaid.

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

493 restriction period, the physician or podiatrist may resume  
494 practice if the board has so ordered.

495 (n) Any entity, organization or person, including the  
496 board, any member of the board, its agents or employees and  
497 any entity or organization or its members referred to in this  
498 article, any insurer, its agents or employees, a medical peer  
499 review committee and a hospital governing board, its  
500 members or any committee appointed by it acting without  
501 malice and without gross negligence in making any report or  
502 other information available to the board or a medical peer  
503 review committee pursuant to law and any person acting  
504 without malice and without gross negligence who assists in  
505 the organization, investigation or preparation of any such  
506 report or information or assists the board or a hospital  
507 governing body or any committee in carrying out any of its  
508 duties or functions provided by law is immune from civil or  
509 criminal liability, except that the unlawful disclosure of  
510 confidential information possessed by the board is a  
511 misdemeanor as provided in this article.

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

524 (p) In every case considered by the board under this  
525 article regarding discipline or licensure, whether initiated by  
526 the board or upon complaint or information from ~~any~~ a  
527 person or organization, the board shall make a preliminary  
528 determination as to whether probable cause exists to  
529 substantiate charges of disqualification due to any reason set

530 forth in subsection (c) of this section. If probable cause is  
531 found to exist, all proceedings on the charges shall be open  
532 to the public who are entitled to all reports, records and  
533 nondeliberative materials introduced at the hearing including  
534 the record of the final action taken: *Provided*, That any  
535 medical records, which were introduced at the hearing and  
536 which pertain to a person who has not expressly waived his  
537 or her right to the confidentiality of the records, may not be  
538 open to the public nor is the public entitled to the records.

539 (q) If the board receives notice that a physician or  
540 podiatrist has been subjected to disciplinary action or has had  
541 his or her credentials suspended or revoked by the board, a  
542 hospital or a professional society, as defined in subsection (b)  
543 of this section, for three or more incidents during a five-year  
544 period, the board shall require the physician or podiatrist to  
545 practice under the direction of a physician or podiatrist  
546 designated by the board for a specified period of time to be  
547 established by the board.



548 (r) Notwithstanding any other provisions of this article,  
549 the board may, at any time, ~~on either on~~ on its own motion, ~~or~~  
550 ~~upon~~ motion by the complainant, ~~or upon~~ motion by the  
551 physician or podiatrist or by stipulation of the parties, refer  
552 the matter to mediation. The board shall obtain a list from  
553 the West Virginia State Bar's mediator referral service of  
554 certified mediators with expertise in professional disciplinary  
555 matters. The board and the physician or podiatrist may  
556 choose a mediator from that list. If the board and the  
557 physician or podiatrist are unable to agree on a mediator, the  
558 board shall designate a mediator from the list by neutral  
559 rotation. The mediation ~~shall not be considered~~ is not a  
560 proceeding open to the public and any reports and records  
561 introduced at the mediation ~~shall~~ do not become part of the  
562 public record. The mediator and all participants in the  
563 mediation shall maintain and preserve the confidentiality of  
564 all mediation proceedings and records. The mediator may  
565 not be subpoenaed or called to testify or otherwise be subject

566 to process requiring disclosure of confidential information in  
567 ~~any~~ a proceeding relating to or arising out of the disciplinary  
568 or licensure matter mediated: *Provided*, That any  
569 confidentiality agreement and any written agreement made  
570 and signed by the parties as a result of mediation may be  
571 used in any proceedings subsequently instituted to enforce  
572 the written agreement. The agreements may be used in other  
573 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  
6 board finds upon investigation that probable cause exists that  
7 the dentist or dental hygienist has violated ~~any~~ a provision of  
8 this article or the rules, the board shall serve the dentist or

9 dental hygienist with a written statement of charges and a  
10 notice specifying the date, time and place of hearing. The  
11 hearing shall be held in accordance with section twenty-two  
12 of this 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 Substances 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  
33 to such action. The chief executive officer shall also report  
34 any 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 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~~ 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.

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(NOTE: The purpose of this bill is to permit the Board of Medicine, Board of Dental Examiners and the Board of Osteopathy to independently initiate disciplinary proceedings in certain circumstances.

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