

**Senate Bill No. 230**

(By Senator Jenkins)

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[Introduced January 8, 2014; 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 §30-4-19 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; permitting the boards to independently  
initiate disciplinary proceedings in certain circumstances;  
permitting the Board of Medicine to approve certain decisions,  
rather than deciding them directly as a whole; and increasing  
the number of days within which the Board of Medicine can make  
certain decisions.

*Be it enacted by the Legislature of West Virginia:*

That §30-3-14 of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted; that §30-4-19 of said code be amended and  
2 reenacted; and that §30-14-12a of said code be amended and  
3 reenacted, all to read as follows:

4 **ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.**

5 **§30-3-14. Professional discipline of physicians and podiatrists;**  
6 **reporting of information to board pertaining to**  
7 **medical professional liability and professional**  
8 **incompetence required; penalties; grounds for license**  
9 **denial and discipline of physicians and podiatrists;**  
10 **investigations; physical and mental examinations;**  
11 **hearings; sanctions; summary sanctions; reporting by**  
12 **the board; reapplication; civil and criminal**  
13 **immunity; voluntary limitation of license; probable**  
14 **cause determinations.**

15 (a) The board may independently initiate disciplinary  
16 proceedings as well as initiate disciplinary proceedings based on  
17 information received from medical peer review committees,  
18 physicians, podiatrists, hospital administrators, professional  
19 societies and others.

20 The board may initiate investigations as to professional  
21 incompetence or other reasons for which a licensed physician or  
22 podiatrist may be adjudged unqualified based upon criminal

1 convictions; complaints by citizens, pharmacists, physicians,  
2 podiatrists, peer review committees, hospital administrators,  
3 professional societies or others; or unfavorable outcomes arising  
4 out of medical professional liability. The board shall initiate an  
5 investigation if it receives notice that three or more judgments or  
6 any combination of judgments and settlements resulting in five or  
7 more unfavorable outcomes arising from medical professional  
8 liability have been rendered or made against the physician or  
9 podiatrist within a five-year period. The board may not consider  
10 any judgments or settlements as conclusive evidence of professional  
11 incompetence or conclusive lack of qualification to practice.

12 (b) Upon request of the board, any medical peer review  
13 committee in this state shall report any information that may  
14 relate to the practice or performance of any physician or  
15 podiatrist known to that medical peer review committee. Copies of  
16 the requests for information from a medical peer review committee  
17 may be provided to the subject physician or podiatrist if, in the  
18 discretion of the board, the provision of ~~such~~ copies will not  
19 jeopardize the board's investigation. In the event that copies are  
20 provided, the subject physician or podiatrist is allowed fifteen  
21 days to comment on the requested information and ~~such~~ the comments  
22 must be considered by the board.

1       The chief executive officer of every hospital shall, within  
2 sixty days after the completion of the hospital's formal  
3 disciplinary procedure and also within sixty days after the  
4 commencement of and again after the conclusion of any resulting  
5 legal action, report in writing to the board the name of any member  
6 of the medical staff or any other physician or podiatrist  
7 practicing in the hospital whose hospital privileges have been  
8 revoked, restricted, reduced or terminated for any cause, including  
9 resignation, together with all pertinent information relating to  
10 such action. The chief executive officer shall also report any  
11 other formal disciplinary action taken against any physician or  
12 podiatrist by the hospital upon the recommendation of its medical  
13 staff relating to professional ethics, medical incompetence,  
14 medical professional liability, moral turpitude or drug or alcohol  
15 abuse. Temporary suspension for failure to maintain records on a  
16 timely basis or failure to attend staff or section meetings need  
17 not be reported. Voluntary cessation of hospital privileges for  
18 reasons unrelated to professional competence or ethics need not be  
19 reported.

20       ~~Any~~ A managed care organization operating in this state which  
21 provides a formal peer review process shall report in writing to  
22 the board, within sixty days after the completion of any formal

1 peer review process and also within sixty days after the  
2 commencement of and again after the conclusion of any resulting  
3 legal action, the name of any physician or podiatrist whose  
4 credentialing has been revoked or not renewed by the managed care  
5 organization. The managed care organization shall also report in  
6 writing to the board any other disciplinary action taken against a  
7 physician or podiatrist relating to professional ethics,  
8 professional liability, moral turpitude or drug or alcohol abuse  
9 within sixty days after completion of a formal peer review process  
10 which results in the action taken by the managed care organization.  
11 For purposes of this subsection, "managed care organization" means  
12 a plan that establishes, operates or maintains a network of health  
13 care providers who have entered into agreements with and been  
14 credentialed by the plan to provide health care services to  
15 enrollees or insureds to whom the plan has the ultimate obligation  
16 to arrange for the provision of or payment for health care services  
17 through organizational arrangements for ongoing quality assurance,  
18 utilization review programs or dispute resolutions.

19 Any professional society in this state comprised primarily of  
20 physicians or podiatrists which takes formal disciplinary action  
21 against a member relating to professional ethics, professional  
22 incompetence, medical professional liability, moral turpitude or

1 drug or alcohol abuse shall report in writing to the board within  
2 sixty days of a final decision the name of the member, together  
3 with all pertinent information relating to the action.

4       Every person, partnership, corporation, association, insurance  
5 company, professional society or other organization providing  
6 professional liability insurance to a physician or podiatrist in  
7 this state, including the State Board of Risk and Insurance  
8 Management, shall submit to the board the following information  
9 within thirty days from ~~any~~ a judgment or settlement of a civil or  
10 medical professional liability action excepting product liability  
11 actions: The name of the insured; the date of ~~any~~ judgment or  
12 settlement; whether ~~any~~ an appeal has been taken on the judgment  
13 and, if so, by which party; the amount of ~~any~~ settlement or  
14 judgment against the insured; and other information required by the  
15 board.

16       Within thirty days from the entry of an order by a court in a  
17 medical professional liability action or other civil action in  
18 which a physician or podiatrist licensed by the board is determined  
19 to have rendered health care services below the applicable standard  
20 of care, the clerk of the court in which the order was entered  
21 shall forward a certified copy of the order to the board.

22       Within thirty days after a person known to be a physician or

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

12       Upon a determination of the board that there is probable cause  
13 to believe that any person, partnership, corporation, association,  
14 insurance company, professional society or other organization has  
15 failed or refused to make a report required by this subsection, the  
16 board shall provide written notice to the alleged violator stating  
17 the nature of the alleged violation and the time and place at which  
18 the alleged violator shall appear to show good cause why a civil  
19 penalty should not be imposed. The hearing shall be conducted in  
20 accordance with the provisions of article five, chapter  
21 twenty-nine-a of this code. After reviewing the record of the  
22 hearing, if the board determines that a violation of this

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

19 Any person may report to the board relevant facts about the  
20 conduct of any physician or podiatrist in this state which in the  
21 opinion of that person amounts to medical professional liability or  
22 professional incompetence.



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

4           The filing of a report with the board pursuant to ~~any a~~  
5 provision of this article, ~~any an~~ investigation by the board or ~~any~~  
6 a disposition of a case by the board does not preclude ~~any an~~  
7 action by a hospital, other health care facility or professional  
8 society comprised primarily of physicians or podiatrists to  
9 suspend, restrict or revoke the privileges or membership of the  
10 physician or podiatrist. Notwithstanding any provision of this  
11 code to the contrary, the board may independently initiate  
12 disciplinary proceedings based on a report or information from an  
13 agent or investigator of the Board of Pharmacy related to data from  
14 the Controlled Substances Monitoring Program.

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

21           (1) Attempting to obtain, obtaining, renewing or attempting to  
22 renew a license to practice medicine and surgery or podiatry by

1 bribery, fraudulent misrepresentation or through known error of the  
2 board;

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

7 (3) False or deceptive advertising;

8 (4) Aiding, assisting, procuring or advising ~~any~~ an  
9 unauthorized person to practice medicine and surgery or podiatry  
10 contrary to law;

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

19 (6) Requesting, receiving or paying directly or indirectly a  
20 payment, rebate, refund, commission, credit or other form of profit  
21 or valuable consideration for the referral of patients to ~~any~~ a  
22 person or entity in connection with providing medical or other

1 health care services or clinical laboratory services, supplies of  
2 any kind, drugs, medication or ~~any~~ other medical goods, services or  
3 devices used in connection with medical or other health care  
4 services;

5 (7) Unprofessional conduct by ~~any~~ a physician or podiatrist in  
6 referring a patient to ~~any~~ a clinical laboratory or pharmacy in  
7 which the physician or podiatrist has a proprietary interest unless  
8 the physician or podiatrist discloses in writing ~~such~~ the interest  
9 to the patient. The written disclosure shall indicate that the  
10 patient may choose any clinical laboratory for purposes of having  
11 ~~any~~ laboratory work or assignment performed or any pharmacy for  
12 purposes of purchasing ~~any~~ a prescribed drug or ~~any~~ other medical  
13 goods or devices used in connection with medical or other health  
14 care services;

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

20 (8) Exercising influence within a patient-physician  
21 relationship for the purpose of engaging a patient in sexual  
22 activity;

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

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

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

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

14           (13) Prescribing, dispensing, administering, mixing or  
15 otherwise preparing a prescription drug, including ~~any~~ a controlled  
16 substance under state or federal law, other than in good faith and  
17 in a therapeutic manner in accordance with accepted medical  
18 standards and in the course of the physician's or podiatrist's  
19 professional practice. ~~Provided, That~~ A physician who discharges  
20 his or her professional obligation to relieve the pain and  
21 suffering and promote the dignity and autonomy of dying patients in  
22 his or her care and, in so doing, exceeds the average dosage of a

1 pain relieving controlled substance, as defined in Schedules II and  
2 III of the Uniform Controlled Substance Act, does not violate this  
3 article;

4 (14) Performing ~~any~~ a procedure or prescribing ~~any~~ a therapy  
5 that, by the accepted standards of medical practice in the  
6 community, would constitute experimentation on human subjects  
7 without first obtaining full, informed and written consent;

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

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

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

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

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

3 (20) Professional incompetence; or

4 (21) The inability to practice medicine and surgery or  
5 podiatry with reasonable skill and safety due to physical or mental  
6 impairment, including deterioration through the aging process, loss  
7 of motor skill or abuse of drugs or alcohol. A physician or  
8 podiatrist adversely affected under this subdivision shall be  
9 afforded an opportunity at reasonable intervals to demonstrate that  
10 he or she may resume the competent practice of medicine and surgery  
11 or podiatry with reasonable skill and safety to patients. In any  
12 proceeding under this subdivision, neither the record of  
13 proceedings nor any orders entered by the board shall be used  
14 against the physician or podiatrist in any other proceeding.

15 (d) The board shall deny ~~any~~ an application for a license or  
16 other authorization to practice medicine and surgery or podiatry in  
17 this state ~~to any applicant who,~~ and shall revoke the license of  
18 ~~any~~ a physician or podiatrist licensed or otherwise lawfully  
19 practicing within this state who is found guilty by ~~any~~ a court of  
20 competent jurisdiction of ~~any~~ a felony involving prescribing,  
21 selling, administering, dispensing, mixing or otherwise preparing  
22 ~~any~~ a prescription drug, including ~~any~~ a controlled substance under

1 state or federal law, for other than generally accepted therapeutic  
2 purposes. Presentation to the board of a certified copy of the  
3 guilty verdict or plea rendered in the court is sufficient proof  
4 thereof for the purposes of this article. A plea of nolo  
5 contendere has the same effect as a verdict or plea of guilt. Upon  
6 application of a physician that has had his or her license revoked  
7 because of a drug related felony conviction, upon completion of any  
8 sentence of confinement, parole, probation or other court-ordered  
9 supervision and full satisfaction of ~~any~~ fines, judgments or other  
10 fees imposed by the sentencing court, the board may issue the  
11 applicant a new license upon a finding that the physician is,  
12 except for the underlying conviction, otherwise qualified to  
13 practice medicine. ~~Provided, That~~ The board may place whatever  
14 terms, conditions or limitations it deems appropriate upon a  
15 physician licensed pursuant to this subsection.

16 (e) The board may refer ~~any~~ cases coming to its attention to  
17 an appropriate committee of an appropriate professional  
18 organization for investigation and report. Except for complaints  
19 related to obtaining initial licensure to practice medicine and  
20 surgery or podiatry in this state by bribery or fraudulent  
21 misrepresentation, ~~any~~ a complaint filed more than two years after  
22 the complainant knew or, in the exercise of reasonable diligence,

1 should have known of the existence of grounds for the complaint,  
2 shall be dismissed. ~~Provided, That~~ In cases of conduct alleged to  
3 be part of a pattern of similar misconduct or professional  
4 incapacity that, if continued, would pose risks of a serious or  
5 substantial nature to the physician's or podiatrist's current  
6 patients, the investigating body may conduct a limited  
7 investigation related to the physician's or podiatrist's current  
8 capacity and qualification to practice and may recommend  
9 conditions, restrictions or limitations on the physician's or  
10 podiatrist's license to practice that it considers necessary for  
11 the protection of the public. Any report shall contain  
12 recommendations for any necessary disciplinary measures and shall  
13 be filed with the board within ninety days of any referral. The  
14 recommendations shall be considered by the board and the case may  
15 be further investigated by the board. The board, after full  
16 investigation, shall take whatever action it considers appropriate,  
17 as provided in this section.

18 (f) The investigating body, as provided in subsection (e) of  
19 this section, may request and the board, under any circumstances,  
20 may require a physician or podiatrist or person applying for  
21 licensure or other authorization to practice medicine and surgery  
22 or podiatry in this state to submit to a physical or mental



1 examination by a physician or physicians approved by the board. A  
2 physician or podiatrist submitting to an examination has the right,  
3 at his or her expense, to designate another physician to be present  
4 at the examination and make an independent report to the  
5 investigating body or the board. The expense of the examination  
6 shall be paid by the board. ~~Any~~ An individual who applies for or  
7 accepts the privilege of practicing medicine and surgery or  
8 podiatry in this state is considered to have given his or her  
9 consent to submit to all examinations when requested to do so in  
10 writing by the board and to have waived all objections to the  
11 admissibility of the testimony or examination report of any  
12 examining physician on the ground that the testimony or report is  
13 privileged communication. If a person fails or refuses to submit  
14 to an examination under circumstances which the board finds are not  
15 beyond his or her control, failure or refusal is prima facie  
16 evidence of his or her inability to practice medicine and surgery  
17 or podiatry competently and in compliance with the standards of  
18 acceptable and prevailing medical practice.

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

22 (h) In every disciplinary or licensure denial action, the

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

18 (I) In disciplinary actions in which probable cause has been  
19 found by the board, the board shall, within twenty days of the date  
20 of service of the written notice of charges or sixty days prior to  
21 the date of the scheduled hearing, whichever is sooner, provide the  
22 respondent with the complete identity, address and telephone number

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

1 brief summary of his or her anticipated testimony; provide  
2 disclosure of any trial expert pursuant to the requirements of Rule  
3 26(b)(4) of the West Virginia Rules of Civil Procedure; provide  
4 inspection and copying of the results of any reports of physical  
5 and mental examinations or scientific tests or experiments; and  
6 provide a list and copy of any proposed exhibit to be used at the  
7 hearing.

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

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

13 (2) Administer a public reprimand;

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

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

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

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

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

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

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

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

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

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

15           A person may not practice medicine and surgery or podiatry or  
16 deliver health care services in violation of ~~any~~ a disciplinary  
17 order revoking, suspending or limiting his or her license while ~~any~~  
18 an appeal is pending. Within sixty days, the board shall report  
19 its final action regarding restriction, limitation, suspension or  
20 revocation of the license of a physician or podiatrist, limitation  
21 on practice privileges or other disciplinary action against ~~any~~ a  
22 physician or podiatrist to all appropriate state agencies,

1 appropriate licensed health facilities and hospitals, insurance  
2 companies or associations writing medical malpractice insurance in  
3 this state, the American Medical Association, the American Podiatry  
4 Association, professional societies of physicians or podiatrists in  
5 the state and any entity responsible for the fiscal administration  
6 of Medicare and Medicaid.

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

14 (n) Any entity, organization or person, including the board,  
15 any member of the board, its agents or employees and any entity or  
16 organization or its members referred to in this article, any  
17 insurer, its agents or employees, a medical peer review committee  
18 and a hospital governing board, its members or any committee  
19 appointed by it acting without malice and without gross negligence  
20 in making any report or other information available to the board or  
21 a medical peer review committee pursuant to law and any person  
22 acting without malice and without gross negligence who assists in

1 the organization, investigation or preparation of any such report  
2 or information or assists the board or a hospital governing body or  
3 any committee in carrying out any of its duties or functions  
4 provided by law is immune from civil or criminal liability, except  
5 that the unlawful disclosure of confidential information possessed  
6 by the board is a misdemeanor as provided in this article.

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

18       (p) In every case considered by the board under this article  
19 regarding discipline or licensure, whether initiated by the board  
20 or upon complaint or information from ~~any~~ a person or organization,  
21 the board shall make a preliminary determination as to whether  
22 probable cause exists to substantiate charges of disqualification



1 due to any reason set forth in subsection (c) of this section. If  
2 probable cause is found to exist, all proceedings on the charges  
3 shall be open to the public who are entitled to all reports,  
4 records and nondeliberative materials introduced at the hearing  
5 including the record of the final action taken: *Provided*, That any  
6 medical records, which were introduced at the hearing and which  
7 pertain to a person who has not expressly waived his or her right  
8 to the confidentiality of the records, may not be open to the  
9 public nor is the public entitled to the records.

10 (q) If the board receives notice that a physician or  
11 podiatrist has been subjected to disciplinary action or has had his  
12 or her credentials suspended or revoked by the board, a hospital or  
13 a professional society, as defined in subsection (b) of this  
14 section, for three or more incidents during a five-year period, the  
15 board shall require the physician or podiatrist to practice under  
16 the direction of a physician or podiatrist designated by the board  
17 for a specified period of time to be established by the board.

18 (r) Notwithstanding any other provisions of this article, the  
19 board may, at any time, ~~or~~ either on its own motion, ~~or upon~~  
20 by the complainant, ~~or upon~~ motion by the physician or podiatrist  
21 or by stipulation of the parties, refer the matter to mediation.  
22 The board shall obtain a list from the West Virginia State Bar's

1 mediator referral service of certified mediators with expertise in  
2 professional disciplinary matters. The board and the physician or  
3 podiatrist may choose a mediator from that list. If the board and  
4 the physician or podiatrist are unable to agree on a mediator, the  
5 board shall designate a mediator from the list by neutral rotation.  
6 The mediation ~~shall not be considered~~ is not a proceeding open to  
7 the public and any reports and records introduced at the mediation  
8 ~~shall do~~ not become part of the public record. The mediator and  
9 all participants in the mediation shall maintain and preserve the  
10 confidentiality of all mediation proceedings and records. The  
11 mediator may not be subpoenaed or called to testify or otherwise be  
12 subject to process requiring disclosure of confidential information  
13 in ~~any~~ a proceeding relating to or arising out of the disciplinary  
14 or licensure matter mediated: *Provided*, That any confidentiality  
15 agreement and any written agreement made and signed by the parties  
16 as a result of mediation may be used in any proceedings  
17 subsequently instituted to enforce the written agreement. The  
18 agreements may be used in other proceedings if the parties agree in  
19 writing.

20 **ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.**

21 **§30-4-19. Complaints; investigations; due process procedure;**  
22 **grounds for disciplinary action.**

1           (a) The board may initiate a complaint upon receipt of  
2 credible information and shall, upon the receipt of a written  
3 complaint of any person, cause an investigation to be made to  
4 determine whether grounds exist for disciplinary action under this  
5 article or the legislative rules promulgated pursuant to this  
6 article.

7           (b) After reviewing any information obtained through an  
8 investigation, the board shall determine if probable cause exists  
9 that the licensee, certificate holder or permittee has violated  
10 subsection (g) of this section or rules promulgated pursuant to  
11 this article.

12           (c) Upon a finding of probable cause to go forward with a  
13 complaint, the board shall provide a copy of the complaint to the  
14 licensee, certificate holder or permittee.

15           (d) Upon a finding that probable cause exists that the  
16 licensee, certificate holder or permittee has violated subsection  
17 (g) of this section or rules promulgated pursuant to this article,  
18 the board may enter into a consent decree or hold a hearing for  
19 disciplinary action against the licensee, certificate holder or  
20 permittee. Any hearing shall be held in accordance with the  
21 provisions of this article and shall require a violation to be  
22 proven by a preponderance of the evidence.

1           (e) A member of the complaint committee or the executive  
2 director of the board may issue subpoenas and subpoenas duces tecum  
3 to obtain testimony and documents to aid in the investigation of  
4 allegations against any person regulated by the article.

5           (f) Any member of the board or its executive director may sign  
6 a consent decree or other legal document on behalf of the board.

7           (g) The board may, after notice and opportunity for hearing,  
8 deny or refuse to renew, suspend, restrict or revoke the license,  
9 certificate or permit of, or impose probationary conditions upon or  
10 take disciplinary action against, any licensee, certificate holder  
11 or permittee for any of the following reasons:

12           (1) Obtaining a board authorization by fraud,  
13 misrepresentation or concealment of material facts;

14           (2) Being convicted of a felony or a misdemeanor crime of  
15 moral turpitude;

16           (3) Being guilty of unprofessional conduct which placed the  
17 public at risk, as defined by legislative rule of the board;

18           (4) Intentional violation of a lawful order or legislative  
19 rule of the board;

20           (5) Having had a board authorization revoked or suspended,  
21 other disciplinary action taken, or an application for a board  
22 authorization denied by the proper authorities of another

1 jurisdiction;

2       (6) Aiding or abetting unlicensed practice;

3       (7) Engaging in an act while acting in a professional capacity  
4 which has endangered or is likely to endanger the health, welfare  
5 or safety of the public;

6       (8) Having an incapacity that prevents a licensee from  
7 engaging in the practice of dentistry or dental hygiene, with  
8 reasonable skill, competence and safety to the public;

9       (9) Committing fraud in connection with the practice of  
10 dentistry or dental hygiene;

11       (10) Failing to report to the board one's surrender of a  
12 license or authorization to practice dentistry or dental hygiene in  
13 another jurisdiction while under disciplinary investigation by any  
14 of those authorities or bodies for conduct that would constitute  
15 grounds for action as defined in this section;

16       (11) Failing to report to the board any adverse judgment,  
17 settlement or award arising from a malpractice claim arising  
18 related to conduct that would constitute grounds for action as  
19 defined in this section;

20       (12) Being guilty of unprofessional conduct as contained in  
21 the American Dental Association principles of ethics and code of  
22 professional conduct. The following acts are conclusively presumed

1 to be unprofessional conduct:

2 (A) Being guilty of any fraud or deception;

3 (B) Committing a criminal operation or being convicted of a  
4 crime involving moral turpitude;

5 (C) Abusing alcohol or drugs;

6 (D) Violating any professional confidence or disclosing any  
7 professional secret;

8 (E) Being grossly immoral;

9 (F) Harassing, abusing, intimidating, insulting, degrading or  
10 humiliating a patient physically, verbally or through another form  
11 of communication;

12 (G) Obtaining any fee by fraud or misrepresentation;

13 (H) Employing directly or indirectly, or directing or  
14 permitting any suspended or unlicensed person so employed, to  
15 perform operations of any kind or to treat lesions of the human  
16 teeth or jaws or correct malimposed formations thereof;

17 (I) Practicing, or offering or undertaking to practice  
18 dentistry under any firm name or trade name not approved by the  
19 board;

20 (J) Having a professional connection or association with, or  
21 lending his or her name to another, for the illegal practice of  
22 dentistry, or professional connection or association with any

1 person, firm or corporation holding himself or herself, themselves  
2 or itself out in any manner contrary to this article;

3 (K) Making use of any advertising relating to the use of any  
4 drug or medicine of unknown formula;

5 (L) Advertising to practice dentistry or perform any operation  
6 thereunder without causing pain;

7 (M) Advertising professional superiority or the performance of  
8 professional services in a superior manner;

9 (N) Advertising to guarantee any dental service;

10 (O) Advertising in any manner that is false or misleading in  
11 any material respect;

12 (P) Soliciting subscriptions from individuals within or  
13 without the state for, or advertising or offering to individuals  
14 within or without the state, a course or instruction or course  
15 materials in any phase, part or branch of dentistry or dental  
16 hygiene in any journal, newspaper, magazine or dental publication,  
17 or by means of radio, television or United States mail, or in or by  
18 any other means of contacting individuals: *Provided*, That the  
19 provisions of this paragraph may not be construed so as to  
20 prohibit:

21 (I) An individual dentist or dental hygienist from presenting  
22 articles pertaining to procedures or technique to state or national

1 journals or accepted dental publications; or

2       (ii) Educational institutions approved by the board from  
3 offering courses or instruction or course materials to individual  
4 dentists and dental hygienists from within or without the state; or

5       (Q) Engaging in any action or conduct which would have  
6 warranted the denial of the license.

7       (13) Knowing or suspecting that a licensee is incapable of  
8 engaging in the practice of dentistry or dental hygiene, with  
9 reasonable skill, competence and safety to the public, and failing  
10 to report any relevant information to the board;

11       (14) Using or disclosing protected health information in an  
12 unauthorized or unlawful manner;

13       (15) Engaging in any conduct that subverts or attempts to  
14 subvert any licensing examination or the administration of any  
15 licensing examination;

16       (16) Failing to furnish to the board or its representatives  
17 any information legally requested by the board or failing to  
18 cooperate with or engaging in any conduct which obstructs an  
19 investigation being conducted by the board;

20       (17) Announcing or otherwise holding himself or herself out to  
21 the public as a specialist or as being specially qualified in any  
22 particular branch of dentistry or as giving special attention to



1 any branch of dentistry or as limiting his or her practice to any  
2 branch of dentistry without first complying with the requirements  
3 established by the board for the specialty and having been issued  
4 a certificate of qualification in the specialty by the board;

5 (18) Failing to report to the board within seventy-two hours  
6 of becoming aware thereof any life threatening occurrence, serious  
7 injury or death of a patient resulting from dental treatment or  
8 complications following a dental procedure;

9 (19) Failing to report to the board any driving under the  
10 influence and/or driving while intoxicated offense; or

11 (20) Violation of any of the terms or conditions of any order  
12 entered in any disciplinary action.

13 (h) For the purposes of subsection (g) of this section,  
14 effective July 1, 2013, disciplinary action may include:

15 (1) Reprimand;

16 (2) Probation;

17 (3) Restrictions;

18 (4) Suspension;

19 (5) Revocation;

20 (6) Administrative fine, not to exceed \$1,000 per day per  
21 violation;

22 (7) Mandatory attendance at continuing education seminars or

1 other training;

2 (8) Practicing under supervision or other restriction; or

3 (9) Requiring the licensee or permittee to report to the board  
4 for periodic interviews for a specified period of time.

5 (I) In addition to any other sanction imposed, the board may  
6 require a licensee or permittee to pay the costs of the proceeding.

7 (j) A person authorized to practice under this article who  
8 reports or otherwise provides evidence of the negligence,  
9 impairment or incompetence of another member of this profession to  
10 the board or to any peer review organization is not liable to any  
11 person for making the report if the report is made without actual  
12 malice and in the reasonable belief that the report is warranted by  
13 the facts known to him or her at the time.

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

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

20 **§30-14-12a. Initiation of suspension or revocation proceedings**  
21 **allowed and required; reporting of information to**  
22 **board pertaining to professional malpractice and**

1                   **professional incompetence required; penalties;**  
2                   **probable cause determinations.**

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

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

14           (b) Upon request of the board, ~~any~~ a medical peer review  
15 committee in this state shall report any information that may  
16 relate to the practice or performance of ~~any~~ an osteopathic  
17 physician known to that medical peer review committee. Copies of  
18 such requests for information from a medical peer review committee  
19 may be provided to the subject osteopathic physician if, in the  
20 discretion of the board, the provision of such copies will not  
21 jeopardize the board's investigation. In the event that copies are  
22 provided, the subject osteopathic physician has fifteen days to

1 comment on the requested information and ~~such~~ the comments must be  
2 considered by the board.

3       After the completion of a hospital's formal disciplinary  
4 procedure and after any resulting legal action, the chief executive  
5 officer of ~~such~~ the hospital shall report in writing to the board  
6 within sixty days the name of any member of the medical staff or  
7 ~~any~~ other osteopathic physician practicing in the hospital whose  
8 hospital privileges have been revoked, restricted, reduced or  
9 terminated for any cause, including resignation, together with all  
10 pertinent information relating to such action. The chief executive  
11 officer shall also report any other formal disciplinary action  
12 taken against ~~any~~ an osteopathic physician by the hospital upon the  
13 recommendation of its medical staff relating to professional  
14 ethics, medical incompetence, medical malpractice, moral turpitude  
15 or drug or alcohol abuse. Temporary suspension for failure to  
16 maintain records on a timely basis or failure to attend staff or  
17 section meetings need not be reported.

18       Any professional society in this state comprised primarily of  
19 osteopathic physicians or physicians and surgeons of other schools  
20 of medicine which takes formal disciplinary action against a member  
21 relating to professional ethics, professional incompetence,  
22 professional malpractice, moral turpitude or drug or alcohol abuse,

1 shall report in writing to the board within sixty days of a final  
2 decision the name of such member, together with all pertinent  
3 information relating to such action.

4       Every person, partnership, corporation, association, insurance  
5 company, professional society or other organization providing  
6 professional liability insurance to an osteopathic physician in  
7 this state shall submit to the board the following information  
8 within thirty days from any judgment, dismissal or settlement of a  
9 civil action or of any claim involving the insured: The date of  
10 ~~any~~ judgment, dismissal or settlement; whether ~~any~~ an appeal has  
11 been taken on the judgment, and, if so, by which party; the amount  
12 of ~~any~~ settlement or judgment against the insured; and ~~such~~ other  
13 information required by the board.

14       Within thirty days after a person known to be an osteopathic  
15 physician licensed or otherwise lawfully practicing medicine and  
16 surgery in this state, or applying to be licensed, is convicted of  
17 a felony under the laws of this state or of any crime under the  
18 laws of this state involving alcohol or drugs ~~in any way~~, including  
19 ~~any~~ a controlled substance under state or federal law, the clerk of  
20 the court of record in which the conviction was entered shall  
21 forward to the board a certified true and correct abstract of  
22 record of the convicting court. The abstract shall include the

1 name and address of ~~such~~ the osteopathic physician or applicant,  
2 the nature of the offense committed and the final judgment and  
3 sentence of the court.

4       Upon a determination of the board that there is probable cause  
5 to believe that ~~any~~ a person, partnership, corporation,  
6 association, insurance company, professional society or other  
7 organization has failed or refused to make a report required by  
8 this subsection, the board shall provide written notice to the  
9 alleged violator stating the nature of the alleged violation and  
10 the time and place at which the alleged violator shall appear to  
11 show good cause why a civil penalty should not be imposed. The  
12 hearing shall be conducted in accordance with the provisions of  
13 article five, chapter twenty-nine-a of this code. After reviewing  
14 the record of such hearing, if the board determines that a  
15 violation of this subsection has occurred, the board shall assess  
16 a civil penalty of not less than \$1,000 nor more than \$10,000  
17 against such violator. The board shall notify anyone assessed of  
18 the assessment in writing and the notice shall specify the reasons  
19 for the assessment. If the violator fails to pay the amount of the  
20 assessment to the board within thirty days, the Attorney General  
21 may institute a civil action in the circuit court of Kanawha County  
22 to recover the amount of the assessment. In any such civil action,

1 the court's review of the board's action shall be conducted in  
2 accordance with the provisions of section four, article five,  
3 chapter twenty-nine-a of this code.

4 Any person may report to the board relevant facts about the  
5 conduct of any osteopathic physician in this state which in the  
6 opinion of such person amounts to professional malpractice or  
7 professional incompetence.

8 The board shall provide forms for filing reports pursuant to  
9 this section. Reports submitted in other forms shall be accepted  
10 by the board.

11 The filing of a report with the board pursuant to ~~any a~~  
12 provision of this article, ~~any an~~ investigation by the board or ~~any~~  
13 a disposition of a case by the board does not preclude any action  
14 by a hospital, other health care facility or professional society  
15 comprised primarily of osteopathic physicians or physicians and  
16 surgeons of other schools of medicine to suspend, restrict or  
17 revoke the privileges or membership of such osteopathic physician.  
18 Notwithstanding any provision of this code to the contrary, the  
19 board may independently initiate disciplinary proceedings based on  
20 a report or information from an agent or investigator of the Board  
21 of Pharmacy related to data from the Controlled Substances  
22 Monitoring Program.

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

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



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

NOTE: The purpose of this bill is to permit the boards of  
medicine, dentistry and osteopathy to independently initiate  
disciplinary proceedings in certain circumstances; permit the Board  
of Medicine to approve certain decisions, rather than deciding them  
directly as a whole; and increase the number of days within which  
the Board of Medicine can make certain decisions.

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