

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Senate Bill 123

BY SENATOR STOLLINGS

[Passed February 16, 2016; in effect 90 days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §16-4F-1, §16-4F-2, §16-4F-3, §16-4F-4 and §16-4F-5; to amend and reenact
3 §30-3-14 of said code; to amend and reenact §30-3E-17 of said code; to amend and
4 reenact §30-5-14 of said code; to amend and reenact §30-7-11 of said code; and to amend
5 and reenact §30-14-11 of said code, all relating to treatment for sexually transmitted
6 diseases; providing for expedited partner therapy; defining terms; allowing prescribing of
7 antibiotics to sexual partners of patient without prior examination of partner; requiring
8 patient counseling; establishing counseling criteria; requiring informational materials be
9 prepared by the Department of Health and Human Resources; providing limited liability
10 for providing expedited partnership therapy; requiring rulemaking; and providing that
11 physicians, physician assistants, pharmacists and advanced practice registered nurses
12 are not subject to disciplinary action for providing certain treatment for sexually transmitted
13 diseases for sexual partners of patient.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §16-4F-1, §16-4F-2, §16-4F-3, §16-4F-4 and §16-4F-5; that §30-3-14 of said
3 code be amended and reenacted; that §30-3E-17 of said code be amended and reenacted; that
4 §30-5-14 of said code be amended and reenacted; that §30-7-11 of said code be amended and
5 reenacted; and that §30-14-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4F. EXPEDITED PARTNER THERAPY.

§16-4F-1. Definitions.

1 As used in this article, unless the context otherwise indicates, the following terms have the
2 following meanings:

3 (1) "Department" means the West Virginia Department of Health and Human Resources.

4 (2) "Expedited partner therapy" means prescribing, dispensing, furnishing or otherwise
5 providing prescription antibiotic drugs to the sexual partner or partners of a person clinically
6 diagnosed as infected with a sexually transmitted disease without physical examination of the
7 partner or partners.

8 (3) "Health care professional" means:

9 (A) An allopathic physician licensed pursuant to article three, chapter thirty of this code;

10 (B) An osteopathic physician licensed pursuant to article fourteen, chapter thirty of this
11 code;

12 (C) A physician assistant licensed pursuant to section four, article three-e, chapter thirty
13 of this code;

14 (D) An advanced practice registered nurse authorized with prescriptive authority pursuant
15 to section fifteen-a, article seven, chapter thirty of this code; or

16 (E) A pharmacist licensed pursuant to article five, chapter thirty of this code.

17 (4) "Sexually transmitted disease" means a disease that may be treated by expedited
18 partner therapy as determined by rule of the department.

§16-4F-2. Expedited partner therapy.

1 (a) Notwithstanding any other provision of law to the contrary, a health care professional
2 who makes a clinical diagnosis of a sexually transmitted disease may provide expedited partner
3 therapy for the treatment of the sexually transmitted disease if, in the judgment of the health care
4 professional, the sexual partner is unlikely or unable to present for comprehensive health care,
5 including evaluation, testing and treatment for sexually transmitted diseases. Expedited partner
6 therapy is limited to a sexual partner who may have been exposed to a sexually transmitted
7 disease within the previous sixty days and who is able to be contacted by the patient.

8 (b) Any health care professional who provides expedited partner therapy shall comply with
9 all necessary provisions of article four of this chapter.

10 (c) A health care professional who provides expedited partner therapy shall provide
11 counseling for the patient, including advice that all women and symptomatic persons, and in
12 particular women with symptoms suggestive of pelvic inflammatory disease, are encouraged to
13 seek medical attention. The health care professional shall also provide in written or electronic
14 format materials provided by the department to be given by the patient to his or her sexual partner.

§16-4F-3. Informational materials.

1 (a) The department shall provide information and technical assistance as appropriate to
2 health care professionals who provide expedited partner therapy. The department shall develop
3 and disseminate in electronic and other formats the following written materials:

4 (1) Informational materials for sexual partners, as described in subsection (c), section two
5 of this article;

6 (2) Informational materials for persons who are repeatedly diagnosed with sexually
7 transmitted diseases; and

8 (3) Guidance for health care professionals on the safe and effective provision of expedited
9 partner therapy.

10 (b) The department may offer educational programs about expedited partner therapy for
11 health care professionals.

§16-4F-4. Limitation of liability.

1 (a) A health care professional who provides expedited partner therapy in good faith without
2 fee or compensation under this article and provides counseling and written materials as required
3 in subsection (c), section two of this article is not subject to civil or professional liability in
4 connection with the provision of the therapy, counseling and materials, except in the case of gross
5 negligence or willful and wanton misconduct. A health care professional is not subject to civil or
6 professional liability for choosing not to provide expedited partner therapy.

7 (b) A pharmacist or pharmacy is not subject to civil or professional liability for choosing not
8 to fill a prescription that would cause that pharmacist or pharmacy to violate any provision of
9 article five, chapter thirty of this code.

§16-4F-5. Rulemaking.

1 The Secretary of the Department of Health and Human Resources shall propose rules for
2 legislative approval in accordance with article three, chapter twenty-nine-a of this code to
3 designate certain diseases as sexually transmitted diseases which may be treated by expedited
4 partner therapy. The department shall consider the recommendations and classifications of the
5 federal Department of Health and Human Services, Centers for Disease Control and Prevention
6 and other nationally recognized medical authorities in making these designations.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

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 proceedings as well as initiate
2 disciplinary proceedings based on information received from medical peer review committees,
3 physicians, podiatrists, hospital administrators, professional societies and others.

4 The board may initiate investigations as to professional incompetence or other reasons
5 for which a licensed physician or podiatrist may be adjudged unqualified based upon criminal
6 convictions; complaints by citizens, pharmacists, physicians, podiatrists, peer review committees,
7 hospital administrators, professional societies or others; or unfavorable outcomes arising out of
8 medical professional liability. The board shall initiate an investigation if it receives notice that three
9 or more judgments, or any combination of judgments and settlements resulting in five or more

10 unfavorable outcomes arising from medical professional liability have been rendered or made
11 against the physician or podiatrist within a five-year period. The board may not consider any
12 judgments or settlements as conclusive evidence of professional incompetence or conclusive lack
13 of qualification to practice.

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

21 The chief executive officer of every hospital shall, within sixty days after the completion of
22 the hospital's formal disciplinary procedure and also within sixty days after the commencement of
23 and again after the conclusion of any resulting legal action, report in writing to the board the name
24 of any member of the medical staff or any other physician or podiatrist practicing in the hospital
25 whose hospital privileges have been revoked, restricted, reduced or terminated for any cause,
26 including resignation, together with all pertinent information relating to such action. The chief
27 executive officer shall also report any other formal disciplinary action taken against any physician
28 or podiatrist by the hospital upon the recommendation of its medical staff relating to professional
29 ethics, medical incompetence, medical professional liability, moral turpitude or drug or alcohol
30 abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend
31 staff or section meetings need not be reported. Voluntary cessation of hospital privileges for
32 reasons unrelated to professional competence or ethics need not be reported.

33 Any managed care organization operating in this state which provides a formal peer review
34 process shall report in writing to the board, within sixty days after the completion of any formal
35 peer review process and also within sixty days after the commencement of and again after the

36 conclusion of any resulting legal action, the name of any physician or podiatrist whose
37 credentialing has been revoked or not renewed by the managed care organization. The managed
38 care organization shall also report in writing to the board any other disciplinary action taken
39 against a physician or podiatrist relating to professional ethics, professional liability, moral
40 turpitude or drug or alcohol abuse within sixty days after completion of a formal peer review
41 process which results in the action taken by the managed care organization. For purposes of this
42 subsection, "managed care organization" means a plan that establishes, operates or maintains a
43 network of health care providers who have entered into agreements with and been credentialed
44 by the plan to provide health care services to enrollees or insureds to whom the plan has the
45 ultimate obligation to arrange for the provision of or payment for health care services through
46 organizational arrangements for ongoing quality assurance, utilization review programs or dispute
47 resolutions.

48 Any professional society in this state comprised primarily of physicians or podiatrists which
49 takes formal disciplinary action against a member relating to professional ethics, professional
50 incompetence, medical professional liability, moral turpitude or drug or alcohol abuse shall report
51 in writing to the board within sixty days of a final decision the name of the member, together with
52 all pertinent information relating to the action.

53 Every person, partnership, corporation, association, insurance company, professional
54 society or other organization providing professional liability insurance to a physician or podiatrist
55 in this state, including the State Board of Risk and Insurance Management, shall submit to the
56 board the following information within thirty days from any judgment or settlement of a civil or
57 medical professional liability action excepting product liability actions: The name of the insured;
58 the date of any judgment or settlement; whether any appeal has been taken on the judgment and,
59 if so, by which party; the amount of any settlement or judgment against the insured; and other
60 information required by the board.

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

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

73 Upon a determination of the board that there is probable cause to believe that any person,
74 partnership, corporation, association, insurance company, professional society or other
75 organization has failed or refused to make a report required by this subsection, the board shall
76 provide written notice to the alleged violator stating the nature of the alleged violation and the time
77 and place at which the alleged violator shall appear to show good cause why a civil penalty should
78 not be imposed. The hearing shall be conducted in accordance with article five, chapter twenty-
79 nine-a of this code. After reviewing the record of the hearing, if the board determines that a
80 violation of this subsection has occurred, the board shall assess a civil penalty of not less than
81 \$1,000 nor more than \$10,000 against the violator. The board shall notify any person so assessed
82 of the assessment in writing and the notice shall specify the reasons for the assessment. If the
83 violator fails to pay the amount of the assessment to the board within thirty days, the Attorney
84 General may institute a civil action in the circuit court of Kanawha County to recover the amount
85 of the assessment. In any civil action, the court's review of the board's action shall be conducted
86 in accordance with section four, article five, chapter twenty-nine-a of this code. Notwithstanding

87 any other provision of this article to the contrary, when there are conflicting views by recognized
88 experts as to whether any alleged conduct breaches an applicable standard of care, the evidence
89 must be clear and convincing before the board may find that the physician or podiatrist has
90 demonstrated a lack of professional competence to practice with a reasonable degree of skill and
91 safety for patients.

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

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

97 The filing of a report with the board pursuant to any provision of this article, any
98 investigation by the board or any disposition of a case by the board does not preclude any action
99 by a hospital, other health care facility or professional society comprised primarily of physicians
100 or podiatrists to suspend, restrict or revoke the privileges or membership of the physician or
101 podiatrist.

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

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

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

112 (3) False or deceptive advertising;

113 (4) Aiding, assisting, procuring or advising any unauthorized person to practice medicine
114 and surgery or podiatry contrary to law;

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

120 (6) Requesting, receiving or paying directly or indirectly a payment, rebate, refund,
121 commission, credit or other form of profit or valuable consideration for the referral of patients to
122 any person or entity in connection with providing medical or other health care services or clinical
123 laboratory services, supplies of any kind, drugs, medication or any other medical goods, services
124 or devices used in connection with medical or other health care services;

125 (7) Unprofessional conduct by any physician or podiatrist in referring a patient to any
126 clinical laboratory or pharmacy in which the physician or podiatrist has a proprietary interest
127 unless the physician or podiatrist discloses in writing such interest to the patient. The written
128 disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having
129 any laboratory work or assignment performed or any pharmacy for purposes of purchasing any
130 prescribed drug or any other medical goods or devices used in connection with medical or other
131 health care services;

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

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

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

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

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

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

147 (13) Prescribing, dispensing, administering, mixing or otherwise preparing a prescription
148 drug, including any controlled substance under state or federal law, other than in good faith and
149 in a therapeutic manner in accordance with accepted medical standards and in the course of the
150 physician's or podiatrist's professional practice. A physician who discharges his or her
151 professional obligation to relieve the pain and suffering and promote the dignity and autonomy of
152 dying patients in his or her care and, in so doing, exceeds the average dosage of a pain relieving
153 controlled substance, as defined in Schedules II and III of the Uniform Controlled Substance Act,
154 does not violate this article;

155 (14) Performing any procedure or prescribing any therapy that, by the accepted standards
156 of medical practice in the community, would constitute experimentation on human subjects
157 without first obtaining full, informed and written consent;

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

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

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

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

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

170 (20) Professional incompetence; or

171 (21) The inability to practice medicine and surgery or podiatry with reasonable skill and
172 safety due to physical or mental impairment, including deterioration through the aging process,
173 loss of motor skill or abuse of drugs or alcohol. A physician or podiatrist adversely affected under
174 this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that he or
175 she may resume the competent practice of medicine and surgery or podiatry with reasonable skill
176 and safety to patients. In any proceeding under this subdivision, neither the record of proceedings
177 nor any orders entered by the board shall be used against the physician or podiatrist in any other
178 proceeding.

179 (d) The board shall deny any application for a license or other authorization to practice
180 medicine and surgery or podiatry in this state to any applicant who, and shall revoke the license
181 of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is
182 found guilty by any court of competent jurisdiction of any felony involving prescribing, selling,
183 administering, dispensing, mixing or otherwise preparing any prescription drug, including any
184 controlled substance under state or federal law, for other than generally accepted therapeutic
185 purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in the
186 court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the
187 same effect as a verdict or plea of guilt. Upon application of a physician that has had his or her
188 license revoked because of a drug related felony conviction, upon completion of any sentence of
189 confinement, parole, probation or other court-ordered supervision and full satisfaction of any fines,
190 judgments or other fees imposed by the sentencing court, the board may issue the applicant a
191 new license upon a finding that the physician is, except for the underlying conviction, otherwise

192 qualified to practice medicine: *Provided*, That the board may place whatever terms, conditions or
193 limitations it deems appropriate upon a physician licensed pursuant to this subsection.

194 (e) The board may refer any cases coming to its attention to an appropriate committee of
195 an appropriate professional organization for investigation and report. Except for complaints
196 related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by
197 bribery or fraudulent misrepresentation, any complaint filed more than two years after the
198 complainant knew, or in the exercise of reasonable diligence should have known, of the existence
199 of grounds for the complaint shall be dismissed: *Provided*, That in cases of conduct alleged to be
200 part of a pattern of similar misconduct or professional incapacity that, if continued, would pose
201 risks of a serious or substantial nature to the physician's or podiatrist's current patients, the
202 investigating body may conduct a limited investigation related to the physician's or podiatrist's
203 current capacity and qualification to practice and may recommend conditions, restrictions or
204 limitations on the physician's or podiatrist's license to practice that it considers necessary for the
205 protection of the public. Any report shall contain recommendations for any necessary disciplinary
206 measures and shall be filed with the board within ninety days of any referral. The
207 recommendations shall be considered by the board and the case may be further investigated by
208 the board. The board after full investigation shall take whatever action it considers appropriate,
209 as provided in this section.

210 (f) The investigating body, as provided in subsection (e) of this section, may request and
211 the board under any circumstances may require a physician or podiatrist or person applying for
212 licensure or other authorization to practice medicine and surgery or podiatry in this state to submit
213 to a physical or mental examination by a physician or physicians approved by the board. A
214 physician or podiatrist submitting to an examination has the right, at his or her expense, to
215 designate another physician to be present at the examination and make an independent report to
216 the investigating body or the board. The expense of the examination shall be paid by the board.
217 Any individual who applies for or accepts the privilege of practicing medicine and surgery or

218 podiatry in this state is considered to have given his or her consent to submit to all examinations
219 when requested to do so in writing by the board and to have waived all objections to the
220 admissibility of the testimony or examination report of any examining physician on the ground that
221 the testimony or report is privileged communication. If a person fails or refuses to submit to an
222 examination under circumstances which the board finds are not beyond his or her control, failure
223 or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry
224 competently and in compliance with the standards of acceptable and prevailing medical practice.

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

227 (h) In every disciplinary or licensure denial action, the board shall furnish the physician or
228 podiatrist or applicant with written notice setting out with particularity the reasons for its action.
229 Disciplinary and licensure denial hearings shall be conducted in accordance with article five,
230 chapter twenty-nine-a of this code. However, hearings shall be heard upon sworn testimony and
231 the rules of evidence for trial courts of record in this state shall apply to all hearings. A transcript
232 of all hearings under this section shall be made, and the respondent may obtain a copy of the
233 transcript at his or her expense. The physician or podiatrist has the right to defend against any
234 charge by the introduction of evidence, the right to be represented by counsel, the right to present
235 and cross-examine witnesses and the right to have subpoenas and subpoenas duces tecum
236 issued on his or her behalf for the attendance of witnesses and the production of documents. The
237 board shall make all its final actions public. The order shall contain the terms of all action taken
238 by the board.

239 (i) In disciplinary actions in which probable cause has been found by the board, the board
240 shall, within twenty days of the date of service of the written notice of charges or sixty days prior
241 to the date of the scheduled hearing, whichever is sooner, provide the respondent with the
242 complete identity, address and telephone number of any person known to the board with
243 knowledge about the facts of any of the charges; provide a copy of any statements in the

244 possession of or under the control of the board; provide a list of proposed witnesses with
245 addresses and telephone numbers, with a brief summary of his or her anticipated testimony;
246 provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West
247 Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of
248 physical and mental examinations or scientific tests or experiments; and provide a list and copy
249 of any proposed exhibit to be used at the hearing: *Provided*, That the board shall not be required
250 to furnish or produce any materials which contain opinion work product information or would be a
251 violation of the attorney-client privilege. Within twenty days of the date of service of the written
252 notice of charges, the board shall disclose any exculpatory evidence with a continuing duty to do
253 so throughout the disciplinary process. Within thirty days of receipt of the board's mandatory
254 discovery, the respondent shall provide the board with the complete identity, address and
255 telephone number of any person known to the respondent with knowledge about the facts of any
256 of the charges; provide a list of proposed witnesses with addresses and telephone numbers, to
257 be called at hearing, with a brief summary of his or her anticipated testimony; provide disclosure
258 of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil
259 Procedure; provide inspection and copying of the results of any reports of physical and mental
260 examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit
261 to be used at the hearing.

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

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

266 (2) Administer a public reprimand;

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

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

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

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

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

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

279 (k) Notwithstanding the provisions of section eight, article one of this chapter, if the board
280 determines the evidence in its possession indicates that a physician's or podiatrist's continuation
281 in practice or unrestricted practice constitutes an immediate danger to the public, the board may
282 take any of the actions provided in subsection (j) of this section on a temporary basis and without
283 a hearing if institution of proceedings for a hearing before the board are initiated simultaneously
284 with the temporary action and begin within fifteen days of the action. The board shall render its
285 decision within five days of the conclusion of a hearing under this subsection.

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

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

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

295 A person may not practice medicine and surgery or podiatry or deliver health care services
296 in violation of any disciplinary order revoking, suspending or limiting his or her license while any
297 appeal is pending. Within sixty days, the board shall report its final action regarding restriction,
298 limitation, suspension or revocation of the license of a physician or podiatrist, limitation on practice
299 privileges or other disciplinary action against any physician or podiatrist to all appropriate state
300 agencies, appropriate licensed health facilities and hospitals, insurance companies or
301 associations writing medical malpractice insurance in this state, the American Medical
302 Association, the American Podiatry Association, professional societies of physicians or podiatrists
303 in the state and any entity responsible for the fiscal administration of Medicare and Medicaid.

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

309 (n) Any entity, organization or person, including the board, any member of the board, its
310 agents or employees and any entity or organization or its members referred to in this article, any
311 insurer, its agents or employees, a medical peer review committee and a hospital governing
312 board, its members or any committee appointed by it acting without malice and without gross
313 negligence in making any report or other information available to the board or a medical peer
314 review committee pursuant to law and any person acting without malice and without gross
315 negligence who assists in the organization, investigation or preparation of any such report or
316 information or assists the board or a hospital governing body or any committee in carrying out any
317 of its duties or functions provided by law is immune from civil or criminal liability, except that the
318 unlawful disclosure of confidential information possessed by the board is a misdemeanor as
319 provided in this article.

320 (o) A physician or podiatrist may request in writing to the board a limitation on or the
321 surrendering of his or her license to practice medicine and surgery or podiatry or other appropriate
322 sanction as provided in this section. The board may grant the request and, if it considers it
323 appropriate, may waive the commencement or continuation of other proceedings under this
324 section. A physician or podiatrist whose license is limited or surrendered or against whom other
325 action is taken under this subsection may, at reasonable intervals, petition for removal of any
326 restriction or limitation on or for reinstatement of his or her license to practice medicine and
327 surgery or podiatry.

328 (p) In every case considered by the board under this article regarding discipline or
329 licensure, whether initiated by the board or upon complaint or information from any person or
330 organization, the board shall make a preliminary determination as to whether probable cause
331 exists to substantiate charges of disqualification due to any reason set forth in subsection (c) of
332 this section. If probable cause is found to exist, all proceedings on the charges shall be open to
333 the public who are entitled to all reports, records and nondeliberative materials introduced at the
334 hearing, including the record of the final action taken: *Provided*, That any medical records, which
335 were introduced at the hearing and which pertain to a person who has not expressly waived his
336 or her right to the confidentiality of the records, may not be open to the public nor is the public
337 entitled to the records.

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

344 (r) Notwithstanding any other provisions of this article, the board may, at any time, on its
345 own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or

346 by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the
347 West Virginia State Bar's mediator referral service of certified mediators with expertise in
348 professional disciplinary matters. The board and the physician or podiatrist may choose a
349 mediator from that list. If the board and the physician or podiatrist are unable to agree on a
350 mediator, the board shall designate a mediator from the list by neutral rotation. The mediation
351 shall not be considered a proceeding open to the public and any reports and records introduced
352 at the mediation shall not become part of the public record. The mediator and all participants in
353 the mediation shall maintain and preserve the confidentiality of all mediation proceedings and
354 records. The mediator may not be subpoenaed or called to testify or otherwise be subject to
355 process requiring disclosure of confidential information in any proceeding relating to or arising out
356 of the disciplinary or licensure matter mediated: *Provided*, That any confidentiality agreement and
357 any written agreement made and signed by the parties as a result of mediation may be used in
358 any proceedings subsequently instituted to enforce the written agreement. The agreements may
359 be used in other proceedings if the parties agree in writing.

360 (s) A physician licensed under this article may not be disciplined for providing expedited
361 partner therapy in accordance with article four-f, chapter sixteen of this code.

ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.

§30-3E-17. Complaint process.

1 (a) All hearings and procedures related to denial of a license, and all complaints,
2 investigations, hearings and procedures a physician assistant licenses and the discipline
3 accorded thereto, shall be in accordance with the processes and procedures set forth in articles
4 three and/or fourteen of this chapter, depending on which board licenses the physician assistant.

5 (b) The boards may impose the same discipline, restrictions and/or limitations upon the
6 license of a physician assistant as they are authorized to impose upon physicians and/or
7 podiatrists.

8 (c) The boards shall direct to the appropriate licensing board a complaint against a
9 physician assistant, a supervising physician and/or an alternate supervising physician.

10 (d) In the event that independent complaint processes are warranted by the boards with
11 respect to the professional conduct of a physician assistant or a supervising and/or alternate
12 supervising physician, the boards are authorized to work cooperatively and to disclose to one
13 another information which may assist the recipient appropriate licensing board in its disciplinary
14 process. The determination of what information, if any, to disclose shall be at the discretion of the
15 disclosing board.

16 (e) A physician assistant licensed under this article may not be disciplined for providing
17 expedited partner therapy in accordance with article four-f, chapter sixteen of this code.

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS
AND PHARMACIES.**

**§30-5-14. Prohibiting the dispensing of prescription orders in absence of practitioner-
patient relationship.**

1 A pharmacist may not compound or dispense any prescription order when he or she has
2 knowledge that the prescription was issued by a practitioner without establishing a valid
3 practitioner-patient relationship. An online or telephonic evaluation by questionnaire, or an online
4 or telephonic consultation, is inadequate to establish a valid practitioner-patient relationship:
5 *Provided*, That this prohibition does not apply:

- 6 (1) In a documented emergency;
- 7 (2) In an on-call or cross-coverage situation;
- 8 (3) For the treatment of sexually transmitted diseases by expedited partner therapy as set
9 forth in article four-f, chapter sixteen of this code; or
- 10 (4) Where patient care is rendered in consultation with another practitioner who has an
11 ongoing relationship with the patient and who has agreed to supervise the patient's treatment,
12 including the use of any prescribed medications.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-11. Denial, revocation or suspension of license; grounds for discipline.

1 (a) The board shall have the power to deny, revoke or suspend any license to practice
2 registered professional nursing issued or applied for in accordance with the provisions of this
3 article, or to otherwise discipline a licensee or applicant upon proof that he or she:

4 (1) Is or was guilty of fraud or deceit in procuring or attempting to procure a license to
5 practice registered professional nursing; or

6 (2) Has been convicted of a felony; or

7 (3) Is unfit or incompetent by reason of negligence, habits or other causes; or

8 (4) Is habitually intemperate or is addicted to the use of habit-forming drugs; or

9 (5) Is mentally incompetent; or

10 (6) Is guilty of conduct derogatory to the morals or standing of the profession of registered
11 nursing; or

12 (7) Is practicing or attempting to practice registered professional nursing without a license
13 or reregistration; or

14 (8) Has willfully or repeatedly violated any of the provisions of this article.

15 (b) An Advanced practice registered nurse licensed under this article may not be
16 disciplined for providing expedited partner therapy in accordance with article four-f, chapter
17 sixteen of this code.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

**§30-14-11. Refusal, suspension or revocation of license; suspension or revocation of
certificate of authorization.**

1 (a) The board may either refuse to issue or may suspend or revoke any license for any
2 one or more of the following causes:

3 (1) Conviction of a felony, as shown by a certified copy of the record of the trial court;

4 (2) Conviction of a misdemeanor involving moral turpitude;

5 (3) Violation of any provision of this article regulating the practice of osteopathic physicians
6 and surgeons;

7 (4) Fraud, misrepresentation or deceit in procuring or attempting to procure admission to
8 practice;

9 (5) Gross malpractice;

10 (6) Advertising by means of knowingly false or deceptive statements;

11 (7) Advertising, practicing or attempting to practice under a name other than one's own;

12 (8) Habitual drunkenness, or habitual addiction to the use of morphine, cocaine or other
13 habit-forming drugs.

14 (b) The board shall also have the power to suspend or revoke for cause any certificate of
15 authorization issued by it. It shall have the power to reinstate any certificate of authorization
16 suspended or revoked by it.

17 (c) An osteopathic physician licensed under this article may not be disciplined for providing
18 expedited partner therapy in accordance with article four-f, chapter sixteen of this code.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2016.

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Governor