

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2628

FISCAL
NOTE

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STORCH, LEWIS AND MAYNARD

[Introduced February 21, 2017; Referred
to the Committee on Health and Human Resources
then Government Organization.]

1 A BILL to amend and reenact §30-3-12 and §30-3-14 of the Code of West Virginia, 1931, as
 2 amended; and to amend and reenact §30-14-11 and §30-14-12a of said code, all relating
 3 generally to the powers and duties of the Board of Medicine and the Board of Osteopathic
 4 Medicine with regard to evidence of serious misconduct of individuals subject to the
 5 boards' jurisdiction; authorizing the Board of Medicine to deny a license to any applicant
 6 who has been convicted of a felony; requiring the Board of Osteopathic Medicine to revoke
 7 a license when an osteopathic physician or physician's assistant is convicted of a felony
 8 involving prescription drugs; authorizing the Board of Medicine to order a permanent
 9 revocation of license when warranted by evidence; specifying additional disciplinary and
 10 restorative powers for the Board of Osteopathic Medicine; clarifying that these boards may
 11 impose disciplinary sanctions when license knowingly fails to report the gross misconduct
 12 of another licensee; and requiring the boards to refer information to law enforcement and
 13 prosecuting authorities when a board has reason to believe a crime has occurred.

Be it enacted by the Legislature of West Virginia:

1 That §30-3-12 and §30-3-14 of the Code of West Virginia, 1931, as amended, be amended
 2 and reenacted; and that §30-14-11 and §30-14-12a of said code be amended and reenacted, all
 3 to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

**§30-3-12. Biennial renewal of license to practice medicine and surgery or podiatry;
 continuing education; rules; fee; inactive license; denial for conviction of felony
 offense.**

1 (a) A license to practice medicine and surgery or podiatry in this state is valid for a term of
 2 two years.

3 (b) The license shall be renewed:

4 (1) Upon receipt of a reasonable fee, as set by the board;

5 (2) Submission of an application on forms provided by the board; and

6 (3) A certification of participation in and successful completion of a minimum of fifty hours
7 of continuing medical or podiatric education satisfactory to the board, as appropriate to the
8 particular license, during the preceding two-year period.

9 (c) The application may not require disclosure of a voluntary agreement entered into
10 pursuant to subsection (h), section nine of this article.

11 (d) Continuing medical education satisfactory to the board is continuing medical education
12 designated as Category I by the American Medical Association or the Academy of Family
13 Physicians and alternate categories approved by the board.

14 (e) Continuing podiatric education satisfactory to the board is continuing podiatric
15 education approved by the Council on Podiatric Education and alternate categories approved by
16 the board.

17 (f) Notwithstanding any provision of this chapter to the contrary, beginning July 1, 2007,
18 failure to timely submit to the board a certification of successful completion of a minimum of fifty
19 hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the
20 particular license, shall result in the automatic expiration of any license to practice medicine and
21 surgery or podiatry until such time as the certification, with all supporting written documentation,
22 is submitted to and approved by the board.

23 (g) If a license is automatically expired and reinstatement is sought within one year of the
24 automatic expiration, the former licensee shall:

25 (1) Provide certification with supporting written documentation of the successful
26 completion of the required continuing education;

27 (2) Pay a renewal fee; and

28 (3) Pay a reinstatement fee equal to fifty percent of the renewal fee.

29 (h) If a license is automatically expired and more than one year has passed since the
30 automatic expiration, the former licensee shall:

31 (1) Apply for a new license;

32 (2) Provide certification with supporting written documentation of the successful
33 completion of the required continuing education; and

34 (3) Pay such fees as determined by the board.

35 (i) Any individual who accepts the privilege of practicing medicine and surgery or podiatry
36 in this state is required to provide supporting written documentation of the continuing education
37 represented as received within thirty days of receipt of a written request to do so by the board. If
38 a licensee fails or refuses to provide supporting written documentation of the continuing education
39 represented as received as required in this section, such failure or refusal to provide supporting
40 written documentation is prima facie evidence of renewing a license to practice medicine and
41 surgery or podiatry by fraudulent misrepresentation.

42 (j) The board may renew, on an inactive basis, the license of a physician or podiatrist who
43 is currently licensed to practice medicine and surgery or podiatry in, but is not actually practicing,
44 medicine and surgery or podiatry in this state. A physician or podiatrist holding an inactive license
45 shall not practice medicine and surgery or podiatry in this state.

46 (k) An inactive license may be converted by the board to an active license upon a written
47 request by the licensee to the board that:

48 (1) Accounts for his or her period of inactivity to the satisfaction of the board; and

49 (2) Submits written documentation of participation in and successful completion of a
50 minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as
51 appropriate to the particular license, during each preceding two-year period.

52 (l) An inactive license may be obtained upon receipt of a reasonable fee, as set by the
53 board, and submission of an application on forms provided by the board on a biennial basis.

54 (m) The board may not require any physician or podiatrist who is retired or retiring from
55 the active practice of medicine and surgery or the practice of podiatry and who is voluntarily
56 surrendering their license to return to the board the license certificate issued to them by the board.

57 (n) The board may deny or refuse to reissue a license to any person who has been

58 convicted of a felony under the laws of this state, any other state, the United States or the laws of
59 any other country or state outside of the United States.

§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; referral to law enforcement authorities.

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; or

179 (22) Knowingly failing to report to the board any act of gross misconduct committed by
180 another licensee of the board.

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

196 (e) The board may refer any cases coming to its attention to an appropriate committee of
197 an appropriate professional organization for investigation and report. Except for complaints
198 related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by
199 bribery or fraudulent misrepresentation, any complaint filed more than two years after the

200 complainant knew, or in the exercise of reasonable diligence should have known, of the existence
201 of grounds for the complaint shall be dismissed: *Provided*, That in cases of conduct alleged to be
202 part of a pattern of similar misconduct or professional incapacity that, if continued, would pose
203 risks of a serious or substantial nature to the physician's or podiatrist's current patients, the
204 investigating body may conduct a limited investigation related to the physician's or podiatrist's
205 current capacity and qualification to practice and may recommend conditions, restrictions or
206 limitations on the physician's or podiatrist's license to practice that it considers necessary for the
207 protection of the public. Any report shall contain recommendations for any necessary disciplinary
208 measures and shall be filed with the board within ninety days of any referral. The
209 recommendations shall be considered by the board and the case may be further investigated by
210 the board. The board after full investigation shall take whatever action it considers appropriate,
211 as provided in this section.

212 (f) The investigating body, as provided in subsection (e) of this section, may request and
213 the board under any circumstances may require a physician or podiatrist or person applying for
214 licensure or other authorization to practice medicine and surgery or podiatry in this state to submit
215 to a physical or mental examination by a physician or physicians approved by the board. A
216 physician or podiatrist submitting to an examination has the right, at his or her expense, to
217 designate another physician to be present at the examination and make an independent report to
218 the investigating body or the board. The expense of the examination shall be paid by the board.
219 Any individual who applies for or accepts the privilege of practicing medicine and surgery or
220 podiatry in this state is considered to have given his or her consent to submit to all examinations
221 when requested to do so in writing by the board and to have waived all objections to the
222 admissibility of the testimony or examination report of any examining physician on the ground that
223 the testimony or report is privileged communication. If a person fails or refuses to submit to an
224 examination under circumstances which the board finds are not beyond his or her control, failure
225 or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry

226 competently and in compliance with the standards of acceptable and prevailing medical practice.

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

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

241 (i) In disciplinary actions in which probable cause has been found by the board, the board
242 shall, within twenty days of the date of service of the written notice of charges or sixty days prior
243 to the date of the scheduled hearing, whichever is sooner, provide the respondent with the
244 complete identity, address and telephone number of any person known to the board with
245 knowledge about the facts of any of the charges; provide a copy of any statements in the
246 possession of or under the control of the board; provide a list of proposed witnesses with
247 addresses and telephone numbers, with a brief summary of his or her anticipated testimony;
248 provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West
249 Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of
250 physical and mental examinations or scientific tests or experiments; and provide a list and copy
251 of any proposed exhibit to be used at the hearing: *Provided*, That the board shall not be required

252 to furnish or produce any materials which contain opinion work product information or would be a
253 violation of the attorney-client privilege. Within twenty days of the date of service of the written
254 notice of charges, the board shall disclose any exculpatory evidence with a continuing duty to do
255 so throughout the disciplinary process. Within thirty days of receipt of the board's mandatory
256 discovery, the respondent shall provide the board with the complete identity, address and
257 telephone number of any person known to the respondent with knowledge about the facts of any
258 of the charges; provide a list of proposed witnesses with addresses and telephone numbers, to
259 be called at hearing, with a brief summary of his or her anticipated testimony; provide disclosure
260 of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil
261 Procedure; provide inspection and copying of the results of any reports of physical and mental
262 examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit
263 to be used at the hearing.

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

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

268 (2) Administer a public reprimand;

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

272 (4) Revoke his or her license or other authorization to practice medicine and surgery or
273 podiatry or to prescribe or dispense controlled substances for ~~a period not to exceed ten years~~
274 any period of time, including for the life of the licensee, that the board may find to be reasonable
275 and necessary according to evidence presented in a hearing before the board or its designee;

276 (5) Require him or her to submit to care, counseling or treatment designated by the board
277 as a condition for initial or continued licensure or renewal of licensure or other authorization to

278 practice medicine and surgery or podiatry;

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

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

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

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

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

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

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

299 A person may not practice medicine and surgery or podiatry or deliver health care services
300 in violation of any disciplinary order revoking, suspending or limiting his or her license while any
301 appeal is pending. Within sixty days, the board shall report its final action regarding restriction,
302 limitation, suspension or revocation of the license of a physician or podiatrist, limitation on practice
303 privileges or other disciplinary action against any physician or podiatrist to all appropriate state

304 agencies, appropriate licensed health facilities and hospitals, insurance companies or
305 associations writing medical malpractice insurance in this state, the American Medical
306 Association, the American Podiatry Association, professional societies of physicians or podiatrists
307 in the state and any entity responsible for the fiscal administration of Medicare and Medicaid.

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

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

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

330 restriction or limitation on or for reinstatement of his or her license to practice medicine and
331 surgery or podiatry.

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

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

348 (r) Notwithstanding any other provisions of this article, the board may, at any time, on its
349 own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or
350 by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the
351 West Virginia State Bar's mediator referral service of certified mediators with expertise in
352 professional disciplinary matters. The board and the physician or podiatrist may choose a
353 mediator from that list. If the board and the physician or podiatrist are unable to agree on a
354 mediator, the board shall designate a mediator from the list by neutral rotation. The mediation
355 shall not be considered a proceeding open to the public and any reports and records introduced

356 at the mediation shall not become part of the public record. The mediator and all participants in
357 the mediation shall maintain and preserve the confidentiality of all mediation proceedings and
358 records. The mediator may not be subpoenaed or called to testify or otherwise be subject to
359 process requiring disclosure of confidential information in any proceeding relating to or arising out
360 of the disciplinary or licensure matter mediated: *Provided*, That any confidentiality agreement and
361 any written agreement made and signed by the parties as a result of mediation may be used in
362 any proceedings subsequently instituted to enforce the written agreement. The agreements may
363 be used in other proceedings if the parties agree in writing.

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

366 (t) Whenever the board receives credible information that a licensee of the board is
367 engaging or has engaged in criminal activity or the commitment of a crime under state or federal
368 law, the board shall report the information, to the extent that sensitive or confidential information
369 may be publicly disclosed under law, to the appropriate state or federal law-enforcement authority
370 and/or prosecuting authority. This duty exists in addition to and is distinct from the reporting
371 required under federal law for reporting actions relating to health care providers to the United
372 States Department of Health and Human Services.

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 and may
2 fine a licensee and may order restitution or rehabilitative action by a licensee for any one or more
3 of the following causes:

4 (1) Conviction of a felony, as shown by a certified copy of the record of the trial court:
5 Provided, That when the conviction is for an offense that involves the transfer, delivery or illicit
6 possession of prescription drugs, the board shall revoke or refuse to issue the license of the

7 convicted physician or physician's assistant for a period of time until the physician or physician
8 assistant demonstrates a record of rehabilitation and that he or she has the integrity, moral
9 character and professional competence to practice in this state;

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

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

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

15 (5) Gross malpractice;

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

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

18 (8) Habitual drunkenness, or habitual addiction to the use of morphine, cocaine or other
19 habit-forming drugs; and

20 (9) Knowingly failing to report to the board any act of gross misconduct committed by
21 another licensee of the board.

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

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

**§30-14-12a. Initiation of suspension or revocation proceedings allowed and required;
reporting of information to board pertaining to professional malpractice and
professional incompetence required; penalties; probable cause
determinations; referrals to law enforcement authorities.**

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

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

8 (b) Upon request of the board, any medical peer review committee in this state shall report
9 any information that may relate to the practice or performance of any osteopathic physician known
10 to that medical peer review committee. Copies of such requests for information from a medical
11 peer review committee may be provided to the subject osteopathic physician if, in the discretion
12 of the board, the provision of such copies will not jeopardize the board's investigation. In the event
13 that copies are provided, the subject osteopathic physician has fifteen days to comment on the
14 requested information and such comments must be considered by the board.

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

25 Any professional society in this state comprised primarily of osteopathic physicians or
26 physicians and surgeons of other schools of medicine which takes formal disciplinary action
27 against a member relating to professional ethics, professional incompetence, professional
28 malpractice, moral turpitude or drug or alcohol abuse, shall report in writing to the board within

29 sixty days of a final decision the name of such member, together with all pertinent information
30 relating to such action.

31 Every person, partnership, corporation, association, insurance company, professional
32 society or other organization providing professional liability insurance to an osteopathic physician
33 in this state shall submit to the board the following information within thirty days from any
34 judgment, dismissal or settlement of a civil action or of any claim involving the insured: The date
35 of any judgment, dismissal or settlement; whether any appeal has been taken on the judgment,
36 and, if so, by which party; the amount of any settlement or judgment against the insured; and such
37 other information required by the board.

38 Within thirty days after a person known to be an osteopathic physician licensed or
39 otherwise lawfully practicing medicine and surgery in this state or applying to be licensed is
40 convicted of a felony under the laws of this state, or of any crime under the laws of this state
41 involving alcohol or drugs in any way, including any controlled substance under state or federal
42 law, the clerk of the court of record in which the conviction was entered shall forward to the board
43 a certified true and correct abstract of record of the convicting court. The abstract shall include
44 the name and address of such osteopathic physician or applicant, the nature of the offense
45 committed and the final judgment and sentence of the court.

46 Upon a determination of the board that there is probable cause to believe that any person,
47 partnership, corporation, association, insurance company, professional society or other
48 organization has failed or refused to make a report required by this subsection, the board shall
49 provide written notice to the alleged violator stating the nature of the alleged violation and the time
50 and place at which the alleged violator shall appear to show good cause why a civil penalty should
51 not be imposed. The hearing shall be conducted in accordance with the provisions of article five,
52 chapter twenty-nine-a of this code. After reviewing the record of such hearing, if the board
53 determines that a violation of this subsection has occurred, the board shall assess a civil penalty
54 of not less than \$1,000 nor more than \$10,000 against such violator. The board shall notify anyone

55 assessed of the assessment in writing and the notice shall specify the reasons for the
56 assessment. If the violator fails to pay the amount of the assessment to the board within thirty
57 days, the Attorney General may institute a civil action in the circuit court of Kanawha County to
58 recover the amount of the assessment. In any such civil action, the court's review of the board's
59 action shall be conducted in accordance with the provisions of section four, article five, chapter
60 twenty-nine-a of this code.

61 Any person may report to the board relevant facts about the conduct of any osteopathic
62 physician in this state which in the opinion of such person amounts to professional malpractice or
63 professional incompetence.

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

66 The filing of a report with the board pursuant to any provision of this article, any
67 investigation by the board or any disposition of a case by the board does not preclude any action
68 by a hospital, other health care facility or professional society comprised primarily of osteopathic
69 physicians or physicians and surgeons of other schools of medicine to suspend, restrict or revoke
70 the privileges or membership of such osteopathic physician.

71 (c) In every case considered by the board under this article regarding suspension,
72 revocation or issuance of a license whether initiated by the board or upon complaint or information
73 from any person or organization, the board shall make a preliminary determination as to whether
74 probable cause exists to substantiate charges of cause to suspend, revoke or refuse to issue a
75 license as set forth in subsection (a), section eleven of this article. If such probable cause is found
76 to exist, all proceedings on such charges shall be open to the public who are entitled to all reports,
77 records, and nondeliberative materials introduced at such hearing, including the record of the final
78 action taken: *Provided*, That any medical records, which were introduced at such hearing and
79 which pertain to a person who has not expressly waived his or her right to the confidentiality of
80 such records, shall not be open to the public nor is the public entitled to such records. If a finding

81 is made that probable cause does not exist, the public has a right of access to the complaint or
82 other document setting forth the charges, the findings of fact and conclusions supporting such
83 finding that probable cause does not exist, if the subject osteopathic physician consents to such
84 access.

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

91 (e) Whenever the board receives credible information that a licensee of the board is
92 engaging or has engaged in criminal activity or the commitment of a crime under state or federal
93 law, the board shall report the information, to the extent that sensitive or confidential information
94 may be publicly disclosed under law, to the appropriate state or federal law-enforcement authority
95 and/or prosecuting authority. This duty exists in addition to and is distinct from the reporting
96 required under federal law for reporting actions relating to health care providers to the United
97 States Department of Health and Human Services.

NOTE: The purpose of this bill is to clarify and strengthen the duties and powers of the Board of Medicine and the Board of Osteopathic Medicine with regard to evidence of serious misconduct by licensees and applicants for license under their respective jurisdictions.

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