

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4481

BY DELEGATES HOWELL, SUMMERS, BATES, ROHRBACH,
ELLINGTON, SHOTT, HAMRICK, STATLER, HILL AND FRICH

[Introduced February 9, 2018; Referred
to the Committee on Health and Human Resources
then Government Organization.]

1 A BILL to amend and reenact §30-1-5 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §30-3-14 of said code; to amend and reenact §30-7-11 of said code; to amend
 3 and reenact §30-7A-10 of said code; and to amend and reenact §30-14-11 of said code,
 4 all relating to the addition of mandatory, inter-board reporting by licensees or registrants
 5 of the boards of medicine, osteopathic medicine, registered professional nursing, and
 6 practical nursing so that licensees or registrants of those boards must report the
 7 professional incompetence or inability to practice of any licensee or registrant of any of
 8 those boards.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF
 EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.**

§30-1-5. Meetings; quorum; investigatory powers; duties.

1 (a) Every board referred to in this chapter shall hold at least one meeting each year, at
 2 such time and place as it may prescribe by rule, for the examination of applicants who desire to
 3 practice their respective professions or occupations in this state and to transact any other
 4 business which may legally come before it. The board may hold additional meetings as may be
 5 necessary, which shall be called by the secretary at the direction of the president or upon the
 6 written request of any three members. A majority of the members of the board constitutes a
 7 quorum for the transaction of its business.

8 (b) The board may compel the attendance of witnesses, to issue subpoenas, to conduct
 9 investigations and hire an investigator and to take testimony and other evidence concerning any
 10 matter within its jurisdiction. The president and secretary of the board may administer oaths for
 11 these purposes.

12 (c) Every board referred to in this chapter shall investigate and resolve complaints which
 13 it receives and shall, within six months of the complaint being filed, send a status report to the

14 party filing the complaint and the respondent by certified mail with a signed return receipt and
15 within one year of the status report's return receipt date issue a final ruling, unless the party filing
16 the complaint and the board agree in writing to extend the time for the final ruling. The time period
17 for final ruling shall be tolled for any delay requested or caused by the respondent or by counsel
18 for the respondent and in no event shall a complaint proceeding be dismissed for exceeding the
19 time standards in this section when such overage is the result of procedural delay or obstructive
20 action by the accused or his or her counsel or agents.

21 (d) Every board shall provide public access to the record of the disposition of the
22 complaints which it receives in accordance with the provisions of chapter twenty-nine-b of this
23 code, and shall provide public access on a website to all completed disciplinary actions in which
24 discipline was ordered. If a board is unable to provide access, the Attorney General shall provide
25 a link to this information on the consumer protection division website, together with a link to the
26 website of all other boards subject to this chapter. Every board shall report violations of individual
27 practice acts contained in this chapter to the board by which the individual may be licensed and
28 shall do so in a timely manner upon receiving notice of the violations. Every person licensed or
29 registered by a board shall report to the board which licenses or registers him or her a known or
30 observed violation of the practice act or the board's rules by any other person licensed or
31 registered by the same board, or a person licensed or registered by another board who is
32 incompetent or unable to practice as set forth in §30-3-14(c)(23), §30-7-11(a)(9), §30-7A-10(7),
33 or §30-14-11(a)(10), and shall do so in a timely manner. Law-enforcement agencies or their
34 personnel and courts shall report in a timely manner to the appropriate board any violations of
35 individual practice acts by any individual.

36 (e) Whenever a board referred to in this chapter obtains information that a person subject
37 to its authority has engaged in, is engaging in or is about to engage in any act which constitutes
38 or will constitute a violation of the provisions of this chapter which are administered and enforced
39 by that board, it may apply to the circuit court for an order enjoining the act. Upon a showing that

40 the person has engaged, is engaging or is about to engage in any such act, the court shall order
41 an injunction, restraining order or other order as the court may deem appropriate.

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; 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 15 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 60 days after the completion of
22 the hospital's formal disciplinary procedure and also within 60 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 60 days after the completion of any formal peer
35 review process and also within 60 days after the commencement of and again after the conclusion
36 of any resulting legal action, the name of any physician or podiatrist whose credentialing has been
37 revoked or not renewed by the managed care organization. The managed care organization shall
38 also report in writing to the board any other disciplinary action taken against a physician or
39 podiatrist relating to professional ethics, professional liability, moral turpitude or drug or alcohol
40 abuse within 60 days after completion of a formal peer review process which results in the action
41 taken by the managed care organization. For purposes of this subsection, "managed care
42 organization" means a plan that establishes, operates or maintains a network of health care

43 providers who have entered into agreements with and been credentialed by the plan to provide
44 health care services to enrollees or insureds to whom the plan has the ultimate obligation to
45 arrange for the provision of or payment for health care services through organizational
46 arrangements for ongoing quality assurance, utilization review programs or dispute resolutions.

47 Any professional society in this state comprised primarily of physicians or podiatrists which
48 takes formal disciplinary action against a member relating to professional ethics, professional
49 incompetence, medical professional liability, moral turpitude or drug or alcohol abuse shall report
50 in writing to the board within 60 days of a final decision the name of the member, together with all
51 pertinent information relating to the action.

52 Every person, partnership, corporation, association, insurance company, professional
53 society or other organization providing professional liability insurance to a physician or podiatrist
54 in this state, including the state Board of Risk and Insurance Management, shall submit to the
55 board the following information within 30 days from any judgment or settlement of a civil or medical
56 professional liability action excepting product liability actions: The name of the insured; the date
57 of any judgment or settlement; whether any appeal has been taken on the judgment and, if so, by
58 which party; the amount of any settlement or judgment against the insured; and other information
59 required by the board.

60 Within 30 days from the entry of an order by a court in a medical professional liability
61 action or other civil action in which a physician or podiatrist licensed by the board is determined
62 to have rendered health care services below the applicable standard of care, the clerk of the court
63 in which the order was entered shall forward a certified copy of the order to the board.

64 Within 30 days after a person known to be a physician or podiatrist licensed or otherwise
65 lawfully practicing medicine and surgery or podiatry in this state or applying to be licensed is
66 convicted of a felony under the laws of this state or of any crime under the laws of this state
67 involving alcohol or drugs in any way, including any controlled substance under state or federal
68 law, the clerk of the court of record in which the conviction was entered shall forward to the board

69 a certified true and correct abstract of record of the convicting court. The abstract shall include
70 the name and address of the physician or podiatrist or applicant, the nature of the offense
71 committed and the final judgment and sentence of the court.

72 Upon a determination of the board that there is probable cause to believe that any person,
73 partnership, corporation, association, insurance company, professional society or other
74 organization has failed or refused to make a report required by this subsection, the board shall
75 provide written notice to the alleged violator stating the nature of the alleged violation and the time
76 and place at which the alleged violator shall appear to show good cause why a civil penalty should
77 not be imposed. The hearing shall be conducted in accordance with §29A-5-1 *et seq.* of this code.
78 After reviewing the record of the hearing, if the board determines that a violation of this subsection
79 has occurred, the board shall assess a civil penalty of not less than \$1,000 nor more than \$10,000
80 against the violator. The board shall notify any person so assessed of the assessment in writing
81 and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount
82 of the assessment to the board within 30 days, the Attorney General may institute a civil action in
83 the circuit court of Kanawha County to recover the amount of the assessment. In any civil action,
84 the court's review of the board's action shall be conducted in accordance with §29A-5-4 of this
85 code. Notwithstanding any other provision of this article to the contrary, when there are conflicting
86 views by recognized experts as to whether any alleged conduct breaches an applicable standard
87 of care, the evidence must be clear and convincing before the board may find that the physician
88 or podiatrist has demonstrated a lack of professional competence to practice with a reasonable
89 degree of skill and safety for patients.

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

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

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

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

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

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

110 (3) False or deceptive advertising;

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

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

118 (6) Requesting, receiving or paying directly or indirectly a payment, rebate, refund,
119 commission, credit or other form of profit or valuable consideration for the referral of patients to
120 any person or entity in connection with providing medical or other health care services or clinical

121 laboratory services, supplies of any kind, drugs, medication or any other medical goods, services
122 or devices used in connection with medical or other health care services;

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

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

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

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

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

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

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

145 (13) Prescribing, dispensing, administering, mixing, or otherwise preparing a prescription
146 drug, including any controlled substance under state or federal law, other than in good faith and

147 in a therapeutic manner in accordance with accepted medical standards and in the course of the
148 physician's or podiatrist's professional practice. A physician who discharges his or her
149 professional obligation to relieve the pain and suffering and promote the dignity and autonomy of
150 dying patients in his or her care and, in so doing, exceeds the average dosage of a pain relieving
151 controlled substance, as defined in Schedules II and III of the Uniform Controlled Substance Act,
152 does not violate this article;

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

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

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

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

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

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

168 (20) Professional incompetence;

169 (21) The inability to practice medicine and surgery or podiatry with reasonable skill and
170 safety due to physical or mental impairment, including deterioration through the aging process,
171 loss of motor skill, or abuse of drugs or alcohol. A physician or podiatrist adversely affected under
172 this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that he or

173 she may resume the competent practice of medicine and surgery or podiatry with reasonable skill
174 and safety to patients. In any proceeding under this subdivision, neither the record of proceedings
175 nor any orders entered by the board shall be used against the physician or podiatrist in any other
176 proceeding; ~~or~~

177 (22) Knowingly failing to report to the board any act of gross misconduct committed by
178 another licensee of the board; or

179 (23) Knowingly failing to report to the board any person licensed or registered under this
180 article, §30-7-1 et seq., §30-7A-1 et seq., or §30-14-1 et seq. of this code who is known or
181 observed to be professionally incompetent or is unable to practice with reasonable skill and safety
182 due to physical or mental impairment, including deterioration through the aging process, loss of
183 motor skills, or abuse of drugs or alcohol.

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

199 (e) The board may refer any cases coming to its attention to an appropriate committee of
200 an appropriate professional organization for investigation and report. Except for complaints
201 related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by
202 bribery or fraudulent misrepresentation, any complaint filed more than two years after the
203 complainant knew, or in the exercise of reasonable diligence should have known, of the existence
204 of grounds for the complaint shall be dismissed: *Provided*, That in cases of conduct alleged to be
205 part of a pattern of similar misconduct or professional incapacity that, if continued, would pose
206 risks of a serious or substantial nature to the physician's or podiatrist's current patients, the
207 investigating body may conduct a limited investigation related to the physician's or podiatrist's
208 current capacity and qualification to practice and may recommend conditions, restrictions or
209 limitations on the physician's or podiatrist's license to practice that it considers necessary for the
210 protection of the public. Any report shall contain recommendations for any necessary disciplinary
211 measures and shall be filed with the board within 90 days of any referral. The recommendations
212 shall be considered by the board and the case may be further investigated by the board. The
213 board, after full investigation, shall take whatever action it considers appropriate, as provided in
214 this section.

215 (f) The investigating body, as provided in subsection (e) of this section, may request and
216 the board under any circumstances may require a physician or podiatrist or person applying for
217 licensure or other authorization to practice medicine and surgery or podiatry in this state to submit
218 to a physical or mental examination by a physician or physicians approved by the board. A
219 physician or podiatrist submitting to an examination has the right, at his or her expense, to
220 designate another physician to be present at the examination and make an independent report to
221 the investigating body or the board. The expense of the examination shall be paid by the board.
222 Any individual who applies for or accepts the privilege of practicing medicine and surgery or
223 podiatry in this state is considered to have given his or her consent to submit to all examinations
224 when requested to do so in writing by the board and to have waived all objections to the

225 admissibility of the testimony or examination report of any examining physician on the ground that
226 the testimony or report is privileged communication. If a person fails or refuses to submit to an
227 examination under circumstances which the board finds are not beyond his or her control, failure
228 or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry
229 competently and in compliance with the standards of acceptable and prevailing medical practice.

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

232 (h) In every disciplinary or licensure denial action, the board shall furnish the physician or
233 podiatrist or applicant with written notice setting out with particularity the reasons for its action.
234 Disciplinary and licensure denial hearings shall be conducted in accordance with §29A-5-1 *et seq.*
235 of this code. However, hearings shall be heard upon sworn testimony and the rules of evidence
236 for trial courts of record in this state shall apply to all hearings. A transcript of all hearings under
237 this section shall be made, and the respondent may obtain a copy of the transcript at his or her
238 expense. The physician or podiatrist has the right to defend against any charge by the introduction
239 of evidence, the right to be represented by counsel, the right to present and cross-examine
240 witnesses and the right to have subpoenas and subpoenas duces tecum issued on his or her
241 behalf for the attendance of witnesses and the production of documents. The board shall make
242 all its final actions public. The order shall contain the terms of all action taken by the board.

243 (i) In disciplinary actions in which probable cause has been found by the board, the board
244 shall, within 20 days of the date of service of the written notice of charges or 60 days prior to the
245 date of the scheduled hearing, whichever is sooner, provide the respondent with the complete
246 identity, address and telephone number of any person known to the board with knowledge about
247 the facts of any of the charges; provide a copy of any statements in the possession of or under
248 the control of the board; provide a list of proposed witnesses with addresses and telephone
249 numbers, with a brief summary of his or her anticipated testimony; provide disclosure of any trial
250 expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure;

251 provide inspection and copying of the results of any reports of physical and mental examinations
252 or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used
253 at the hearing: *Provided*, That the board shall not be required to furnish or produce any materials
254 which contain opinion work product information or would be a violation of the attorney-client
255 privilege. Within 20 days of the date of service of the written notice of charges, the board shall
256 disclose any exculpatory evidence with a continuing duty to do so throughout the disciplinary
257 process. Within 30 days of receipt of the board's mandatory discovery, the respondent shall
258 provide the board with the complete identity, address and telephone number of any person known
259 to the respondent with knowledge about the facts of any of the charges; provide a list of proposed
260 witnesses with addresses and telephone numbers, to be called at hearing, with a brief summary
261 of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the
262 requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection
263 and copying of the results of any reports of physical and mental examinations or scientific tests
264 or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing.

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

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

269 (2) Administer a public reprimand;

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

273 (4) Revoke his or her license or other authorization to practice medicine and surgery or
274 podiatry or to prescribe or dispense controlled substances for any period of time, including for the
275 life of the licensee, that the board may find to be reasonable and necessary according to evidence
276 presented in a hearing before the board or its designee;

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

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

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

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

284 (k) Notwithstanding the provisions of §30-1-8 of this code, if the board determines the
285 evidence in its possession indicates that a physician's or podiatrist's continuation in practice or
286 unrestricted practice constitutes an immediate danger to the public, the board may take any of
287 the actions provided in subsection (j) of this section on a temporary basis and without a hearing
288 if institution of proceedings for a hearing before the board are initiated simultaneously with the
289 temporary action and begin within 15 days of the action. The board shall render its decision within
290 five days of the conclusion of a hearing under this subsection.

291 (l) Any person against whom disciplinary action is taken pursuant to this article has the
292 right to judicial review as provided in §29A-5-1 *et seq.* and §29A-6-1 *et seq.* of this code of this
293 code: *Provided*, That a circuit judge may also remand the matter to the board if it appears from
294 competent evidence presented to it in support of a motion for remand that there is newly
295 discovered evidence of such a character as ought to produce an opposite result at a second
296 hearing on the merits before the board and:

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

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

300 A person may not practice medicine and surgery or podiatry or deliver health care services
301 in violation of any disciplinary order revoking, suspending or limiting his or her license while any
302 appeal is pending. Within 60 days, the board shall report its final action regarding restriction,

303 limitation, suspension or revocation of the license of a physician or podiatrist, limitation on practice
304 privileges or other disciplinary action against any physician or podiatrist to all appropriate state
305 agencies, appropriate licensed health facilities and hospitals, insurance companies or
306 associations writing medical malpractice insurance in this state, the American Medical
307 Association, the American Podiatry Association, professional societies of physicians or podiatrists
308 in the state and any entity responsible for the fiscal administration of Medicare and Medicaid.

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

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

325 (o) A physician or podiatrist may request in writing to the board a limitation on or the
326 surrendering of his or her license to practice medicine and surgery or podiatry or other appropriate
327 sanction as provided in this section. The board may grant the request and, if it considers it
328 appropriate, may waive the commencement or continuation of other proceedings under this

329 section. A physician or podiatrist whose license is limited or surrendered or against whom other
330 action is taken under this subsection may, at reasonable intervals, petition for removal of any
331 restriction or limitation on or for reinstatement of his or her license to practice medicine and
332 surgery or podiatry.

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

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

349 (r) Notwithstanding any other provisions of this article, the board may, at any time, on its
350 own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or
351 by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the
352 West Virginia State Bar's mediator referral service of certified mediators with expertise in
353 professional disciplinary matters. The board and the physician or podiatrist may choose a
354 mediator from that list. If the board and the physician or podiatrist are unable to agree on a

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

365 (s) A physician licensed under this article may not be disciplined for providing expedited
366 partner therapy in accordance with §16-4F-1 *et seq.* of this code.

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

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; or

15 (9) Knowingly fails to report to the board any person licensed or registered under this
16 article, §30-3-1 et seq., §30-7A-1 et seq., or §30-14-1 et seq. of this code who is known or
17 observed to be professionally incompetent or is unable to practice with reasonable skill and safety
18 due to physical or mental impairment, including deterioration through the aging process, loss of
19 motor skills, or abuse of drugs or alcohol.

20 (b) An Advanced practice registered nurse licensed under this article may not be
21 disciplined for providing expedited partner therapy in accordance with §16-4F-1 et seq. of this
22 code.

ARTICLE 7A. PRACTICAL NURSES.

§30-7A-10. Disciplinary proceeding; grounds for discipline.

1 The board shall have the right, in accordance with rules and regulations promulgated
2 under the provisions of §29A-3-1 et seq. of this code, to refuse to admit an applicant for the
3 licensure examination for the hereinafter stated reasons, and also the board shall have the power
4 to revoke or suspend any license to practice practical nursing issued by the board in accordance
5 with the provisions of this article, or to otherwise discipline a licensee upon satisfactory proof that
6 the person:

7 (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice

- 8 practical nursing; ~~or~~
- 9 (2) Is convicted of a felony; ~~or~~
- 10 (3) Is habitually intemperate or is addicted to the use of habit-forming drugs; ~~or~~
- 11 (4) Is mentally incompetent; ~~or~~
- 12 (5) Is guilty of professional misconduct as defined by the board; ~~or~~
- 13 (6) ~~who~~ Practices or attempts to practice without a license or who willfully or repeatedly
- 14 violates any of the provisions of this article; or
- 15 (7) Knowingly fails to report to the board, any person licensed or registered under this
- 16 article, §30-3-1 et seq., §30-7-1 et seq., or §30-14-1 et seq. of this code who is known or observed
- 17 to be professionally incompetent or is unable to practice with reasonable skill and safety due to
- 18 physical or mental impairment, including deterioration through the aging process, loss of motor
- 19 skills, or abuse of drugs or alcohol.

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 refuse to issue a license, suspend or revoke a license, fine a licensee,
- 2 order restitution or rehabilitative action by a licensee, or order a combination thereof for any one
- 3 or more 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 if the conviction is for an offense that involves the transfer, delivery or illicit
- 6 possession of a prescription drug, then 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's
- 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; ~~or~~

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

22 (10) Knowingly failing to report to the board any person licensed or registered under this
23 article, §30-3-1 et seq., §30-7-1 et seq., or §30-7A-1 et seq. of this code who is known or observed
24 to be professionally incompetent or is unable to practice with reasonable skill and safety due to
25 physical or mental impairment, including deterioration through the aging process, loss of motor
26 skills, or abuse of drugs or alcohol.

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

30 (c) An osteopathic physician licensed under this article may not be disciplined for providing
31 expedited partner therapy in accordance with §16-4F-1 et seq. of this code.

NOTE: The purpose of this bill is to require licensees or registrants of the boards of medicine, osteopathic medicine, registered professional nursing, and practical nursing to report the professional incompetence or inability to practice of any licensee or registrant of his or her own board or of the other three listed boards.

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