

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4734

BY DELEGATES HILL AND PACK

[Originating in the Committee on Health and Human

Resources; February 13, 2020.]

1 A BILL to repeal §30-7-1a, §30-7-6a, §30-7-6b, §30-7-8a, §30-7-11a, §30-7-15a, §30-7-15b, §30-
2 7-15c, §30-7-15d, and §30-7-15e of the Code of West Virginia, 1931, as amended; to
3 repeal §30-7E-1, §30-7E-2, and §30-7E-3 of said code; to amend said code by adding
4 thereto a new section, designated §16-5B-19; to amend and reenact §30-7-1, §30-7-2,
5 §30-7-3, §30-7-4, §30-7-5, §30-7-6, §30-7-7, §30-7-8, §30-7-9, §30-7-10, §30-7-11, §30-
6 7-12, §30-7-13, §30-7-14, §30-7-16, §30-7-17, §30-7-18, §30-7-19, and §30-7-20 of said
7 code; to amend said code by adding thereto 11 new sections, designated §30-7-21, §30-
8 7-22, §30-7-23, §30-7-24, §30-7-25, §30-7-26, §30-7-27, §30-7-28, §30-7-29, §30-7-30,
9 and §30-7-31, all relating to the Board of Nursing, prohibiting the practice of nursing
10 without a license; providing other applicable sections; defining terms; renaming the board;
11 providing for board composition and qualifications; setting forth the powers and duties of
12 the board; clarifying rule-making authority; continuing a special revenue account;
13 establishing license and permit requirements; establishing qualifications for licensure;
14 codifying a scope of practice; creating a temporary permit; providing for reciprocal
15 licensure; establishing renewal requirements; providing for exemptions from licensure;
16 creating a special volunteer license; continuing a Joint Advisory Council; providing the
17 council's composition; providing council members' terms; providing powers of the council;
18 providing duties of the council; setting forth limitations of the article; permitting the board
19 to file an injunction; setting forth grounds for disciplinary actions; allowing for specific
20 disciplinary actions; providing procedures for investigation of complaints; providing for
21 judicial review and appeals of decisions; setting forth hearing and notice requirements;
22 providing for civil causes of action; providing criminal offenses are to be reported to law
23 enforcement; providing criminal penalties; repealing expired authority; and updating
24 references.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-19. Circulating registered nurses.

1 A registered professional nurse experienced in operating room nursing shall be present
2 as a circulating nurse in each operating room in a hospital, or ambulatory surgical center as
3 defined by §16-5B-1 of this code, during operative procedures.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-1. Unlawful acts.

1 (a) It is unlawful for a person to practice or offer to practice registered professional nursing
2 or advanced practice registered nursing in this state without a license, issued under the provisions
3 of this article, or advertise or use any title or description tending to convey or give the impression
4 that he or she is a registered professional nurse or advanced practice registered nurse, unless
5 the person is licensed under the provisions of this article.

6 (b) A business entity may not render any service or engage in any activity which, if
7 rendered or engaged in by an individual, would constitute the practice of registered professional
8 nursing or advanced practice nursing, except through a licensee.

**§30-7-1a. Eligibility for licensure by meeting requirements which existed prior to the
legislative enactments during the 2012 legislative session.**

1 [Repealed]

§30-7-2. Applicable law.

1 The practices authorized under the provisions of this article and the board are subject to
2 §30-1-1 *et seq.* of this code, the provisions of this article, and any rules promulgated hereunder.

§30-7-3. Definitions.

1 As used in this article:

2 “Advanced practice registered nurse” means a registered nurse who has acquired
3 advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to
4 patients;

5 “Board” means the West Virginia Board of Registered Professional Nurses;

6 “Certified Nurse Anesthetist” means a person who holds a diploma or certificate
7 evidencing his or her successful completion of the educational program of a school of anesthesia
8 accredited by the American Association of Nurse Anesthetists;

9 “Collaborative relationship” means a working relationship, structured through a written
10 agreement, in which an advanced practice registered nurse may prescribe drugs in collaboration
11 with a qualified physician; “Direct patient care” means the provision of services to a sick, injured,
12 mentally or physically disabled, elderly or fragile patient that requires some degree of interaction
13 with that patient. Direct patient care may include assessment, treatment, counseling, procedures,
14 self-care, patient education, administration of medication, and implementation of a care plan;

15 “License” means a license to practice registered professional nursing or advanced practice
16 registered nursing;

17 “Licensee” means a person licensed as a registered professional nurse or advanced
18 practice registered nurse under this article;

19 “Major mental illness” means a diagnosis of a mental disorder within the axis of psychotic
20 or affective or mood, alcohol, or chemical abuse, or alcohol or chemical dependency as stipulated
21 in the International Code of Diagnosis;

22 “Nurse health program” means a program meeting the requirements of this article;

23 “Qualifying illness” means the diagnosis of substance use disorder, alcohol or substance
24 dependency, or major mental illness;

25 “Registered nurse” means a person licensed under this article to practice registered
26 professional nursing under this article;

27 "Temporary permit" means a permit authorizing the holder to practice registered
28 professional nursing until the permit is no longer effective or the holder is granted a license by the
29 board.

§30-7-4. West Virginia Board of Registered Professional Nurses.

1 (a) The West Virginia Board of Examiners for Registered Professional Nurses is renamed
2 the West Virginia Board of Registered Nurses effective July 1, 2020. The members of the West
3 Virginia Board of Examiners for Registered Professional Nurses shall remain as members until
4 the provisions of this section become effective.

5 (b) On July 1, 2020, the Governor, by and with the advice and consent of the Senate, shall
6 appoint four new board members:

7 (1) One person licensed as an advanced practice registered professional nurse by the
8 board;

9 (2) One person licensed as a registered professional nurse by the board; and

10 (3) Two citizen members who are not licensed under the provisions of this chapter and
11 who have never performed any services as a health care professional;

12 (c) As board members' terms expire, the Governor, by and with the advice and consent of
13 the Senate, shall appoint a new person board member in this order:

14 (1) One person licensed as an advanced practice registered professional nurse by the
15 board;

16 (2) One person who is certified as a dialysis technician by the board;

17 (3) One person licensed as a registered professional nurse by the board;

18 (4) One citizen member who is not licensed under the provisions of this chapter and who
19 has never performed any services as a health care professional;

20 (5) One person licensed as a registered professional nurse by the board;

21 (6) One person licensed as a registered professional nurse by the board; and

22 (7) One person licensed as a registered professional nurse by the board;

23 (d) The licensed members shall represent a variety of nursing practices;

24 (e) Organizations that represent nurses may submit to the Governor recommendations for
25 the appointment of the licensed board members.

26 (f) The appointment term is five years. A member may not serve more than two
27 consecutive terms. A member may continue to serve until his or her successor has been
28 appointed and qualified.

29 (g) Each licensed member of the board, at the time of his or her appointment, shall have
30 been actively practicing in this state for three out of the last five years immediately preceding the
31 appointment.

32 (h) Each member of the board shall be a resident of this state during the appointment
33 term.

34 (i) A vacancy on the board shall be filled by appointment by the Governor for the unexpired
35 term of the member whose office is vacant.

36 (j) The Governor may remove any member from the board for neglect of duty,
37 incompetency, or official misconduct.

38 (k) A licensed member of the board immediately and automatically forfeits membership to
39 the board if his or her license to practice is disciplined in any jurisdiction.

40 (l) A member of the board immediately and automatically forfeits membership to the board
41 if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident
42 of this state.

43 (m) The board shall elect one of its members as president and one member as secretary
44 who shall serve at the will and pleasure of the board.

45 (n) A member of the board is entitled to receive compensation and expense
46 reimbursement in accordance with §30-1-1 et seq. of this code.

47 (o) A simple majority of the membership serving on the board at a given time is a quorum
48 for the transaction of business.

49 (p) The board shall hold at least one meeting annually. Other meetings shall be held at
50 the call of the president or upon the written request of four members, at the time and place as
51 designated in the call or request.

52 (q) Prior to commencing his or her duties as a member of the board, each member shall
53 take and subscribe to the oath required by section five, article four of the Constitution of this state.

54 (r) A board member, when acting in good faith and without malice, shall enjoy immunity
55 from individual civil liability while acting within the scope of their duties as board members.

§30-7-5. Powers of the board.

1 The board has all the powers and duties set forth in this article, in §30-1-1 et seq. of this
2 code and elsewhere in law, including the ability to:

3 (1) Hold meetings;

4 (2) Establish procedures for submitting, approving, and rejecting applications for a license
5 and permit;

6 (3) Determine the qualifications of an applicant for a license and permit;

7 (4) Establish the fees charged under the provisions of this article;

8 (5) Issue, renew, restrict, deny, suspend, revoke, or reinstate a license and permit;

9 (6) Prepare, conduct, administer, and grade written, oral, or written and oral examinations
10 for a license;

11 (7) Contract with third parties to administer the examinations required under the provisions
12 of this article;

13 (8) Maintain records of the examinations the board, or a third party, administers, including
14 the number of persons taking the examination and the pass and fail rate;

15 (9) Maintain an office and hire, discharge, establish the job requirements, and fix the
16 compensation of employees, and contract with persons necessary to enforce the provisions of
17 this article;

18 (10) Employ investigators, attorneys, hearing examiners, consultants, and other
19 employees as may be necessary who are exempt from the classified service and who serve at
20 the will and pleasure of the board;

21 (11) Delegate hiring of employees to the executive director;

22 (12) Investigate alleged violations of the provisions of this article and legislative rules,
23 orders, and final decisions of the board;

24 (13) Conduct disciplinary hearings of persons regulated by the board;

25 (14) Determine disciplinary action and issue orders;

26 (15) Institute appropriate legal action for the enforcement of the provisions of this article;

27 (16) Maintain an accurate registry of names and addresses of all persons regulated by the
28 board;

29 (17) Keep accurate and complete records of its proceedings, and certify the same as may
30 be necessary and appropriate;

31 (18) Propose rules in accordance with the provisions of §29A-3-1 et seq. of this code to
32 implement the provisions of this article;

33 (19) Sue and be sued in its official name as an agency of this state;

34 (20) Approve a nursing school as provided in §30-7-20 of this code;

35 (21) Establish a nurse health program;

36 (22) Implement the provisions of the enhanced nurse licensure compact in accordance
37 with §30-7B-1 et seq. of this code;

38 (23) Coordinate with and assist the Center for Nursing in accordance with §30-7B-1 et
39 seq. of this code; and

40 (24) Confer with the Attorney General or his or her assistant in connection with legal
41 matters and questions.

§30-7-6. Rulemaking.

1 (a) The board shall propose rules for legislative approval, in accordance with the
2 provisions of §29A-3-1 et seq. of this code to implement the provisions of this article including:

- 3 (1) Standards and requirements for licenses and permits;
4 (2) Requirements for third parties to prepare and/or administer examinations and
5 reexaminations;
6 (3) Educational and experience requirements;
7 (4) Continuing education requirements and approval of continuing education courses;
8 (5) Procedures for the issuance and renewal of licenses and permits;
9 (6) Establish a fee schedule;
10 (7) Assess a supplemental licensure fee not to exceed \$10 per license per year. The
11 supplemental licensure fee is to be used to fund the center for nursing and to carry out its
12 purposes as set forth in §30-7B-1 et seq. of this code;
13 (8) Establish professional conduct requirements;
14 (9) Establish the procedures for denying, suspending, restricting, revoking, reinstating, or
15 limiting the practice of licensees;
16 (10) Establish requirements for inactive, retired, or revoked licenses and permits;
17 (11) Regulate a nursing school as provided for in §30-7-20 of this code;
18 (12) Establish a nurse health program;
19 (13) Establish prescribing requirement for an advanced practice registered nurse as
20 provided in section 15 of this article;
21 (14) Reports to be submitted by nursing programs;
22 (15) Establish criteria for licensure by endorsement;
23 (15) Regulate dialysis care; and
24 (16) Any other rules necessary to implement this article.
25 (b) The legislative rules of the West Virginia Board of Examiners for Registered
26 Professional Nurses, pursuant to the authority provided in previous enactments of this article, in
27 effect on June 30, 2020, and not in conflict with the provisions of this article shall remain in effect

28 until they are amended, replaced, or rescinded, and are to be considered transferred to and under
29 the authority of the West Virginia Board of Registered Nurses pursuant to the provisions of this
30 article.

**§30-7-6a. Special volunteer registered professional nurse license; civil immunity for
voluntary services rendered to indigents.**

1 [Repealed]

**§30-7-6b. Special volunteer license; civil immunity for voluntary services rendered to
indigents.**

1 [Repealed]

§30-7-7. Fees; special revenue account; administrative fines.

1 (a) The special revenue fund as expended by the West Virginia Board of Examiners for
2 Registered Professional Nurses pursuant to the authority granted under previous enactments of
3 this article shall expire July 1, 2020, and all such remaining funds shall transfer to the special
4 revenue account which shall be created in the State Treasury on July 1, 2020, and shall be known
5 as the “West Virginia Board of Registered Nurses Fund”.

6 (b) All fees and other moneys, except administrative fines, received by the board shall be
7 deposited in the “West Virginia Board of Registered Nurses Fund” which is continued. The fund
8 is used by the board for the administration of this article. Except as provided in §30-1-1 et seq. of
9 this code, the board retains the amount in the special revenue account from year to year. No
10 compensation or expense incurred under this article is a charge against the General Revenue
11 Fund.

§30-7-8. License to practice registered professional nursing.

1 (a) The board may issue a license to practice registered nursing to an applicant who meets
2 the following requirements:

3 (1) Is at least 18 years of age;

4 (2) Has completed an approved four-year high school course of study or the equivalent
5 thereof, as determined by the appropriate educational agency;

6 (3) Has completed a nursing education program as provided in §30-7-20;

7 (4) Has passed an examination approved by the board;

8 (5) Has paid the application fee specified by rule;

9 (6) Has completed a criminal background check, as required by §30-1D-1 et seq. of this
10 code;

11 (7) Is not an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code,
12 unless an applicant in an active recovery process, which may be evidenced by participation in a
13 Nurse Health Program, structured aftercare, or a 12-step program or other similar group or
14 process, may be considered; and

15 (8) Is a citizen of the United States or is eligible for employment in the United States.

16 (b) A license to practice registered professional nursing issued by the board shall for all
17 purposes be considered a license issued under this section: *Provided*, That a person holding a
18 license shall renew the license.

§30-7-8a. Supplemental fees to fund center for nursing; emergency rules.

1 [Repealed]

§30-7-9. Scope of practice of a registered professional nurse.

1 The practice of registered professional nursing includes:

2 (1) Providing comprehensive nursing assessment of the health status of patients;

3 (2) Collaborating with health care team to develop and coordinate an integrated patient
4 centered health care plan;

5 (3) Developing the comprehensive patient centered health care plan, including:

6 (A) Establishing nursing diagnoses;

7 (B) Setting goals to meet identified health care needs; and

8 (C) Prescribing nursing interventions.

9 (4) Implementing nursing care through the execution of independent nursing strategies,
10 and the provision of regimens requested, ordered, or prescribed by authorized health care
11 providers;

12 (5) Evaluating responses to interventions and the effectiveness of the plan of care;

13 (6) Designing and implementing teaching plans based on patient needs;

14 (7) Delegating and assigning nursing interventions to implement the plan of care;

15 (8) Providing for the maintenance of safe and effective nursing care rendered directly or
16 indirectly;

17 (9) Advocating the best interest of patients;

18 (10) Communicating and collaborating with other health care providers in the management
19 of health care and the implementation of the total health care regimen within and across care
20 settings;

21 (11) Managing, supervising, and evaluating the practice of nursing;

22 (12) Teaching the theory and practice of nursing;

23 (13) Participating in development of health care policies, procedures, and systems; and

24 (14) Performing other acts for which a registered professional nurse is educated and
25 trained, consistent with professional standards.

§30-7-10. License to practice advanced practice registered nursing.

1 (a) The board may issue an advanced practice registered nurse license to an applicant
2 who meets the following requirements:

3 (1) Is at least 18 years of age;

4 (2) Is currently certified by a national certification organization, approved by the board, in
5 one or more of the following nationally recognized advance practice registered nursing roles:
6 certified registered nurse anesthetist, certified nurse-midwife, clinical nurse specialist, or certified
7 nurse practitioner;

8 (3) Has paid the application fee specified by legislative rule; and

9 (4) Is not an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code,
10 unless an applicant in an active recovery process, which may, in the discretion of the board, be
11 evidenced by participation in a Nurse Health Program, structured aftercare, or a 12-step program
12 or other similar group or process, may be considered.

13 (b) An advanced practice registered nurse license issued by the board and in good
14 standing on the effective date of the amendments to this section shall for all purposes be
15 considered an advanced practice registered nurse license issued under this section: *Provided,*
16 That a person holding an advanced practice registered nurse license shall renew the license.

17 (c) An applicant, who is licensed in another jurisdiction as an advanced practice registered
18 nurse, is eligible to apply for licensure.

19 (d) By virtue of being a licensed advanced practice registered nurse that person is also
20 licensed as a registered professional nurse. The board may not charge an additional fee for
21 registered professional nurse license.

§30-7-11. Scope of practice for an advanced practice registered nurse.

1 In addition to the scope of practice set forth in §30-7-9 of this code, the practice of
2 advanced practice registered nursing includes the following:

3 (1) Conducting an advanced assessment;

4 (2) Ordering and interpreting diagnostic procedures;

5 (3) Establishing primary and differential diagnoses;

6 (4) Prescribing, ordering, administering, dispensing, and furnishing therapeutic measures
7 as set forth in §30-7-15 of this code;

8 (5) Delegating and assigning therapeutic measures to assistive personnel standards;

9 (6) Consulting with other disciplines and providing referrals to health care agencies, health
10 care providers, and community resources; and

11 (7) Performing other acts for which an advanced practice registered nurse is educated
12 and trained, consistent with professional standards which require formalized didactic and clinical
13 education.

**§30-7-11a. Voluntary agreements relating to alcohol or chemical dependency;
confidentiality.**

1 [Repealed]

**§30-7-12. Form of prescriptions; termination of authority; renewal; notification of
termination of authority.**

1 (a) Prescriptions authorized by an advanced practice registered nurse shall:

2 (1) Comply with all applicable state and federal laws;

3 (2) Be signed by the prescriber with the initials "A.P.R.N." or the designated certification
4 title of the prescriber; and

5 (3) Include the prescriber's identification number assigned by the board or the prescriber's
6 national provider identifier assigned by the National Provider System pursuant to 45 C.F.R.
7 §162.408.

8 (b) Prescriptive authorization shall be terminated if the advanced practice registered nurse
9 has:

10 (1) Not maintained current authorization as an advanced practice registered nurse; or

11 (2) Prescribed outside the advanced practice registered nurse's scope of practice or has
12 prescribed drugs for other than therapeutic purposes; or

13 (3) Not filed verification of a collaborative agreement with the board if such an agreement
14 is required.

15 (c) Prescriptive authority for an advanced practice registered nurse shall be renewed
16 biennially. Documentation of eight contact hours of pharmacology during the previous two years
17 shall be submitted at the time of renewal.

18 (d) The board shall notify the Board of Pharmacy within 24 hours after termination of, or
19 change in, an advanced practice registered nurse’s prescriptive authority.

§30-7-13. Prescriptive authority for prescription drugs.

1 (a) The board may authorize an advanced practice registered nurse to prescribe
2 prescription drugs in accordance with this article and all other applicable state and federal laws.
3 An authorized advanced practice registered nurse may write or sign prescriptions or transmit
4 prescriptions verbally or by other means of communication.

5 (b) The board shall promulgate legislative rules in accordance with chapter 29A of this
6 code governing the eligibility and extent to which an advanced practice registered nurse may
7 prescribe drugs. The rules shall provide, at a minimum, a state formulary classifying those
8 categories of drugs which shall not be prescribed by an advanced practice registered nurse
9 including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act,
10 antineoplastics, and radiopharmaceuticals. Drugs listed under Schedule III shall be limited up to
11 a 30-day supply. Once a 30-day supply has been reached no refill is permitted. In addition to the
12 above referenced provisions and restrictions and pursuant to a collaborative agreement as set
13 forth in §30-7-14 of this code, the rules shall permit the prescribing of an annual supply of any
14 drug, with the exception of controlled substances, which is prescribed for the treatment of a
15 chronic condition, other than chronic pain management. For the purposes of this section, a
16 “chronic condition” is a condition which lasts three months or more, generally cannot be prevented
17 by vaccines, can be controlled but not cured by medication, and does not generally disappear.
18 These conditions, with the exception of chronic pain, include, but are not limited to, arthritis,
19 asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity. The
20 prescriber authorized in this section shall note on the prescription the chronic disease being
21 treated.

22 (c) The board shall transmit to the Board of Pharmacy a list of all advanced practice
23 registered nurses with prescriptive authority. The list shall include:

- 24 (1) The name of the authorized advanced practice registered nurse;
- 25 (2) The prescriber's identification number assigned by the board; and
- 26 (3) The effective date of prescriptive authority.

§30-7-14. Eligibility for prescriptive authority and collaborative relationships.

1 (a) To be eligible to apply for authorization to prescribe drugs pursuant to §30-7-13 of this
2 code, an applicant:

- 3 (1) Shall be licensed in West Virginia as an advanced practice registered nurse;
- 4 (2) Shall be at least 18 years of age;
- 5 (3) Shall have completed 45 contact hours of education in pharmacology and clinical
6 management of drug therapy under a program approved by the board; 15 hours of which shall
7 have been completed within the two-year period immediately prior to entering into a prerequisite
8 collaborative relationship;

9 (4) Shall provide the board with evidence that he or she is a person of good moral
10 character and not addicted to alcohol or the use of controlled substances;

11 (5) May not have his or her practice authorization in any jurisdiction suspended, limited,
12 or revoked; and

13 (6) Shall submit a completed application to the board, accompanied by a fee as
14 established by the board by rule.

15 (b) The board shall authorize an applicant to prescribe prescription drugs under the terms
16 of a collaborative agreement, in accordance with §30-7-13 of this code and applicable legislative
17 rules if the applicant has met the prerequisites of subsection (a) of this section and the following
18 additional prerequisites are satisfied:

- 19 (1) The board is satisfied that the collaborating physician is licensed in good standing;
- 20 (2) The collaborative agreement is sufficient in form;
- 21 (3) The applicant has completed the education requirements; and

22 (4) The applicant has submitted a completed application on forms developed by the board
23 and paid an application fee established by the board in legislative rule.

24 (c) A collaborative agreement for a collaborative relationship for prescriptive practice
25 between a physician and an advanced practice registered nurse shall be set forth in writing and
26 include, but not be limited to, the following:

27 (1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it
28 applies to the advanced practice registered nurse's clinical practice;

29 (2) Statements describing the individual and shared responsibilities of the advanced
30 practice registered nurse and the collaborating physician;

31 (3) Periodic and joint evaluation of prescriptive practice; and

32 (4) Periodic joint review and updating of the written guidelines or protocols.

33 (d) Verification of a collaborative agreement shall be by the attestation of the APRN and
34 collaborating physician on a document sent to the board. The APRN shall keep the copy of the
35 verified agreement available upon request by the board.

36 (e) The board shall, upon application, authorize an advanced practice registered nurse to
37 prescribe prescription drugs in accordance with §30-7-13 of this code without the further
38 requirement of a collaborative agreement if the applicant has satisfied the following prerequisites:

39 (1) Has practiced at least three years in a documented collaborative relationship with
40 granted prescriptive authority;

41 (2) Is licensed in good standing with the board; and

42 (3) Has submitted a completed application on forms developed by the board and paid an
43 application fee established by the board in legislative rule.

44 (f) Notwithstanding the provisions of subsection (e) of this section, the board may require
45 an advanced practice registered nurse to practice in a collaborative agreement if the board
46 determines, by order arising out of the board's complaint process, that a collaborative relationship
47 is necessary for the rehabilitation of a licensee or for protection of the public.

§30-7-15a. Prescriptive authority for prescription drugs; coordination with Board of Pharmacy; rule-making authority.

1 [Repealed]

§30-7-15b. Eligibility for prescriptive authority; application; fee; collaborative relationships and agreements.

1 [Repealed]

§30-7-15c. Form of prescriptions; termination of authority; renewal; notification of termination of authority.

1 [Repealed]

§30-7-15d. Advanced practice registered nurse signatory authority.

1 [Repealed]

§30-7-15e. Joint Advisory Council on Limited Prescriptive Authority.

[Repealed]

§30-7-16. Advanced practice registered nurse signatory authority.

1 (a) An advanced practice registered nurse may provide an authorized signature,
2 certification, stamp, verification, affidavit, or endorsement on documents within the scope of his
3 or her practice, including, but not limited to, the following documents:

4 (1) Death certificates: *Provided*, That the advanced practice registered nurse has received
5 training from the board on the completion of death certificates;

6 (2) “Physician orders for life sustaining treatment”, “physician orders for scope of
7 treatment”, and “do not resuscitate” forms;

8 (3) Handicap hunting certificates; and

9 (4) Utility company forms requiring maintenance of utilities regardless of ability to pay.

10 (b) An advanced practice registered nurse may not sign a certificate of merit for a medical
11 malpractice claim against a physician.

§30-7-17. Joint Advisory Council on Limited Prescriptive Authority.

1 (a) There is continued the Joint Advisory Council on Limited Prescriptive Authority. The
2 purpose of the council is to advise the board regarding collaborative agreements and prescriptive
3 authority for advanced practice registered nurses.

4 (b) The Governor shall appoint:

5 (1) Two allopathic physicians as recommended by the Board of Medicine who are in a
6 collaborative relationship with advanced practice registered nurses;

7 (2) Two osteopathic physicians as recommended by the Board of Osteopathic Medicine
8 who are in a collaborative relationship with advanced practice registered nurses;

9 (3) Six advanced practice registered nurses as recommended by the Board of Registered
10 Nurses who have at least three years full-time practice experience, and shall include at least one
11 certified nurse practitioner, one certified nurse-midwife, and one certified registered nurse
12 anesthetist, all of whom actively prescribe prescription drugs;

13 (4) One licensed pharmacist as recommended by the Board of Pharmacy;

14 (5) One consumer representative; and

15 (6) One representative from a school of public health of an institution of higher education.

16 (c) Members of the council who are health care providers shall have at least three years
17 full-time practice experience and hold active state licenses.

18 (d) A member shall serve for a term of three years. The Governor shall stagger the terms
19 so that no more than five appointments shall expire annually. Prior to the election of a chairman,
20 the board shall be called together by the representative from a school of public health of an
21 institution of higher education.

22 (e) A majority of members appointed to the council shall constitute a quorum to conduct
23 official business.

24 (f) The council shall choose its own chairman and shall meet at the call of the chairman
25 at least biannually.

26 (g) The council may perform the following duties:

27 (1) Review and evaluate applications used for advanced practice registered nurses to
28 prescribe without a collaborative agreement;

29 (2) Assist advanced practice registered nurses with entering into collaborative agreements
30 in nonemergency situations, including providing the contact information for physicians with whom
31 the advanced practice registered nurses may collaborate;

32 (3) Advise the board in emergency situations of a rescinded collaborative agreement,
33 giving a 60-day grace period;

34 (4) Assist the board in developing and proposing emergency rules;

35 (5) Review and advise on complaints against advanced practice registered nurses;

36 (6) Develop pilot projects allowing independent prescribing of controlled substances by
37 advanced practice registered nurses, and study results to assure patient/public safety;

38 (7) Develop other studies and/or pilot projects, including, but not limited to:

39 (A) Issues of access, outcomes, and cost effectiveness of services;

40 (B) The development of recommendations for reciprocity;

41 (C) The optimal length of time for transition into independent prescribing; and

42 (D) Methods to foster effective inter-professional communication.

§30-7-18. Exceptions.

1 This article may not be construed to prohibit:

2 (1) The furnishing of nursing assistance in an emergency;

3 (2) The practice of nursing incidental to a program of study by students enrolled in a
4 nursing program;

5 (3) Caring for the sick when done in connection with the practice of religious tenets of any
6 church and by and for its members.

7 (4) The practice of any legally qualified nurse of another state who is employed by the
8 United States or any bureau, division, or agency thereof, while in the discharge of his or her official
9 duties; or

10 (5) A licensed registered professional nurse or licensed advanced practice registered
11 nurse, who accompanies a patient to whom he or she administers registered professional nursing,
12 or advanced practice registered nursing while the patient is in transit or being transported into,
13 out of, or through this state. The board may set forth additional requirements for this exemption
14 by legislative rule.

§30-7-19. Temporary permits.

1 The board may issue a temporary permit to a person applying for a license under this
2 article.

§30-7-20. Schools of nursing.

1 (a) A nursing program is determined to be board approved if the program is accredited by
2 a national nursing accrediting agency recognized by the United States Department of Education.
3 The accreditation is considered board approved and is exempt from board rules that require
4 ongoing approval if the school or program maintains this accreditation.

5 (b) By July 1, 2022, all nursing programs shall be accredited by a national accrediting
6 agency recognized by the United States Department of Education. A program created after July
7 1, 2018, shall have five years to obtain accreditation by an accrediting agency recognized by the
8 United States Department of Education.

9 (c) The board may require information concerning the nursing program to be reported to
10 the board by legislative rule. The requested information shall be consistent with information
11 already being collected by the schools which is required to maintain the program's accreditation.

12 (d) The board shall approve a new nursing program until the program is accredited by a
13 national nursing accrediting agency recognized by the United States Department of Education.

§30-7-21. Schools of nursing faculty requirements.

1 (a) Full-time nursing faculty members shall:

2 (1) Have a graduate degree with a major in nursing; have a bachelor's degree with a major
3 in nursing and be enrolled in a graduate degree program with a major in nursing within one year
4 of employment as a faculty member; or have a bachelor's degree with a major in nursing and at
5 least 10 years of direct patient care experience in nursing;

6 (2) Have evidence of current experience in nursing practice and education sufficient to
7 demonstrate professional competence. For faculty with less than two years' experience in
8 education, the nursing program administrator will submit to the board mentoring and orientation
9 plans as defined by board guidelines and function under the guidance of a faculty member fully
10 qualified in the specific teaching area and professional competence; and

11 (3) Have credentials which verify status as a registered professional nurse in West
12 Virginia.

13 (b) Part-time nursing faculty members shall:

14 (1) Have a graduate degree with a major in nursing; have a bachelor's degree with a major
15 in nursing and be enrolled in a graduate degree program with a major in nursing within one year
16 of employment as a faculty member; or have a bachelor's degree with a major in nursing and at
17 least two years of direct patient care experience in nursing;

18 (2) Have evidence of current experience in nursing practice and education sufficient to
19 demonstrate professional competence. For faculty with less than two years' experience in
20 education, the nursing program administrator will submit to the board mentoring and orientation
21 plans as defined by board guidelines and function under the guidance of a faculty member fully
22 qualified in the specific teaching area and professional competence; and

23 (3) Have credentials which verify status as a registered professional nurse in West
24 Virginia.

25 (c) The board may grant an exception to the requirements in §30-7-21 of this code for
26 faculty members who have qualifications other than those set forth in these subsections which
27 are acceptable to the board.

§30-7-22. Voluntary agreements relating to alcohol or chemical dependency;
confidentiality.

1 (a) A licensee or applicant may enter into a voluntary agreement with a nurse health
2 program. The agreement between the licensee or applicant and the nurse health program shall
3 include a jointly agreed upon treatment program and mandatory conditions and procedures to
4 monitor compliance with the program of recovery.

5 (b) A voluntary agreement entered into pursuant to this section is not a disciplinary action
6 or order by the board and may not be disclosed to the board and is not public information if:

7 (1) The voluntary agreement is the result of the licensee or applicant self-enrolling or
8 voluntarily participating in the board-designated nurse health program;

9 (2) The board has not received nor filed a written complaint regarding the licensee or
10 applicant relating to an alcohol, chemical dependency, or major mental illness affecting the care
11 and treatment of patients; and

12 (3) The licensee or applicant is in compliance with the voluntary treatment program and
13 the conditions and procedures to monitor compliance.

14 (c) If a licensee or applicant enters into a voluntary agreement with a nurse health program
15 and then fails to comply with or fulfill the terms of said agreement, the nurse health program shall
16 report the noncompliance to the board within 24 hours. The board may initiate disciplinary
17 proceedings pursuant to §30-7-24 of this code or may permit continued participation in the nurse
18 health program or both.

19 (d) If the board has not instituted a disciplinary proceeding as provided for in this article,
20 the information received, maintained, or developed by the board relating to the alcohol or chemical
21 dependency impairment of a licensee or applicant and a voluntary agreement made pursuant to

22 this section shall be confidential and not available for public information, discovery, or court
23 subpoena, nor for introduction into evidence in a medical professional liability action or other
24 action for damages arising out of the provision of or failure to provide health care services.

25 (e) Notwithstanding any of the foregoing provisions, the board may cooperate with and
26 provide documentation of a voluntary agreement entered into pursuant to this section to licensing
27 boards in other jurisdictions of which the board has become aware and may be appropriate.

28 (f) A licensee is not entitled to the creation or designation of a nurse health program for
29 any individual qualifying illness or group of qualifying illnesses.

§30-7-23. License renewal.

1 (a) Persons regulated by this article shall annually or biennially, renew his or her board
2 authorization by completing a form prescribed by the board and submitting any other information
3 required by the board.

4 (b) The board shall charge a fee for each renewal of a board authorization and shall charge
5 a late fee for any renewal not paid by the due date.

6 (c) The board shall require as a condition of renewal that each licensee or permittee
7 complete continuing education.

8 (d) The board may deny an application for renewal for any reason which would justify the
9 denial of an original application.

§30-7-24. Special volunteer nurse; civil immunity for voluntary services rendered to
indigents.

1 (a) There is continued a special volunteer licensed registered professional nurse, and
2 advanced practice nurse who has retired from the active practice of registered professional
3 nursing, or an advanced practice nursing and want to donate their expertise for the care and
4 treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in
5 part, for the delivery of health care services without charge. The special volunteer to a licensee
6 under this article and the legislative rules promulgated hereunder without the payment of an

7 application fee, license fee, or renewal fee, shall be issued for the remainder of the licensing
8 period, and renewed consistent with the board's other licensing requirements. The board shall
9 develop application forms for the special volunteer license provided in this subsection which shall
10 contain the licensee's acknowledgment that:

11 (1) The licensee's practice under the special volunteer license will be exclusively devoted
12 to providing nursing care to needy and indigent persons in West Virginia;

13 (2) The licensee will not receive any payment or compensation, either direct or indirect, or
14 have the expectation of any payment or compensation but may donate to the clinic the proceeds
15 of any reimbursement, for any nursing services rendered under the special volunteer license; and

16 (3) The licensee will supply any supporting documentation that the board may reasonably
17 require.

18 (b) A licensee whose license is in good standing may donate his or her expertise for the
19 care and treatment of indigent and needy patients pursuant to an arrangement with a clinic
20 organized, in whole or in part, for the delivery of health care services without charge to the patient.
21 Services rendered pursuant to an arrangement may be performed in either the licensee's office
22 or a clinical setting.

23 (c) A licensee who renders nursing service to indigent and needy patients of a clinic
24 organized, in whole or in part, for the delivery of health care services without charge under a
25 special volunteer license authorized under subsection (a) of this section or pursuant to an
26 arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment
27 or compensation or the expectation or promise of payment or compensation is immune from
28 liability for any civil action arising out of any act or omission resulting from the rendering of the
29 nursing service at the clinic unless the act or omission was the result of the licensee's gross
30 negligence or willful misconduct. In order for the immunity under this subsection to apply, there
31 must be a written agreement between the licensee and the clinic pursuant to which the licensee
32 will provide voluntary uncompensated nursing services under the control of the clinic to patients

33 of the clinic before the rendering of any services by the licensee at the clinic: *Provided*, That any
34 clinic entering into such written agreement is required to maintain liability coverage of not less
35 than \$1 million per occurrence.

36 (d) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in
37 whole or in part, for the delivery of health care services without charge is not relieved from imputed
38 liability for the negligent acts of a registered professional nurse rendering voluntary nursing
39 services at or for the clinic under a special volunteer license authorized under subsection (a) of
40 this section or who renders such care and treatment pursuant to an arrangement with a clinic as
41 authorized pursuant to subsection (b) of this section.

42 (e) For purposes of this section, a person otherwise eligible for licensure means a person
43 who satisfies all of the requirements for licensure as listed in §30-7-8, §30-7-10 and §30-7-12 of
44 this code, and in the legislative rules promulgated thereunder, except the fee requirements of that
45 section and of the legislative rules promulgated by the board relating to fees.

46 (f) Nothing in this section may be construed as requiring the board to issue a special
47 volunteer license to a licensee whose license is or has been subject to any disciplinary action or
48 to a licensee who has surrendered his or her license or caused the license to lapse, expire, and
49 become invalid in lieu of having a complaint initiated or other action taken against his or her
50 license, or who has elected to place a license in inactive status in lieu of having a complaint
51 initiated or other action taken against his or her license, or who has been denied a license.

52 (g) Any policy or contract of liability insurance providing coverage for liability sold, issued,
53 or delivered in this state to a licensee covered under the provisions of this article shall be read so
54 as to contain a provision or endorsement where the company issuing the policy waives or agrees
55 not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim
56 covered by the terms of the policy within the policy limits, the immunity from liability of the insured
57 by reason of the care and treatment of needy and indigent patients by a registered professional
58 nurse who holds a special volunteer registered professional nurse license or who renders such

59 care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection
60 (b) of this section.

§30-7-25. Reinstatement.

1 (a) A licensee against whom disciplinary action has been taken under the provisions of
2 this article shall be afforded an opportunity to demonstrate the qualifications to resume practice.
3 The application for reinstatement is subject to the procedures specified by legislative rule.

4 (b) A licensee who does not complete a licensure renewal, as specified by the board by
5 rule, and whose license has lapsed, shall apply for reinstatement as specified by the board by
6 rule.

7 (c) The board, at its discretion and for cause, may require an applicant for reinstatement
8 to undergo a physical and/or mental evaluation to determine if a licensee is competent to practice
9 or if the licensee is impaired by drugs or alcohol.

§30-7-26. Actions to enjoin violations.

1 (a) If the board obtains information that any person has engaged in, is engaging in, or is
2 about to engage in any act which constitutes or will constitute a violation of the provisions of this
3 article, the rules promulgated pursuant to this article or a final order or decision of the board, it
4 may issue a notice to the person to cease and desist in engaging in the act and/or apply to the
5 circuit court in the county of the alleged violation for an order enjoining the act.

6 (b) The circuit court may issue a temporary injunction pending a decision on the merits
7 and may issue a permanent injunction based on its findings in the case.

8 (c) The judgment of the circuit court on an application permitted by the provisions of this
9 section is final unless reversed, vacated, or modified on appeal to the West Virginia Supreme
10 Court of Appeals.

§30-7-27. Complaints; investigations; due process procedure; grounds for disciplinary
action.

1 (a) The board may initiate a complaint upon receipt of credible information and shall, upon
2 the receipt of a written complaint of any person, cause an investigation to be made to determine

3 whether grounds exist for disciplinary action under this article or the legislative rules promulgated
4 pursuant to this article.

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

8 (c) Upon a finding of probable cause to go forward with a complaint, the board shall provide
9 a copy of the complaint to the licensee or permittee.

10 (d) Upon a finding that probable cause exists that the licensee permittee has violated
11 subsection (g) of this section or rules promulgated pursuant to this article, the board may enter
12 into a consent decree or hold a hearing for disciplinary action against the licensee or permittee.
13 Any hearing shall be held in accordance with the provisions of this article and shall require a
14 violation to be proven by a preponderance of the evidence.

15 (e) A member of the discipline review committee or the executive director of the board
16 may issue subpoenas and subpoenas *duces tecum* to obtain testimony and documents to aid in
17 the investigation of allegations against any person regulated by the article.

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

20 (g) The board may, after notice and opportunity for hearing, deny or refuse to renew,
21 suspend, restrict, or revoke the license or permit of, or impose probationary conditions upon, or
22 take disciplinary action against, any licensee or permittee for any of the following reasons:

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

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

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

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

29 (5) Having had a board authorization revoked or suspended, other disciplinary action
30 taken, or an application for a board authorization denied by the proper authorities of another
31 jurisdiction;

32 (6) Aiding or abetting unlicensed practice;

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

35 (8) Having an incapacity that prevents a licensee from engaging in the practice of
36 registered professional nursing, or advanced practice registered nursing, with reasonable skill,
37 competence, and safety to the public;

38 (9) Committing fraud in connection with the practice of registered professional nursing or
39 advanced practice registered nursing;

40 (10) Failing to report to the board of one's surrender of a license or authorization to practice
41 of registered professional nursing, or advanced practice registered nursing in another jurisdiction
42 while under disciplinary investigation by any of those authorities or bodies for conduct that would
43 constitute grounds for action as defined in this section;

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

47 (12) Being guilty of unprofessional conduct as contained in the American Nurses
48 Association principles of ethics and code of professional conduct. The following acts are
49 conclusively presumed to be unprofessional conduct:

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

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

52 (C) Abusing alcohol or drugs;

53 (D) Violating any professional confidence or disclosing any professional secret;

54 (E) Harassing, abusing, intimidating, insulting, degrading, or humiliating a patient
55 physically, verbally, or through another form of communication;

56 (F) Obtaining any fee by fraud or misrepresentation;

57 (G) Engaging in any action or conduct which would have warranted the denial of the
58 license.

59 (13) Knowing or suspecting that a licensee is incapable of engaging in the practice of
60 registered professional nursing, or advanced practice registered nursing, with reasonable skill,
61 competence, and safety to the public, and failing to report any relevant information to the board;

62 (14) Using or disclosing protected health information in an unauthorized or unlawful
63 manner;

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

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

69 (17) Failing to report to the board any driving under the influence and/or driving while
70 intoxicated offense; or

71 (18) Violating any of the terms or conditions of any order entered in any disciplinary action.

72 (h) For the purposes of subsection (g) of this section, effective July 1, 2018, disciplinary
73 action may include:

74 (1) Reprimand;

75 (2) Probation;

76 (3) Restrictions;

77 (4) Suspension;

78 (5) Revocation;

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

- 80 (7) Mandatory continuing education or other training;
81 (8) Practicing under supervision or other restriction; or
82 (9) Requiring the licensee or permittee to report to the board for periodic interviews for a
83 specified period.

84 (i) In addition to any other sanction imposed, the board may require a licensee or permittee
85 to pay the costs of the proceeding.

86 (j) An advanced practice registered nurse may not be disciplined for providing expedited
87 partner therapy in accordance with §16-4F-1 et seq.

88 (k) A person authorized to practice under this article who reports or otherwise provides
89 evidence of the negligence, impairment, or incompetence of another member of this profession
90 to the board or to any peer review organization is not liable to any person for making the report if
91 the report is made without actual malice and in the reasonable belief that the report is warranted
92 by the facts known to him or her at the time.

§30-7-28. Procedures for hearing; right of appeal.

1 (a) Hearings are governed by provisions in §30-1-8 of this code.

2 (b) The board may conduct the hearing or elect to have an administrative law judge
3 conduct the hearing.

4 (c) If the hearing is conducted by an administrative law judge, at the conclusion of a
5 hearing he or she shall prepare a proposed written order containing findings of fact and
6 conclusions of law. The proposed order may contain proposed disciplinary actions if the board so
7 directs. The board may accept, reject, or modify the decision of the administrative law judge.

8 (d) Any member or the executive director of the board has the authority to administer oaths
9 and examine any person under oath.

10 (e) If, after a hearing, the board determines the licensee or permittee has violated
11 provisions of this article or the board's rules, a formal written decision shall be prepared which

12 contains findings of fact, conclusions of law, and a specific description of the disciplinary actions
13 imposed.

§30-7-29. Judicial review.

1 A person adversely affected by a decision of the board denying an application, or entered
2 after a hearing, may obtain judicial review of the decision in accordance with §29A-5-4 of this
3 code and may appeal any ruling resulting from judicial review in accordance with §29A-6-1 et seq.
4 of this code.

§30-7-30. Criminal offenses.

1 (a) When, as a result of an investigation under this article or otherwise, the board has
2 reason to believe that a person authorized under this article has committed a criminal offense
3 under this article, the board may bring its information to the attention of an appropriate law-
4 enforcement official.

5 (b) Any person who intentionally practices, or holds himself or herself out as qualified to
6 practice registered nursing or advanced practice registered nursing, or uses any title, word, or
7 abbreviation to indicate to or induce others to believe he or she is licensed to practice as a
8 registered professional nurse or advanced practice registered nurse without obtaining an active,
9 valid West Virginia license to practice that profession or with a license that is:

10 (1) Expired, suspended, or lapsed; or

11 (2) Inactive, revoked, suspended as a result of disciplinary action, or surrendered, is guilty
12 of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000.

§30-7-31. Single act evidence of practice.

1 In any action brought under this article, any proceeding initiated under this article,
2 evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty,
3 injunction, restraining order, or conviction without evidence of a general course of conduct.

ARTICLE 7E. NURSE HEALTH PROGRAMS.

§30-7E-1. Definitions.

1 [Repealed]

§30-7E-2. Nurse health program.

1 [Repealed]

§30-7E-3. Discretionary authority of boards to designate programs.

1 [Repealed]

NOTE: The purpose of this bill is to rewrite the article on registered professional nurses.

§30-7-1a, §30-7-6a, §30-7-6b, §30-7-8a, §30-7-11a, §30-7-15a, §30-7-15b, §30-7-15c, §30-7-15d, §30-7-15e, §30-7E-1, §30-7E-2, and §30-7E-3 are repealed.

§30-7-1, §30-7-2, §30-7-3, §30-7-4, §30-7-5, §30-7-6, §30-7-7, §30-7-8, §30-7-9, §30-7-10, §30-7-11, §30-7-12, §30-7-13, §30-7-14, §30-7-15, §30-7-16, §30-7-18, §30-7-19, and §30-7-20 have been completely rewritten; therefore they have been completely underscored.

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