

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 606

BY SENATORS WELD, WOELFEL, TAKUBO, STOLLINGS,

AND PLYMALE

[Introduced February 09, 2022; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §30-3-14 of the Code of West Virginia, 1931, as amended, relating
 2 to the West Virginia Medical Practice Act; the duty of providers licensed or authorized by
 3 the board to report misconduct; civil immunity for making good-faith reports; modifying
 4 grounds for professional discipline and license denial; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

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 podiatrist; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determination; referral to law-enforcement authorities; rulemaking.

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, the Board of Pharmacy,
 4 and others.

5 The board may initiate investigations as to professional incompetence or other reasons
 6 for which a licensed physician or podiatrist may be adjudged unqualified based upon criminal
 7 convictions; complaints by citizens, pharmacists, physicians, podiatrists, peer review committees,
 8 hospital administrators, professional societies, or others; or unfavorable outcomes arising out of
 9 medical professional liability. The board shall initiate an investigation if it receives notice that
 10 three or more judgments, or any combination of judgments and settlements resulting in five or
 11 more unfavorable outcomes arising from medical professional liability, have been rendered or
 12 made against the physician or podiatrist within a five-year period. The board may not consider
 13 any judgments or settlements as conclusive evidence of professional incompetence or conclusive

14 lack of qualification to practice.

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

22 The chief executive officer of every hospital shall, within 60 days after the completion of
23 the hospital's formal disciplinary procedure and also within 60 days after the commencement of
24 and again after the conclusion of any resulting legal action, report in writing to the board the name
25 of any member of the medical staff or any other physician or podiatrist practicing in the hospital
26 whose hospital privileges have been revoked, restricted, reduced, or terminated for any cause,
27 including resignation, together with all pertinent information relating to such action. The chief
28 executive officer shall also report any other formal disciplinary action taken against any physician
29 or podiatrist by the hospital upon the recommendation of its medical staff relating to professional
30 ethics, medical incompetence, medical professional liability, moral turpitude or drug or alcohol
31 abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend
32 staff or section meetings need not be reported. Voluntary cessation of hospital privileges for
33 reasons unrelated to professional competence or ethics need not be reported.

34 Any managed care organization operating in this state which provides a formal peer review
35 process shall report in writing to the board, within 60 days after the completion of any formal peer
36 review process and also within 60 days after the commencement of and again after the conclusion
37 of any resulting legal action, the name of any physician or podiatrist whose credentialing has been
38 revoked or not renewed by the managed care organization. The managed care organization shall
39 also report in writing to the board any other disciplinary action taken against a physician or

40 podiatrist relating to professional ethics, professional liability, moral turpitude, or drug or alcohol
41 abuse within 60 days after completion of a formal peer review process which results in the action
42 taken by the managed care organization. For purposes of this subsection, “managed care
43 organization” means a plan that establishes, operates, or maintains a network of health care
44 providers who have entered into agreements with and been credentialed by the plan to provide
45 health care services to enrollees or insureds to whom the plan has the ultimate obligation to
46 arrange for the provision of or payment for health care services through organizational
47 arrangements for ongoing quality assurance, utilization review programs, or dispute resolutions.

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

53 Any person authorized by the board to provide healthcare services to patients in this state
54 shall submit a written report to the board of any incidents the person reasonably believes to have
55 occurred involving any of the following:

56 (1) A person licensed or authorized by the board to provide healthcare services to patients
57 in this state exercising influence within a provider-physician relationship for the purpose of
58 engaging a patient in sexual activity or other sexual misconduct with a patient;

59 (2) A person authorized by the board to provide healthcare services to patients in this state
60 engaging in drug diversion by transferring controlled substances or prescriptions for controlled
61 substances to:

62 (A) Himself or herself for personal use;

63 (B) Any person with whom the provider is having a sexual relationship; or

64 (C) Any person without a legitimate medical purpose and outside the bounds of
65 professional practice;

66 (3) Fraudulent prescribing, or theft of controlled substances by a person licensed or
67 authorized by the board to provide healthcare services to patients in this state; or

68 (4) Other gross misconduct by a person authorized by the board to provide healthcare
69 services to patients in this state.

70 All required reports shall be submitted to the board within 30 days of the reportable
71 incident, or if the provider with a duty to report gained knowledge of the incident after it occurred,
72 within 30 days of the provider's knowledge of the incident. Failure of a person authorized by the
73 board to provide healthcare services to patients in this state to report any such incidents to the
74 board constitutes unprofessional conduct and is grounds for disciplinary action by the board. A
75 physician who is licensed by the board and who obtains responsive information exclusively while
76 functioning as the executive director or employee of a board-approved professional health
77 program shall only be required to report in conformity with §30-3-9(h) of this code.

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

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

90 Within 30 days after a person known to be a physician or podiatrist licensed or otherwise
91 lawfully practicing medicine and surgery or podiatry in this state or applying to be licensed is

92 convicted of a felony under the laws of this state or of any crime under the laws of this state
93 involving alcohol or drugs in any way, including any controlled substance under state or federal
94 law, the clerk of the court of record in which the conviction was entered shall forward to the board
95 a certified true and correct abstract of record of the convicting court. The abstract shall include
96 the name and address of the physician or podiatrist or applicant, the nature of the offense
97 committed, and the final judgment and sentence of the court.

98 Upon a determination of the board that there is probable cause to believe that any person,
99 partnership, corporation, association, insurance company, professional society, or other
100 organization has failed or refused to make a report required by this subsection, the board shall
101 provide written notice to the alleged violator stating the nature of the alleged violation and the time
102 and place at which the alleged violator shall appear to show good cause why a civil penalty should
103 not be imposed. The hearing shall be conducted in accordance with §29A-5-1 *et seq.* of this code.
104 After reviewing the record of the hearing, if the board determines that a violation of this subsection
105 has occurred, the board shall assess a civil penalty of not less than \$1,000 nor more than \$10,000
106 against the violator. The board shall notify any person so assessed of the assessment in writing
107 and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount
108 of the assessment to the board within 30 days, the Attorney General may institute a civil action in
109 the Circuit Court of Kanawha County to recover the amount of the assessment. In any civil action,
110 the court's review of the board's action shall be conducted in accordance with §29A-5-4 of this
111 code. Notwithstanding any other provision of this article to the contrary, when there are conflicting
112 views by recognized experts as to whether any alleged conduct breaches an applicable standard
113 of care, the evidence ~~must~~ shall be clear and convincing before the board may find that the
114 physician or podiatrist has demonstrated a lack of professional competence to practice with a
115 reasonable degree of skill and safety for patients.

116 Any person may report to the board relevant facts about the conduct of any physician or
117 podiatrist in this state which in the opinion of that person amounts to medical professional liability

118 or professional incompetence.

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

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

126 Any person who reports pursuant to this subsection, in good faith and without fraud or
127 malice, is immune from civil liability. Reports made in bad faith, fraudulently, or maliciously
128 constitute unprofessional conduct and, if made by persons licensed or authorized to practice by
129 the board, are grounds for disciplinary action pursuant to § 30-3-14(c) of this code.

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

134 (1) Attempting to obtain, obtaining, renewing, or attempting to renew a license or other
135 authorization to practice medicine and surgery or podiatry by bribery, fraudulent
136 misrepresentation, or through known error of the board;

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

140 (3) False or deceptive advertising;

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

143 (5) Making or filing a report that the person knows to be false; intentionally or negligently

144 failing to file a report or record required by state or federal law; willfully impeding or obstructing
145 the filing of a report or record required by state or federal law; or inducing another person to do
146 any of the foregoing. The reports and records covered in this subdivision mean only those that
147 are signed in the capacity as a licensed physician or podiatrist;

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

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

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

164 (8) Exercising influence within a patient-physician relationship for the purpose of engaging
165 a patient in sexual activity or engaging in other sexual misconduct;

166 The board shall propose rules for legislative approval in accordance with the provisions of
167 §29A-3-1 et seq. of this code which define sexual misconduct and identify prohibited professional
168 misconduct, including sexual misconduct, for which an application may be denied and/or a license
169 or other authorization to practice may be subject to disciplinary action by the board;

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

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

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

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

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

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

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

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

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

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

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

202 (20) Professional incompetence;

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

211 (22) Knowingly failing to report to the board any act of gross misconduct committed by
212 another licensee of the board or failing to comply with any reporting requirement set forth in §30-
213 3-14(b) of this code.

214 (d) The board shall deny any application for a license or other authorization to practice
215 medicine and surgery or podiatry in this state to any applicant, and shall revoke the license of any
216 physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty
217 by any court of competent jurisdiction of any felony involving prescribing, selling, administering,
218 dispensing, mixing, or otherwise preparing any prescription drug, including any controlled
219 substance under state or federal law, for other than generally accepted therapeutic purposes.
220 Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is
221 sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the same

222 effect as a verdict or plea of guilt. Upon application of a physician that has had his or her license
223 revoked because of a drug related felony conviction, upon completion of any sentence of
224 confinement, parole, probation, or other court-ordered supervision and full satisfaction of any
225 fines, judgments, or other fees imposed by the sentencing court, the board may issue the
226 applicant a new license upon a finding that the physician is, except for the underlying conviction,
227 otherwise qualified to practice medicine: *Provided*, That the board may place whatever terms,
228 conditions, or limitations it deems appropriate upon a physician licensed pursuant to this
229 subsection.

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

246 (f) The investigating body, as provided in §30-3-14(e) of this code, may request and the
247 board under any circumstances may require a physician or podiatrist or person applying for

248 licensure or other authorization to practice medicine and surgery or podiatry in this state to submit
249 to a physical or mental examination by a physician or physicians approved by the board. A
250 physician or podiatrist submitting to an examination has the right, at his or her expense, to
251 designate another physician to be present at the examination and make an independent report to
252 the investigating body or the board. The expense of the examination shall be paid by the board.
253 Any individual who applies for or accepts the privilege of practicing medicine and surgery or
254 podiatry in this state is considered to have given his or her consent to submit to all examinations
255 when requested to do so in writing by the board and to have waived all objections to the
256 admissibility of the testimony or examination report of any examining physician on the ground that
257 the testimony or report is privileged communication. If a person fails or refuses to submit to an
258 examination under circumstances which the board finds are not beyond his or her control, failure
259 or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry
260 competently and in compliance with the standards of acceptable and prevailing medical practice.

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

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

274 (i) In disciplinary actions in which probable cause has been found by the board, the board
275 shall, within 20 days of the date of service of the written notice of charges or 60 days prior to the
276 date of the scheduled hearing, whichever is sooner, provide the respondent with the complete
277 identity, address, and telephone number of any person known to the board with knowledge about
278 the facts of any of the charges; provide a copy of any statements in the possession of or under
279 the control of the board; provide a list of proposed witnesses with addresses and telephone
280 numbers, with a brief summary of his or her anticipated testimony; provide disclosure of any trial
281 expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure;
282 provide inspection and copying of the results of any reports of physical and mental examinations
283 or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used
284 at the hearing: *Provided*, That the board ~~shall~~ may not be required to furnish or produce any
285 materials which contain opinion work product information or would be a violation of the attorney-
286 client privilege. Within 20 days of the date of service of the written notice of charges, the board
287 shall disclose any exculpatory evidence with a continuing duty to do so throughout the disciplinary
288 process. Within 30 days of receipt of the board's mandatory discovery, the respondent shall
289 provide the board with the complete identity, address, and telephone number of any person known
290 to the respondent with knowledge about the facts of any of the charges; provide a list of proposed
291 witnesses with addresses and telephone numbers, to be called at hearing, with a brief summary
292 of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the
293 requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection
294 and copying of the results of any reports of physical and mental examinations or scientific tests
295 or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing.

296 (j) Whenever it finds any person unqualified because of any of the grounds set forth in
297 §30-3-14(c) of this code, the board may enter an order imposing one or more of the following:

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

- 300 (2) Administer a public reprimand;
- 301 (3) Suspend, limit, or restrict his or her license or other authorization to practice medicine
302 and surgery or podiatry for not more than five years, including limiting the practice of that person
303 to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;
- 304 (4) Revoke his or her license or other authorization to practice medicine and surgery or
305 podiatry or to prescribe or dispense controlled substances for any period of time, including for the
306 life of the licensee, that the board may find to be reasonable and necessary according to evidence
307 presented in a hearing before the board or its designee;
- 308 (5) Require him or her to submit to care, counseling, or treatment designated by the board
309 as a condition for initial or continued licensure or renewal of licensure or other authorization to
310 practice medicine and surgery or podiatry;
- 311 (6) Require him or her to participate in a program of education prescribed by the board;
- 312 (7) Require him or her to practice under the direction of a physician or podiatrist designated
313 by the board for a specified period of time; and
- 314 (8) Assess a civil fine of not less than \$1,000 nor more than \$10,000.
- 315 (k) Notwithstanding the provisions of §30-1-8 of this code, if the board determines the
316 evidence in its possession indicates that a physician's or podiatrist's continuation in practice or
317 unrestricted practice constitutes an immediate danger to the public, the board may take any of
318 the actions provided in §30-3-4(j) of this code on a temporary basis and without a hearing if
319 institution of proceedings for a hearing before the board are initiated simultaneously with the
320 temporary action and begin within 15 days of the action. The board shall render its decision within
321 five days of the conclusion of a hearing under this subsection.
- 322 (l) Any person against whom disciplinary action is taken pursuant to this article has the
323 right to judicial review as provided in §29A-5-1 *et seq.* and §29A-6-1 *et seq.* of this code: *Provided,*
324 That a circuit judge may also remand the matter to the board if it appears from competent
325 evidence presented to it in support of a motion for remand that there is newly discovered evidence

326 of such a character as ought to produce an opposite result at a second hearing on the merits
327 before the board and:

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

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

331 A person may not practice medicine and surgery or podiatry or deliver health care services
332 in violation of any disciplinary order revoking, suspending, or limiting his or her license while any
333 appeal is pending. Within 60 days, the board shall report its final action regarding restriction,
334 limitation, suspension, or revocation of the license of a physician or podiatrist, limitation on
335 practice privileges, or other disciplinary action against any physician or podiatrist to all appropriate
336 state agencies, appropriate licensed health facilities and hospitals, insurance companies or
337 associations writing medical malpractice insurance in this state, the American Medical
338 Association, the American Podiatry Association, professional societies of physicians or podiatrists
339 in the state, and any entity responsible for the fiscal administration of Medicare and Medicaid.

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

345 (n) Any entity, organization or person, including the board, any member of the board, its
346 agents or employees and any entity or organization or its members referred to in this article, any
347 insurer, its agents or employees, a medical peer review committee and a hospital governing
348 board, its members or any committee appointed by it acting without malice and without gross
349 negligence in making any report or other information available to the board or a medical peer
350 review committee pursuant to law and any person acting without malice and without gross
351 negligence who assists in the organization, investigation, or preparation of any such report or

352 information or assists the board or a hospital governing body or any committee in carrying out any
353 of its duties or functions provided by law is immune from civil or criminal liability, except that the
354 unlawful disclosure of confidential information possessed by the board is a misdemeanor as
355 provided in this article.

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

364 (p) In every case considered by the board under this article regarding discipline or
365 licensure, whether initiated by the board or upon complaint or information from any person or
366 organization, the board shall make a preliminary determination as to whether probable cause
367 exists to substantiate charges of disqualification due to any reason set forth in §30-3-14(c) of this
368 code. If probable cause is found to exist, all proceedings on the charges shall be open to the
369 public who are entitled to all reports, records, and nondeliberative materials introduced at the
370 hearing, including the record of the final action taken: *Provided*, That any medical records, which
371 were introduced at the hearing and which pertain to a person who has not expressly waived his
372 or her right to the confidentiality of the records, may not be open to the public nor is the public
373 entitled to the records.

374 (q) If the board receives notice that a physician or podiatrist has been subjected to
375 disciplinary action or has had his or her credentials suspended or revoked by the board, a hospital
376 or a professional society, as defined in §30-3-14(b) of this code, for three or more incidents during
377 a five-year period, the board shall require the physician or podiatrist to practice under the direction

378 of a physician or podiatrist designated by the board for a specified period of time to be established
379 by the board.

380 (r) Notwithstanding any other provisions of this article, the board may, at any time, on its
381 own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or
382 by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the
383 West Virginia State Bar's mediator referral service of certified mediators with expertise in
384 professional disciplinary matters. The board and the physician or podiatrist may choose a
385 mediator from that list. If the board and the physician or podiatrist are unable to agree on a
386 mediator, the board shall designate a mediator from the list by neutral rotation. The mediation
387 ~~shall~~ may not be considered a proceeding open to the public, and any reports and records
388 introduced at the mediation shall not become part of the public record. The mediator and all
389 participants in the mediation shall maintain and preserve the confidentiality of all mediation
390 proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise
391 be subject to process requiring disclosure of confidential information in any proceeding relating to
392 or arising out of the disciplinary or licensure matter mediated: *Provided*, That any confidentiality
393 agreement and any written agreement made and signed by the parties as a result of mediation
394 may be used in any proceedings subsequently instituted to enforce the written agreement. The
395 agreements may be used in other proceedings if the parties agree in writing.

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

398 (t) Whenever the board receives credible information that a licensee of the board is
399 engaging or has engaged in criminal activity or the commitment of a crime under state or federal
400 law, the board shall report the information, to the extent that sensitive or confidential information
401 may be publicly disclosed under law, to the appropriate state or federal law-enforcement authority
402 and/or prosecuting authority. This duty exists in addition to and is distinct from the reporting
403 required under federal law for reporting actions relating to health care providers to the United

404 States Department of Health and Human Services.

NOTE: The purpose of this bill is to establish a duty to report certain incidents of provider misconduct by persons authorized by the board to treat patients in this state; to provide civil immunity for good faith reports to the board; to modify the grounds for professional discipline and license denial to include a broader array of provider sexual misconduct and reporting to the board, and to provide rulemaking authority to the board to promulgate rules relating to sexual misconduct by providers licensed or authorized by the board.

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