

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-1. Legislative findings.

The Legislature hereby finds and declares that the practice of medicine and surgery and the practice of podiatry is a privilege and not a natural right of individuals. As a matter of public policy, it is necessary to protect the public interest through enactment of this article and to regulate the granting of such privileges and their use.

§30-3-2. Purpose.

The purpose of this article is to provide for the licensure and professional discipline of physicians and podiatrists and for the licensure and professional discipline of physician assistants and to provide a professional environment that encourages the delivery of quality medical services within this state.

§30-3-3. Short title.

This article shall be known and may be cited as the "West Virginia Medical Practice Act."

§30-3-4. Definitions.

As used in this article:

- (1) "Board" means the West Virginia Board of Medicine established in section five of this article.
- (2) "Medical peer review committee" means a committee of, or appointed by, a state or local professional medical society, or a committee of, or appointed by, a medical staff of a licensed hospital, long-term care facility or other health care facility, or any health care peer review organization as defined in section one, article three-c of this chapter, or any other organization of professionals in this state formed pursuant to state or federal law and authorized to evaluate medical and health care services.
- (3) "Practice of medicine and surgery" means the diagnosis or treatment of, or operation or prescription for, any human disease, pain, injury, deformity or other physical or mental condition. "Surgery" includes the use on humans of lasers, ionizing radiation, pulsed light and radiofrequency devices. The provisions of this section do not apply to any person who is a duly licensed health care provider under other pertinent provisions of this code and who is acting within the scope of his or her license.
- (4) "Practice of podiatry" means the examination, diagnosis, treatment, prevention and care of conditions and functions of the human foot and ankle by medical, surgical and other scientific knowledge and methods; with surgical treatment of the ankle authorized only when a podiatrist has been granted privileges to perform ankle surgery by a hospital's medical staff credentialing committee based on the training and experience of the podiatrist; and medical and surgical

treatment of warts and other dermatological lesions of the hand which similarly occur in the foot. When a podiatrist uses other than local anesthesia, in surgical treatment of the foot, the anesthesia must be administered by, or under the direction of, an anesthesiologist or certified registered nurse anesthetist authorized under the State of West Virginia to administer anesthesia. A medical evaluation shall be made by a physician of every patient prior to the administration of other than local anesthesia.

(5) "State health officer" means the commissioner for the Bureau for Public Health or his or her designee, which officer or designee shall be a physician and shall act as secretary of the board and shall carry out any and all responsibilities assigned in this article to the secretary of the board.

§30-3-5. West Virginia Board of Medicine powers and duties continued; appointment and terms of members; vacancies; removal.

The West Virginia Board of Medicine has assumed, carried on and succeeded to all the duties, rights, powers, obligations and liabilities heretofore belonging to or exercised by the Medical Licensing Board of West Virginia. All the rules, orders, rulings, licenses, certificates, permits and other acts and undertakings of the medical licensing board of West Virginia as heretofore constituted have continued as those of the West Virginia Board of Medicine until they expired or were amended, altered or revoked. The board remains the sole authority for the issuance of licenses to practice medicine and surgery and to practice podiatry and to practice as physician assistants in this state under the supervision of physicians licensed under this article. The board shall continue to be a regulatory and disciplinary body for the practice of medicine and surgery and the practice of podiatry and for physician assistants in this state.

The board shall consist of fifteen members. One member shall be the state health officer ex officio, with the right to vote as a member of the board. The other fourteen members shall be appointed by the Governor, with the advice and consent of the Senate. Eight of the members shall be appointed from among individuals holding the degree of doctor of medicine and two shall hold the degree of doctor of podiatric medicine. One member shall be an individual licensed by the board as a physician assistant. Each of these members must be duly licensed to practice his or her profession in this state on the date of appointment and must have been licensed and actively practicing that profession for at least five years immediately preceding the date of appointment. Three lay members shall be appointed to represent health care consumers. Neither the lay members nor any person of the lay members' immediate families shall be a provider of or be employed by a provider of health care services. The state health officer's term shall continue for the period that he or she holds office as state health officer. Each other member of the board shall be appointed to serve a term of five years: *Provided*, That the members of the Board of Medicine holding appointments on the effective date of this section shall continue to serve as members of the Board of Medicine until the expiration of their term unless sooner removed. Each term shall begin on October 1 of the applicable year, and a member may not be appointed to more than two consecutive full terms on the board.

A person is not eligible for membership on the board who is a member of any political party executive committee or, with the exception of the state health officer, who holds any public

office or public employment under the federal government or under the government of this state or any political subdivision thereof.

In making appointments to the board, the Governor shall, so far as practicable, select the members from different geographical sections of the state. When a vacancy on the board occurs and less than one year remains in the unexpired term, the appointee shall be eligible to serve the remainder of the unexpired term and two consecutive full terms on the board.

No member may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality: *Provided*, That the expiration, surrender or revocation of the professional license by the board of a member of the board shall cause the membership to immediately and automatically terminate.

§30-3-6. Conduct of business of West Virginia Board of Medicine; meetings; officers; compensation; expenses; quorum.

Every two years the board shall elect from among its members a president and vice president. Regular meetings shall be held as scheduled by the rules of the board. Special meetings of the board may be called by the joint action of the president and vice president or by any three members of the board on seven days' prior written notice by mail postage prepaid or electronic means or, in case of emergency, on two days' notice by telephone and electronic means. With the exception of the state health officer, members of the board shall receive compensation and expense reimbursement in accordance with section eleven, article one of this chapter.

A majority of the membership of the board constitutes a quorum for the transaction of business, and business is transacted by a majority vote of a quorum, except for disciplinary actions which shall require the affirmative vote of not less than five members or a majority vote of those present, whichever is greater.

Meetings of the board shall be held in public session. Disciplinary proceedings, prior to a finding of probable cause as provided in subsection (p), section fourteen of this article, shall be held in closed sessions, unless the party subject to discipline requests that the proceedings be held in public session.

§30-3-7. Powers and duties of West Virginia Board of Medicine.

(a) The board is autonomous and, in accordance with this article, shall determine qualifications of applicants for licenses to practice medicine and surgery, to practice podiatry, and to practice as a physician assistant for a physician licensed under this article, and shall issue licenses to qualified applicants and shall regulate the professional conduct and discipline of such individuals. In carrying out its functions, the board may:

- (1) Adopt such rules as are necessary to carry out the purposes of this article;
- (2) Hold hearings and conduct investigations, subpoena witnesses and documents and administer oaths;

(3) Institute proceedings in the courts of this state to enforce its subpoenas for the production of witnesses and documents and its orders and to restrain and enjoin violations of this article and of any rules promulgated under it;

(4) Employ investigators, attorneys, hearing examiners, consultants and such other employees as may be necessary, who shall be exempt from the classified service of the Division of Personnel and who shall serve at the will and pleasure of the board. In addition, all personnel employed through the Department of Health and Human Resources on June 30, 2009, to provide services for the board are hereby transferred to the board effective July 1, 2009. However, the employment, salary, benefits or position classification of any person transferred under this section may not be reduced or diminished by reason of this section. All persons transferred shall retain their coverage under the classified service of the Division of Personnel and all matters relating to job classification, job tenure and conditions of employment shall remain in force and effect from and after the date of this section, to the same extent as if this section had not been reenacted. Also, nothing herein shall prohibit the disciplining or dismissal of any employee for cause.

(5) Enter into contracts and receive and disburse funds according to law;

(6) Establish and certify standards for the supervision and certification of physician assistants;

(7) Authorize medical and podiatry corporations in accordance with the limitations of section fifteen of this article to practice medicine and surgery or podiatry through duly licensed physicians or podiatrists; and

(8) Perform such other duties as are set forth in this article or otherwise provided for in this code.

(b) The board shall submit an annual report of its activities to the Legislature. The report shall include a statistical analysis of complaints received, charges investigated, charges dismissed after investigation, the grounds for each such dismissal and disciplinary proceedings and disposition.

§30-3-7a. Findings and Rule-making authority.

(a) The Legislature finds that it is appropriate and in the public interest to require the Board of Medicine to regulate the practice of Radiologist Assistants.

(b) The West Virginia Board of Medicine, with the advice of the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners, shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to:

(1) Establish the scope of practice of a Radiologist Assistant;

(2) Develop the education and training requirements for a Radiologist Assistant; and

(3) Regulate Radiologist Assistants.

§30-3-8. State health officer to act as secretary of the board.

The state health officer, in addition to being a member of the board, shall act as its secretary. He or she shall, together with the president of the board, sign all licenses, reports, orders and other documents that may be required by the board in the performance of its duties.

§30-3-9. Records of board; expungement; examination; notice; public information; voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges.

(a) The board shall maintain a permanent record of the names of all physicians, podiatrists, and physician assistants, licensed, certified or otherwise lawfully practicing in this state and of all persons applying to be so licensed to practice, along with an individual historical record for each such individual containing reports and all other information furnished the board under this article or otherwise. Such record may include, in accordance with rules established by the board, additional items relating to the individual's record of professional practice that will facilitate proper review of such individual's professional competence.

(b) Upon a determination by the board that any report submitted to it is without merit, the report shall be expunged from the individual's historical record.

(c) A physician, podiatrist, physician assistant or applicant, or authorized representative thereof, has the right, upon request, to examine his or her own individual historical record maintained by the board pursuant to this article and to place into such record a statement of reasonable length of his or her own view of the correctness or relevance of any information existing in such record. Such statement shall at all times accompany that part of the record in contention.

(d) A physician, podiatrist, physician assistant or applicant has the right to seek through court action the amendment or expungement of any part of his or her historical record.

(e) A physician, podiatrist, physician assistant or applicant shall be provided written notice within thirty days of the placement and substance of any information in his or her individual historical record that pertains to him or her and that was not submitted to the board by him or her.

(f) Except for information relating to biographical background, education, professional training and practice, a voluntary agreement entered into pursuant to subsection (h) of this section and which has been disclosed to the board, prior disciplinary action by any entity, or information contained on the licensure application, the board shall expunge information in an individual's historical record unless it has initiated a proceeding for a hearing upon such information within two years of the placing of the information into the historical record.

(g) Orders of the board relating to disciplinary action against a physician, podiatrist or physician assistant are public information.

(h)(1) In order to encourage voluntary participation in monitored alcohol chemical dependency or major mental illness programs and in recognition of the fact that major mental illness, alcoholism and chemical dependency are illnesses, a physician, podiatrist or physician assistant licensed, certified or otherwise lawfully practicing in this state or applying for a license to practice in this state may enter into a voluntary agreement with the physician health program as defined in section two, article three-d of this chapter. The agreement between the physician, podiatrist or physician assistant and the physician health program shall include a jointly agreed upon treatment program and mandatory conditions and procedures to monitor compliance with the program of recovery.

(2) Any voluntary agreement entered into pursuant to this subsection shall not be considered a disciplinary action or order by the board, shall not be disclosed to the board and shall not be public information if:

(A) Such voluntary agreement is the result of the physician, podiatrist or physician assistant self-enrolling or voluntarily participating in the board-designated physician health program;

(B) The board has not received nor filed any written complaints regarding said physician, podiatrist or physician assistant relating to an alcohol, chemical dependency or major mental illness affecting the care and treatment of patients, nor received any reports pursuant to subsection (b), section fourteen of this article relating to an alcohol or chemical dependency impairment; and

(C) The physician, podiatrist or physician assistant is in compliance with the voluntary treatment program and the conditions and procedures to monitor compliance.

(3) If any physician, podiatrist or physician assistant enters into a voluntary agreement with the board-approved physician health program, pursuant to this subsection and then fails to comply with or fulfill the terms of said agreement, the physician health program shall report the noncompliance to the board within twenty-four hours. The board may initiate disciplinary proceedings pursuant to subsection (a), section fourteen of this article or may permit continued participation in the physician health program or both.

(4) If the board has not instituted any disciplinary proceeding as provided for in this article, any information received, maintained or developed by the board relating to the alcohol or chemical dependency impairment of any physician, podiatrist or physician assistant and any voluntary agreement made pursuant to this subsection shall be confidential and not available for public information, discovery or court subpoena, nor for introduction into evidence in any medical professional liability action or other action for damages arising out of the provision of or failure to provide health care services.

In the board's annual report of its activities to the Legislature required under section seven of this article, the board shall include information regarding the success of the voluntary agreement mechanism established therein: *Provided*, That in making such report, the board shall not

disclose any personally identifiable information relating to any physician, podiatrist or physician assistant participating in a voluntary agreement as provided herein.

Notwithstanding any of the foregoing provisions, the board may cooperate with and provide documentation of any voluntary agreement entered into pursuant to this subsection to licensing boards in other jurisdictions of which the board has become aware and may be appropriate.

(i) Any physician-patient privilege does not apply in any investigation or proceeding by the board or by a medical peer review committee or by a hospital governing board with respect to relevant hospital medical records, while any of the aforesaid are acting within the scope of their authority: *Provided*, That the disclosure of any information pursuant to this provision shall not be considered a waiver of any such privilege in any other proceeding.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

(a) The board shall issue a license to practice medicine and surgery or to practice podiatry to any individual who is qualified to do so in accordance with the provisions of this article.

(b) For an individual to be licensed to practice medicine and surgery in this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable fee, the amount of the reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of medicine and surgery;

(2) He or she must provide evidence of graduation and receipt of the degree of doctor of medicine or its equivalent from a school of medicine, which is approved by the liaison committee on medical education or by the board;

(3) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the Accreditation Council for Graduate Medical Education; and

(4) He or she must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice medicine and surgery. The board shall before the date of examination determine what will constitute a passing score: *Provided*, That the board, or a majority of it, may accept in lieu of an examination of applicants the certificate of the National Board of Medical Examiners: *Provided, however*, That an applicant is required to attain a passing score on all components or steps of the examination within a period of ten consecutive years. The board need not reject a candidate for a nonmaterial technical or administrative error or omission in the application process that is unrelated to the candidate's professional qualifications as long as there is sufficient information available to the board to determine the eligibility of the candidate for licensure.

(c) In addition to the requirements of subsection (b) of this section, any individual who has received the degree of doctor of medicine or its equivalent from a school of medicine located outside of the United States, the Commonwealth of Puerto Rico and Canada to be licensed to practice medicine in this state must also meet the following additional requirements and limitations:

(1) He or she must be able to demonstrate to the satisfaction of the board his or her ability to communicate in the English language;

(2) Before taking a licensure examination, he or she must have fulfilled the requirements of the Educational Commission for Foreign Medical Graduates for certification or he or she must provide evidence of receipt of a passing score on the examination of the Educational Commission for Foreign Medical Graduates: *Provided*, That an applicant who: (i) Is currently fully licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state, the District of Columbia, Canada or the Commonwealth of Puerto Rico; (ii) has been engaged on a full-time professional basis in the practice of medicine within the state or jurisdiction where the applicant is fully licensed for a period of at least five years; and (iii) is not the subject of any pending disciplinary action by a medical licensing board and has not been the subject of professional discipline by a medical licensing board in any jurisdiction is not required to have a certificate from the Educational Commission for Foreign Medical Graduates;

(3) He or she must submit evidence to the board of either: (i) Having successfully completed a minimum of two years of graduate clinical training in a program approved by the Accreditation Council for Graduate Medical Education; or (ii) current certification by a member board of the American Board of Medical Specialties.

(d) For an individual to be licensed to practice podiatry in this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable fee, the amount of the reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of podiatric medicine;

(2) He or she must provide evidence of graduation and receipt of the degree of doctor of podiatric medicine or its equivalent from a school of podiatric medicine which is approved by the Council of Podiatry Education or by the board;

(3) He or she must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice podiatric medicine. The board shall before the date of examination determine what will constitute a passing score: *Provided*, That an applicant is required to attain a passing score on all components or steps of the examination within a period of ten consecutive years; and

(4) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the Council on Podiatric Medical Education or the Colleges of Podiatric Medicine. The board may consider a minimum of two years of graduate podiatric clinical training in the U. S. armed forces or three years' private podiatric clinical experience in lieu of this requirement.

(e) Notwithstanding any of the provisions of this article, the board may issue a restricted license to an applicant in extraordinary circumstances under the following conditions:

(1) Upon a finding by the board that based on the applicant's exceptional education, training and practice credentials, the applicant's practice in the state would be beneficial to the public welfare;

(2) Upon a finding by the board that the applicant's education, training and practice credentials are substantially equivalent to the requirements of licensure established in this article;

(3) Upon a finding by the board that the applicant received his or her post-graduate medical training outside of the United States and its territories;

(4) That the restricted license issued under extraordinary circumstances is approved by a vote of three fourths of the members of the board;

(5) That orders denying applications for a restricted license under this subsection are not appealable; and

(6) That the board report to the President of the Senate and the Speaker of the House of Delegates all decisions made pursuant to this subsection and the reasons for those decisions.

(f) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, that establish and regulate the restricted license issued to an applicant in extraordinary circumstances pursuant to the provisions of this section.

(g) Personal interviews by board members of all applicants are not required. An applicant for a license may be required by the board, in its discretion, to appear for a personal interview and may be required to produce original documents for review by the board.

(h) All licenses to practice medicine and surgery granted prior to July 1, 2008, and valid on that date shall continue in full effect for the term and under the conditions provided by law at the time of the granting of the license: *Provided*, That the provisions of subsection (d) of this section do not apply to any person legally entitled to practice chiropody or podiatry in this state prior to June 11, 1965: *Provided, however*, That all persons licensed to practice chiropody prior to June 11, 1965, shall be permitted to use the term "chiropody-podiatry" and shall have the rights, privileges and responsibilities of a podiatrist set out in this article.

(i) The board may not issue a license to a person not previously licensed in West Virginia whose license has been revoked or suspended in another state until reinstatement of his or her license in that state.

§30-3-10a. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

(a) There is hereby established a special volunteer medical license for physicians retired or retiring from the active practice of medicine who wish to donate their expertise for the medical care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer medical license shall be issued by the West Virginia Board of Medicine to physicians licensed or otherwise eligible for licensure under this article and the rules promulgated hereunder without the payment of any application fee, license fee or renewal fee, shall be issued for a fiscal year or part thereof, and shall be renewable annually. The board shall develop application forms for the special license provided for in this subsection which shall contain the physician's acknowledgment that: (1) The physician's practice under the special volunteer medical license will be exclusively and totally devoted to providing medical care to needy and indigent persons in West Virginia; (2) the physician will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any medical services rendered under the special volunteer medical license; (3) the physician will supply any supporting documentation that the board may reasonably require; and (4) the physician agrees to continue to participate in continuing medical education as required of physicians in active practice.

(b) Any physician who renders any medical service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer medical license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service at the clinic unless the act or omission was the result of the physician's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the physician and the clinic pursuant to which the physician will provide voluntary noncompensated medical services under the control of the clinic to patients of the clinic before the rendering of any services by the physician at the clinic: *Provided*, That any clinic entering into such written agreement shall be required to maintain liability coverage of not less than one million dollars per occurrence.

(c) Notwithstanding the provisions of subsection (a) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge shall not be relieved from imputed liability for the negligent acts of a physician rendering voluntary medical services at or for the clinic under a special volunteer medical license authorized under subsection (a) of this section.

(d) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section ten of this article and in the legislative rules

promulgated hereunder, except the fee requirements of subsections (b) and (d) of said section and of the legislative rule promulgated by the board relating to fees.

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

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any physician covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a physician who holds a special volunteer medical license: *Provided*, That this subsection shall not apply to a terminated policy, terminated contract of liability insurance or extended reporting endorsement attached thereto that provides "tail insurance" as defined by section two, article twenty-d, chapter thirty-three of this code: *Provided further*, That nothing within this subsection shall be construed to extend coverage under a terminated policy or terminated contract of liability insurance or any extended reporting endorsement attached thereto to: (1) Alter or amend the effective policy period of any policy, contract of liability insurance or extended reporting endorsement; or (2) cover the treatment of indigent and needy patients by a physician who holds a special volunteer medical license.

§30-3-11. Endorsement of licenses to practice medicine and surgery and podiatry; fees; temporary license; summer camp doctors.

(a) Any person seeking to be licensed to practice medicine and surgery in this state who holds a valid license to practice medicine and surgery attained under requirements substantially similar to the requirement of section ten of this article from another state, the District of Columbia, the Commonwealth of Puerto Rico or Canada, and any person seeking to be licensed to practice podiatry in this state who holds a valid license to practice podiatry attained under requirements substantially similar to the requirements in section ten of this article from another state, territory or foreign country or the District of Columbia shall be issued a license to practice medicine and surgery or podiatry, as appropriate, in this state if he or she meets the following requirements:

(1) He or she must submit an application to the board on forms provided by the board and remit a reasonable licensure fee, the amount of such reasonable fee to be set by the board. The application must, as a minimum, require a statement that the applicant is a licensed physician or podiatrist in good standing and indicate whether any medical disciplinary action has been taken against him or her in the past; and

(2) He or she must demonstrate to the satisfaction of the board that he or she has the requisite qualifications to provide the same standard of care as a physician or podiatrist initially licensed in this state.

(b) The board may investigate the applicant and may request a personal interview to review the applicant's qualifications and professional credentials.

(c) The board may, at its discretion, grant a temporary license to an individual applying for licensure under this section if the individual meets the requirements of subdivision (1), subsection (a) of this section. Such temporary license shall only be valid until the board is able to meet and consider the endorsement request. The board may fix and collect a reasonable fee for a temporary license, the amount of such reasonable fee to be set by the board.

(d) The application fee shall be waived, and to the extent consistent with the integrity of the licensure process and the requirements for licensure as set forth in this section and in the relevant legislative rules, the board shall expedite its processing of an individual's application to practice medicine and surgery, or practice podiatry: *Provided*, That the sole purpose for licensure is to provide services at a children's summer camp for not more than one specifically designated three week period annually. The license shall be issued for a period of the specifically designated three weeks only, on an annual basis.

§30-3-11a. Endorsement of licenses to practice medicine and surgery as medical school faculty.

(a) The board shall issue a limited license to practice medicine and surgery without examination to an individual appointed to a West Virginia medical school faculty who holds a valid license to practice medicine and surgery from another state, the District of Columbia, the Commonwealth of Puerto Rico, Canada or other country the board determines has substantially equivalent requirements for licensure as those jurisdictions, and who has completed the application form prescribed by the board, remitted a nonrefundable application fee in the amount of one hundred fifty dollars and who presents satisfactory proof to the board that:

(1) He or she is of good moral and professional character;

(2) He or she is physically and mentally capable of engaging in the practice of medicine and surgery;

(3) He or she is able to communicate in English;

(4) He or she is a graduate of a school of medicine which is approved by the liaison committee on medical education or by the World Health Organization or by the board with the degree of doctor of medicine or its equivalent;

(5) He or she has successfully completed one year of approved graduate clinical training or a fellowship of at least one year, or has received training which the board determines to be equivalent to or exceeds the one year graduate clinical training or fellowship requirement;

(6) He or she has not committed any act in this or any other jurisdiction which would constitute the basis for disciplining a physician under section fourteen of this article; and

(7) He or she has been offered and has accepted a faculty appointment to teach in a medical school in this state.

(b) The board shall investigate the applicant and may request a personal interview to review the applicant's qualifications and professional credentials.

(c) The medical practice of a physician licensed under this section is limited to the medical center of the medical school to which the physician has been appointed to the faculty.

(d) A limited license issued under this section is valid for a term of one year. No limited license issued pursuant to this section may be renewed.

(e) Before the limited license has expired, a physician licensed under this section may apply for a license to practice medicine and surgery in West Virginia pursuant to the provisions of section twelve of this article: *Provided*, That any license granted by the board pursuant to this subsection, retains the practice limitations set out in subsection (c) of this section.

(f) Any license issued under this section will automatically expire and be void, without notice to the physician, when the physician's faculty appointment is terminated. The dean of the medical school shall notify the board within five days of the termination of a faculty appointment of a physician licensed pursuant to this section.

(g) A physician licensed under this section must keep all medical licenses issued by other jurisdictions in good standing and must notify the board, within fifteen days of its occurrence, of any denial, suspension or revocation of or any limitation placed on a medical license issued by another jurisdiction.

§30-3-11b. License to practice medicine and surgery at certain state veterans nursing home facilities.

(a) The board is authorized and encouraged to the best of its ability to issue a license to practice medicine and surgery in this state without examination to a physician that currently holds a license to practice medicine and surgery at a Federal Veterans Administration Hospital upon completion of an application form prescribed by the board and who presents satisfactory proof to the board that he or she is currently employed and practicing in a Federal Veterans Administration Hospital that is located in a county in which a nursing home operated by the West Virginia Department of Veteran's Assistance is located: *Provided*, That the physician shall maintain an valid, unrestricted license to practice medicine in another state.

(b) The medical practice for which a physician is licensed under this section is limited to practice in a nursing home operated by the West Virginia Department of Veteran's Assistance that is located in the same county in which the Federal Veterans Administration Hospital where the individual is employed.

(c) No fee may be assessed to an individual licensed or seeking licensure pursuant to this section.

(d) The board shall propose emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to implement the provisions of this section.

(e) The board shall report to the Legislative Oversight Commission on Health and Human Resources Accountability and the Legislative Oversight Commission on Education Accountability by July 1, 2016 on the implementation of this section including the number of licenses issued, number of complaints, and any other pertinent legislation.

§30-3-12. Biennial renewal of license to practice medicine and surgery or podiatry; continuing education; rules; fee; inactive license.

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

(b) The license shall be renewed:

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

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

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

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

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

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

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

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

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

(2) Pay a renewal fee; and

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

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

(1) Apply for a new license;

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

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

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

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

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

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

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

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

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

§30-3-13. Licensing requirements for the practice of medicine and surgery or podiatry; exceptions; unauthorized practice; notice; criminal penalties.

(a) It is unlawful for any person who does not hold an active, unexpired license issued pursuant to this article, or who is not practicing pursuant to the licensure exceptions set forth in this section, to:

(1) Engage in the practice of medicine and surgery or podiatry in this state;

(2) Represent that he or she is a physician, surgeon or podiatrist authorized to practice medicine and surgery or podiatry in this state; or

(3) Use any title, word or abbreviation to indicate or induce others to believe that he or she is licensed to practice medicine and surgery or podiatry in this state.

(b) It is unlawful for any person who does not hold an active, unexpired license issued pursuant to this article to engage in the practice of telemedicine within this state. As used in this section, the “practice of telemedicine” means the practice of medicine using communication tools such as electronic communication, information technology or other means of interaction between a licensed health care professional in one location and a patient in another location, with or without an intervening health care provider, and typically involves secure real time audio/video conferencing or similar secure audio/video services, remote monitoring, interactive video and store and forward digital image or health data technology to provide or support health care delivery by replicating the interaction of a traditional in person encounter between a provider and a patient. The practice of telemedicine occurs in this state when the patient receiving health care services through a telemedicine encounter is physically located in this state.

(c) It is not unlawful for a person:

(1) Who is a licensed health care provider under this code to act within his or her scope of practice;

(2) Who is not a licensed health care professional in this state to provide first aid care in an emergency situation; or

(3) To engage in the bona fide religious tenets of any recognized church in the administration of assistance to the sick or suffering by mental or spiritual means.

(d) The following persons are exempt from the licensure requirements under this article:

(1) A person enrolled in a school of medicine approved by the Liaison Committee on Medical Education or by the board;

(2) A person enrolled in a school of podiatric medicine approved by the Council of Podiatry Education or by the board;

(3) A person engaged in graduate medical training in a program approved by the Accreditation Council for Graduate Medical Education or the board;

(4) A person engaged in graduate podiatric training in a program approved by the Council on Podiatric Education or by the board;

(5) A physician or podiatrist engaged in the performance of his or her official duties holding one or more licenses from another state or foreign country and who is a commissioned medical officer of, a member of or employed by:

(A) The United States Military;

(B) The Department of Defense;

(C) The United States Public Health Service; or

(D) Any other federal agency;

(6) A physician or podiatrist holding one or more unrestricted licenses granted by another state or foreign country serving as visiting medical faculty engaged in education, training or research duties at a medical school or institution recognized by the board for up to six months if:

(A) The physician does not engage in the practice of medicine and surgery or podiatry outside of the auspices of the sponsoring school or institution; and

(B) The sponsoring medical school or institution provides prior written notification to the board including the physician's name, all jurisdictions of licensure and the beginning and end date of the physician's visiting medical faculty status;

(7) A physician or podiatrist holding one or more unrestricted licenses granted by another state present in the state as a member of an air ambulance treatment team or organ harvesting team;

(8) A physician or podiatrist holding one or more unrestricted licenses granted by another state or foreign country providing a consultation on a singular occasion to a licensed physician or podiatrist in this state, whether the consulting physician or podiatrist is physically present in the state for the consultation or not;

(9) A physician or podiatrist holding one or more unrestricted licenses granted by another state or foreign country providing teaching assistance, in a medical capacity, for a period not to exceed seven days;

(10) A physician or podiatrist holding one or more unrestricted licenses granted by another state or foreign country serving as a volunteer in a noncompensated role for a charitable function for a period not to exceed seven days; and

(11) A physician or podiatrist holding one or more unrestricted licenses granted by another state or foreign country providing medical services to a college or university affiliated and/or sponsored sports team or an incorporated sports team if:

(A) He or she has a written agreement with that sports team to provide care to team members, band member, cheerleader, mascot, coaching staff and families traveling with the team for a specific sporting event, team appearance or training camp occurring in this state;

(B) He or she may only provide care or consultation to team members, coaching staff and families traveling with the team no longer than seven consecutive days per sporting event;

(C) He or she is not authorized to practice at a health care facility or clinic, acute care facility or urgent care center located in this state, but the physician may accompany the patient to the facility and consult; and

(D) The physician or podiatrist may be permitted, by written permission from the executive director, to extend his or her authorization to practice medicine for a maximum of seven additional consecutive days if the requestor shows good cause for the extension.

(e) A physician or podiatrist who does not hold a license issued by the board and who is practicing medicine in this state pursuant to the exceptions to licensure set forth in this section may practice in West Virginia under one or more of the licensure exceptions for no greater than a cumulative total of thirty days in any one calendar year.

(f) The executive director shall send by certified mail to a physician not licensed in this state a written order that revokes the privilege to practice medicine under this section if the executive director finds good cause to do so. If no current address can be determined, the order may be sent by regular mail to the physician's last known address.

(g) A person who engages in the unlawful practice of medicine and surgery or podiatry while holding a license issued pursuant to this article which has been classified by the board as expired for ninety days or fewer is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$5,000 or confined in jail not more than twelve months, or both fined and confined.

(h) A person who is found to be engaging in the practice of medicine and: (1) Has never been licensed by the board under this article; (2) holds a license which has been classified by the board as expired for greater than ninety days; or (3) holds a license which has been placed in inactive status, revoked, suspended or surrendered to the board is guilty of a felony and, upon conviction, shall be fined not more than \$10,000 or imprisoned in a correctional facility for not less than one year nor more than five years or both fined and imprisoned.

(i) Upon a determination by the board that any report or complaint submitted to it concerns allegations of the unlawful practice of medicine and surgery by an individual who is licensed under another article of this chapter, the board shall refer the complaint to the appropriate licensing authority. Additionally, whenever the board receives credible information that an individual is engaging in the unlawful practice of medicine and surgery or podiatry in violation

of this section, the board may report such information to the appropriate state and/or federal law enforcement authority and/or prosecuting attorney.

30-3-13a. Telemedicine practice; requirements; exceptions; definitions; rule-making

(a) *Definitions* -- For the purposes of this section:

(1) "Chronic nonmalignant pain" means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. "Chronic non-malignant pain" does not include pain associated with a terminal condition or illness or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition or illness.

(2) "Physician" means a person licensed by the West Virginia Board of Medicine to practice allopathic medicine in West Virginia.

(3) "Store and forward telemedicine" means the asynchronous computer-based communication of medical data or images from an originating location to a physician or podiatrist at another site for the purpose of diagnostic or therapeutic assistance.

(4) "Telemedicine" means the practice of medicine using tools such as electronic communication, information technology, store and forward telecommunication, or other means of interaction between a physician or podiatrist in one location and a patient in another location, with or without an intervening healthcare provider.

(5) "Telemedicine technologies" means technologies and devices which enable secure electronic communications and information exchange in the practice of telemedicine, and typically involve the application of secure real-time audio/video conferencing or similar secure video services, remote monitoring, or store and forward digital image technology to provide or support healthcare delivery by replicating the interaction of a traditional in-person encounter between a physician or podiatrist and a patient.

(b) *Licensure*.

(1) The practice of medicine occurs where the patient is located at the time the telemedicine technologies are used.

(2) A physician or podiatrist who practices telemedicine must be licensed as provided in this article.

(3) This section does not apply to:

(A) An informal consultation or second opinion, at the request of a physician or podiatrist who is licensed to practice medicine or podiatry in this state, provided that the physician or podiatrist requesting the opinion retains authority and responsibility for the patient's care; and

(B) Furnishing of medical assistance by a physician or podiatrist in case of an emergency or disaster, if no charge is made for the medical assistance.

(c) *Physician-Patient or Podiatrist-Patient Relationship Through Telemedicine Encounter.*

(1) A physician-patient or podiatrist-patient relationship may not be established through:

(A) Audio-only communication;

(B) Text-based communications such as e-mail, internet questionnaires, text-based messaging or other written forms of communication; or

(C) Any combination thereof.

(2) If an existing physician-patient or podiatrist-patient relationship does not exist prior to the utilization to telemedicine technologies, or if services are rendered solely through telemedicine technologies, a physician-patient or podiatrist-patient relationship may only be established:

(A) Through the use of telemedicine technologies which incorporate interactive audio using store and forward technology, real-time videoconferencing or similar secure video services during the initial physician-patient or podiatrist-patient encounter; or

(B) For the practice of pathology and radiology, a physician-patient relationship may be established through store and forward telemedicine or other similar technologies.

(3) Once a physician-patient or podiatrist-patient relationship has been established, either through an in-person encounter or in accordance with subsection (c)(2) of this section, the physician or podiatrist may utilize any telemedicine technology that meets the standard of care and is appropriate for the particular patient presentation.

(d) *Telemedicine Practice.* A physician or podiatrist using telemedicine technologies to practice medicine or podiatry shall:

(1) Verify the identity and location of the patient;

(2) Provide the patient with confirmation of the identity and qualifications of the physician or podiatrist;

(3) Provide the patient with the physical location and contact information of the physician;

(4) Establish or maintain a physician-patient or podiatrist-patient relationship that conforms to the standard of care;

(5) Determine whether telemedicine technologies are appropriate for the particular patient presentation for which the practice of medicine or podiatry is to be rendered;

(6) Obtain from the patient appropriate consent for the use of telemedicine technologies;

(7) Conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the particular patient presentation; and

(8) Create and maintain healthcare records for the patient which justify the course of treatment and which verify compliance with the requirements of this section,

(9) The requirements of subdivisions (1) through (8) of subsection (d) in this section do not apply to the practice of pathology or radiology medicine through store and forward telemedicine.

(e) Standard of Care.

The practice of medicine or podiatry provided via telemedicine technologies, including the establishment of a physician-patient or podiatrist-patient relationship and issuing a prescription via electronic means as part of a telemedicine encounter, are subject to the same standard of care, professional practice requirements and scope of practice limitations as traditional in-person physician-patient or podiatrist-patient encounters. Treatment, including issuing a prescription, based solely on an online questionnaire, does not constitute an acceptable standard of care.

(f) Patient Records.

The patient record established during the use of telemedicine technologies shall be accessible and documented for both the physician or podiatrist and the patient, consistent with the laws and legislative rules governing patient healthcare records. All laws governing the confidentiality of healthcare information and governing patient access to medical records shall apply to records of practice of medicine or podiatry provided through telemedicine technologies. A physician or podiatrist solely providing services using telemedicine technologies shall make documentation of the encounter easily available to the patient, and subject to the patient's consent, to any identified care provider of the patient.

(g) Prescribing Limitations.

(1) A physician or podiatrist who practices medicine to a patient solely through the utilization of telemedicine technologies may not prescribe to that patient any controlled substances listed in Schedule II of the Uniform Controlled Substances Act.

(2) A physician or podiatrist may not prescribe any pain-relieving controlled substance listed in Schedules II through V of the Uniform Controlled Substance Act as part of a course of treatment for chronic non-malignant pain solely based upon a telemedicine encounter.

(h) Exceptions.

This article does not prohibit the use of audio-only or text-based communications by a physician or podiatrist who is:

(1) Responding to call for patients with whom a physician-patient or podiatrist-patient relationship has been established through an in-person encounter by the physician or podiatrist;

(2) Providing cross coverage for a physician or podiatrist who has established a physician-patient or podiatrist-patient relationship with the patient through an in-person encounter; or

(3) Providing medical assistance in the event of an emergency situation.

(i) *Rulemaking.*

The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine may propose joint rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement standards for and limitations upon the utilization of telemedicine technologies in the practice of medicine and podiatry in this state.

(j) *Preserving Traditional Physician-Patient or Podiatrist-Patient Relationship.*

Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to change in any way the personal character of the physician-patient or podiatrist-patient relationship. This section does not alter the scope of practice of any healthcare provider or authorize the delivery of healthcare services in a setting, or in a manner, not otherwise authorized by law.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to Board pertaining to medical professional liability and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the Board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.

(a) The Board may independently initiate disciplinary proceedings as well as initiate disciplinary proceedings based on information received from medical peer review committees, physicians, podiatrists, hospital administrators, professional societies and others.

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

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

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

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

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

Every person, partnership, corporation, association, insurance company, professional society or other organization providing professional liability insurance to a physician or podiatrist in this state, including the State Board of Risk and Insurance Management, shall submit to the Board

the following information within thirty days from any judgment or settlement of a civil or medical professional liability action excepting product liability actions: The name of the insured; the date of any judgment or settlement; whether any appeal has been taken on the judgment and, if so, by which party; the amount of any settlement or judgment against the insured; and other information required by the Board.

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

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

Upon a determination of the Board that there is probable cause to believe that any person, partnership, corporation, association, insurance company, professional society or other organization has failed or refused to make a report required by this subsection, the Board shall provide written notice to the alleged violator stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. After reviewing the record of the hearing, if the Board determines that a violation of this subsection has occurred, the Board shall assess a civil penalty of not less than one thousand dollars nor more than ten thousand dollars against the violator. The Board shall notify any person so assessed of the assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the Board within thirty days, the Attorney General may institute a civil action in the circuit court of Kanawha County to recover the amount of the assessment. In any civil action, the court's review of the Board's action shall be conducted in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code. Notwithstanding any other provision of this article to the contrary, when there are conflicting views by recognized experts as to whether any alleged conduct breaches an applicable standard of care, the evidence must be clear and convincing before the Board may find that the physician or podiatrist has demonstrated a lack of professional competence to practice with a reasonable degree of skill and safety for patients.

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

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

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

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

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

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

(3) False or deceptive advertising;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) Professional incompetence; or

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

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

(e) The Board may refer any cases coming to its attention to an appropriate committee of an appropriate professional organization for investigation and report. Except for complaints related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by bribery or fraudulent misrepresentation, any complaint filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of grounds for the complaint shall be dismissed: *Provided*, That in cases of conduct alleged to be part of a pattern of similar misconduct or professional incapacity that, if continued, would pose risks of a serious or substantial nature to the physician's or podiatrist's current patients, the investigating body may conduct a limited investigation related to the physician's or podiatrist's current capacity and qualification to practice and may recommend conditions, restrictions or limitations on the physician's or podiatrist's license to practice that it considers necessary for the protection of the public. Any report shall contain recommendations for any necessary disciplinary measures

and shall be filed with the Board within ninety days of any referral. The recommendations shall be considered by the Board and the case may be further investigated by the Board. The Board after full investigation shall take whatever action it considers appropriate, as provided in this section.

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

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

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

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

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

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

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

(2) Administer a public reprimand;

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

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

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

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

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

(8) Assess a civil fine of not less than one thousand dollars nor more than ten thousand dollars.

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

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

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

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

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

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

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

or functions provided by law is immune from civil or criminal liability, except that the unlawful disclosure of confidential information possessed by the Board is a misdemeanor as provided in this article.

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

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

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

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

may be used in any proceedings subsequently instituted to enforce the written agreement. The agreements may be used in other proceedings if the parties agree in writing.

§30-3-15. Certificate of authorization requirements for medical and podiatry corporations.

(a) *Unlawful acts.* - It is unlawful for any corporation to practice or offer to practice medicine and surgery or podiatry in this state without a certificate of authorization issued by the board designating the corporation as an authorized medical or podiatry corporation.

(b) *Certificate of authorization for in-state medical or podiatry corporation.* - One or more physicians licensed to practice medicine and surgery in this state under this article, or one or more physicians licensed under this article and one or more physicians licensed under article fourteen of this chapter, or one or more podiatrists licensed to practice podiatry in this state may receive a certificate of authorization from the board to be designated a medical or podiatry corporation by:

(1) Filing a written application with the board on a form prescribed by the board;

(2) Furnishing satisfactory proof to the board that each shareholder of the proposed medical or podiatry corporation is a licensed physician or podiatrist pursuant to this article or article fourteen of this chapter; and

(3) Submitting applicable fees which are not refundable.

(c) *Certificate of authorization for out-of-state medical or podiatry corporation.* - A medical or podiatry corporation formed outside of this state for the purpose of engaging in the practice of medicine and surgery or the practice of podiatry may receive a certificate of authorization from the board to be designated a foreign medical or podiatry corporation by:

(1) Filing a written application with the board on a form prescribed by the board;

(2) Furnishing satisfactory proof to the board that the medical or podiatry corporation has received a certificate of authorization or similar authorization from the appropriate authorities as a medical or podiatry corporation, or professional corporation in its state of incorporation and is currently in good standing with that authority;

(3) Furnishing satisfactory proof to the board that at least one shareholder of the proposed medical or podiatry corporation is a licensed physician or podiatrist pursuant to this article and is designated as the corporate representative for all communications with the board regarding the designation and continuing authorization of the corporation as a foreign medical or podiatry corporation;

(4) Furnishing satisfactory proof to the board that all of the medical or podiatry corporation's shareholders are licensed physicians or podiatrists in one or more states and submitting a complete list of the shareholders, including each shareholder's name, their state or states of licensure and their license number(s); and

(5) Submitting applicable fees which are not refundable.

(d) *Notice of certificate of authorization to Secretary of State.* - When the board issues a certificate of authorization to a medical or podiatry corporation, then the board shall notify the Secretary of State that a certificate of authorization has been issued. When the Secretary of State receives a notification from the board, he or she shall attach that certificate of authorization to the corporation application and, upon compliance by the corporation with the pertinent provisions of this code, shall notify the incorporators that the medical or podiatry corporation, through licensed physicians or licensed podiatrists, may engage in the practice of medicine and surgery or the practice of podiatry in West Virginia.

(e) *Authorized practice of medical or podiatry corporation.* - An authorized medical corporation may only practice medicine and surgery through individual physicians licensed to practice medicine and surgery in this state. An authorized podiatry corporation may only practice podiatry through individual podiatrists licensed to practice podiatry in this state. Physicians or podiatrists may be employees rather than shareholders of a medical or podiatry corporation, and nothing herein requires a license for or other legal authorization of, any individual employed by a medical or podiatry corporation to perform services for which no license or other legal authorization is otherwise required.

(f) *Renewal of certificate of authorization.* - A medical or podiatry corporation holding a certificate of authorization shall register biennially, on or before the expiration date on its certificate of authorization, on a form prescribed by the board, and pay a biennial fee. If a medical or podiatry corporation does not timely renew its certificate of authorization, then its certificate of authorization automatically expires.

(g) *Renewal for expired certificate of authorization.* - A medical or podiatry corporation whose certificate of authorization has expired may reapply for a certificate of authorization by submitting a new application and application fee in conformity with subsection (b) or (c) of this section.

(h) *Ceasing operation -- In-state medical or podiatry corporation.* - A medical or podiatry corporation formed in this state and holding a certificate of authorization shall cease to engage in the practice of medicine, surgery or podiatry when notified by the board that:

(1) One of its shareholders is no longer a duly licensed physician or podiatrist in this state; or

(2) The shares of the medical or podiatry corporation have been sold or transferred to a person who is not a licensed physician or podiatrist in this state. The personal representative of a deceased shareholder shall have a period, not to exceed twelve months from the date of the shareholder's death, to transfer the shares. Nothing herein affects the existence of the medical or podiatry corporation or its right to continue to operate for all lawful purposes other than the practice of medicine and surgery or the practice of podiatry.

(i) *Ceasing operation -- Out-of-state medical or podiatry corporation.* - A medical or podiatry corporation formed outside of this state and holding a certificate of authorization shall immediately cease to engage in the practice of medicine, surgery or podiatry in this state if:

(1) The corporate shareholders no longer include at least one shareholder who is licensed to practice as a physician or podiatrist in this state;

(2) The corporation is notified that one of its shareholders is no longer a licensed physician or podiatrist; or

(3) The shares of the medical or podiatry corporation have been sold or transferred to a person who is not a licensed physician or podiatrist. The personal representative of a deceased shareholder shall have a period, not to exceed twelve months from the date of the shareholder's death, to transfer the shares. In order to maintain its certificate of authorization to practice medicine, surgery or podiatry during the twelve month period, the medical or podiatry corporation shall, at all times, have at least one shareholder who is a licensed physician or podiatrist in this state. Nothing herein affects the existence of the medical or podiatry corporation or its right to continue to operate for all lawful purposes other than the practice of medicine, surgery or podiatry.

(j) *Notice to Secretary of State.* - Within thirty days of the expiration, revocation or suspension of a certificate of authorization by the board, the board shall submit written notice to the Secretary of State.

(k) *Unlawful acts.* - It is unlawful for any corporation to practice or offer to practice medicine and surgery or podiatry after its certificate of authorization has expired or been revoked, or if suspended, during the term of the suspension.

(l) *Application of section.* - Nothing in this section is meant or intended to change in any way the rights, duties, privileges, responsibilities and liabilities incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to change in any way the personal character of the physician-patient or podiatrist-patient relationship.

(m) *Court evidence.* - A certificate of authorization issued by the board to a corporation to practice medicine and surgery or podiatry in this state that has not expired, been revoked or suspended is admissible in evidence in all courts of this state and is prima facie evidence of the facts stated therein.

(n) *Penalties.* - Any officer, shareholder or employee of a medical or podiatry corporation who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 per violation.

§30-3-16.

Repealed, June 6, 2014

§30-3-16a.

Repealed, June 6, 2014

§30-3-17. Limitation of article.

The practice of medicine and surgery by persons possessing the degree of doctor of osteopathy and authorized by the laws of this state to practice medicine and surgery shall in no way be affected by the provisions of this article.

§30-3-18.

Repealed.