WEST VIRGINIA CODE CHAPTER 16 ARTICLE 5G

WV Legislature

§16-5G-1. Declaration of legislative policy.

The Legislature hereby finds and declares that hospitals owned or operated by nonprofit corporations, nonprofit associations or local governmental units are relied on by the citizens of this state for services essential to their health and well-being. The Legislature further finds and declares that public funds from various sources and by various means contribute significantly to the revenues and operations of such institutions. Therefore, it is in the best interest of the people of this state for all proceedings of the boards of directors or other governing bodies of such hospitals to be conducted in an open and public manner so that the people can remain informed of the decisions and decision making processes affecting the health services on which they so vitally depend and which they help support through tax exemptions, public funding and other means.

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§16-5G-2. Definitions.

As used in this article:

(1) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order or measure on which a vote of the governing body is required at any meeting at which a quorum is present;

(2) "Executive session" means any meeting or part of a meeting of the governing body of a hospital that is closed to the public;

(3) "Governing body" means:

(A) With respect to a hospital owned or operated by a nonprofit corporation, the board of directors established pursuant to section eight hundred one, article eight, chapter thirty-one-e of this code;

(B) With respect to a county hospital, the board of trustees established pursuant to section fifteen, article three, chapter seven of this code; or

(C) With respect to all other hospitals subject to this article, the single board of directors, board of trustees, or, if given another name, the single group of governing board members having the authority to make decisions concerning the management and control of a hospital: Provided, That the medical staff of a hospital, the executive committee of the medical staff of a hospital and any other committee or subcommittee of the medical staff of a hospital are not a governing body of any hospital described in paragraphs (A), (B) and (C) of this subdivision;

(4) "Hospital" means any hospital owned or operated by a nonprofit corporation, nonprofit association or local governmental unit;

(5) "Meeting" means the convening of the governing body of a hospital for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter: Provided, That the convening of a committee, subcommittee or other subcomponent of the governing body or the convening of any group other than the governing body that makes recommendations to the governing body is not a meeting within the meaning of this article unless the committee, subcommittee, subcomponent or group is vested with independent decision-making authority and exercises the independent decision-making authority at any convening; and

(6) "Quorum" means, unless otherwise defined by applicable law, a simple majority of the constituent membership of the governing body.

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§16-5G-3. Proceedings to be open; public notice of meetings.

Except as expressly and specifically otherwise provided by law, and except as provided in section four of this article, all meetings of a governing body of a hospital shall be open to the public. Any governing body may make and enforce reasonable rules and regulations for attendance and presentation at any meeting where there is not room enough for all members of the public who wish to attend. This article does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised: Provided, That persons who desire to address the governing body may not be required to register to address the body more than fifteen minutes prior to time the scheduled meeting is to commence.

Each governing body shall promulgate rules by which the date, time and place of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media, except in the event of an emergency requiring immediate official action.

Each governing body shall file a notice of any meeting by causing a notice of the meeting to be printed in a local newspaper: Provided, That the governing body may otherwise provide by rule or regulation an alternative procedure that will reasonably provide the public with notice. Each notice shall state the date, time, place and purpose of the meeting.

In the event of an emergency requiring immediate official action, any governing body may provide an emergency meeting notice at any time prior to the meeting. The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

Upon petition by any adversely affected party, any court of competent jurisdiction may invalidate any action taken at any meeting for which notice did not comply with the requirements of this section.

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§16-5G-4. Exceptions.

(a) This article does not prevent the governing body of a hospital from holding an executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under this article for the holding of the executive session and has presented it to the governing body and to the general public, but no official action may be made in the executive session, except as is necessary:

(1) To protect the confidentiality of protected health information as defined by the Health Insurance Portability and Accountability Act of 1996;

(2) To preserve the privilege and confidentiality of peer review information as provided in article three-c, chapter thirty of this code;

(3) To approve confidential legal settlements or otherwise act in connection with matters described in subdivision (5), subsection (b) of this section; or

(4) To end an executive session and readmit the public to a meeting.

(b) An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a hospital as defined in this article for the following:

(1) The appointment, employment, retirement, promotion, demotion, disciplining, resignation, discharge, dismissal or compensation of any officer or employee, or other personnel matters, or for the purpose of conducting a hearing on a complaint against an officer or employee, unless the officer or employee requests an open meeting;

(2) The disciplining, suspension or expulsion of any student or trainee enrolled in a program conducted by the hospital, unless the student or trainee requests an open meeting;

(3) Investigations and proceedings involving the issuance, denial, suspension or revocation of the authority or privilege of a medical practitioner to use the hospital and to engage in particular kinds of practice or to perform particular kinds of operations, unless the person seeking the authority or privilege or whose authority or privilege was denied, suspended or revoked requests an open meeting;

(4) Matters concerning the failure or refusal of a medical practitioner to comply with reasonable regulations of a hospital with respect to the conditions under which operations are performed and other medical services are delivered;

(5) To conduct privileged attorney-client communications or to consider the work product of the hospital's attorney or the hospital administration, including materials prepared by an attorney or others in anticipation of litigation, litigation strategies and reports, confidential legal settlements and discussions, negotiations and alternative dispute resolution proceedings conducted in pursuit of a legal settlement;

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(6) The physical or mental health of any person, unless the person requests an open meeting;

(7) Matters which, if discussed in public, would be likely to affect adversely the reputation of any person;

(8) Any official investigation or matters relating to crime prevention or law enforcement;

(9) The development of security personnel or devices;

(10) Matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving competition which, if made public, might adversely affect the financial or other interest of the state or any political subdivision or the hospital; or

(11) To consider or act upon the matters described in subdivisions (1), (2), (3) and (4), subsection (a) of this section.

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§16-5G-5. Minutes.

Each governing body shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in section four of this article, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

(1) The date, time and place of the meeting;

(2) The name of each member of the governing body present and absent;

(3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and

(4) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.

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§16-5G-6. Enforcement by injunctions; actions in violation of article voidable.

The circuit court in the county where a hospital is located has jurisdiction to enforce this article upon civil action commenced by any citizen of this state within one hundred twenty days after the action complained of was taken or the decision complained of was made. Where the action seeks injunctive relief, no bond may be required unless the petition appears to be without merit or made with the sole intent of harassing or delaying or avoiding return by the governing body.

The court is empowered to compel compliance or enjoin noncompliance with the provisions of this article and to annul a decision made in violation of this article. An injunction may also order that subsequent actions be taken or decisions be made in conformity with the provisions of this article.

Any order which compels compliance or enjoins noncompliance with the provisions of this article, or which annuls a decision made in violation of this article shall include findings of fact and conclusions of law and shall be recorded in the minutes of the governing body.

Upon entry of an order, the court may, where the court finds that the governing body intentionally violated the provisions of this article, order the governing body to pay the complaining person's necessary attorney fees and expenses. Where the court, upon denying the relief sought by the complaining person in the action, finds that the action was frivolous or commenced with the primary intent of harassing the governing body or any member thereof or, in the absence of good faith, of delaying any meetings or decisions of the governing body, the court may require the complaining person to pay the governing body's necessary attorney fees and expenses.

Any person who intentionally violates the provisions of this article is liable in an action for compensatory and punitive damages not to exceed a total of $500.

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§16-5G-7. Violation of article; penalties.

(a) In addition to or in conjunction with any other acts or omissions which may be determined to violate this article, it is a violation of this article for a governing body to hold a private meeting with the intention of transacting public business, thwarting public scrutiny and making decisions that eventually become official action.

(b) Any person who is a member of a governing body of a hospital required to conduct open meetings in compliance with the provisions of this article and who willfully and knowingly violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500, or confined in jail not more than ten days, or both fined and confined.

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