WEST VIRGINIA CODE: §30-14-11A

§30-14-11a. 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 osteopathic physicians and osteopathic 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. When the board receives a report submitted pursuant to the provisions of section twelve-a of this article, or when the board receives or initiates a complaint regarding the conduct of anyone practicing osteopathic medicine or surgery, the board shall create a separate complaint file in which the board shall maintain all documents relating to the investigation and action upon the alleged conduct.

(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) An osteopathic physician, osteopathic physician assistant, or applicant, or authorized representative thereof, has the right, upon request, to examine his or her own individual records 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) An osteopathic physician, osteopathic 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) An osteopathic physician, osteopathic 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, other than requests for verification of the status of the individual's license and the board's responses thereto.

(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 complaint file unless it has initiated a proceeding for a hearing upon such information within two years of the placing of the information into the complaint file.

(g) Orders of the board relating to disciplinary action against a physician, or physician

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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, an osteopathic physician or osteopathic 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 board-designated physician health program. The agreement between the physician 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 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 or physician assistant relating to an alcohol, chemical dependency or major mental illness affecting the care and treatment of patients, nor received any written reports pursuant to subsection (b), section fourteen of this article relating to an alcohol or chemical dependency impairment; and

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

(3) If any osteopathic physician or osteopathic 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 section eleven 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 in this article, any information received, maintained, or developed by the board relating to the alcohol or chemical dependency impairment of any osteopathic physician or osteopathic 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 Governor and the Legislature required under section twelve, article one of this chapter, the board shall include information

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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 osteopathic physician or osteopathic 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 as 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.

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