WEST VIRGINIA CODE: §30-14-12A

§30-14-12a. Initiation of suspension or revocation proceedings allowed and required; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; probable cause determinations; referrals to law-enforcement authorities.

(a) The board may independently initiate suspension or revocation proceedings as well as initiate suspension or revocation proceedings based on information received from any person, including but not limited to the Board of Pharmacy as required by §60A-9-1 et seq. of this code.

The board shall initiate investigations as to professional incompetence or other reasons for which a licensed osteopathic physician and surgeon may be adjudged unqualified if the board 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 such osteopathic physician within a five-year period.

(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 osteopathic physician known to that medical peer review committee. Copies of such requests for information from a medical peer review committee may be provided to the subject osteopathic physician 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 osteopathic physician has 15 days to comment on the requested information and such comments must be considered by the board.

After the completion of a hospital's formal disciplinary procedure and after any resulting legal action, the chief executive officer of such hospital shall report in writing to the board within 60 days the name of any member of the medical staff or any other osteopathic physician practicing in the hospital whose hospital privileges have been revoked, restricted, reduced, or terminated for any cause, including resignation, together with all pertinent information relating to such action.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 osteopathic physician by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical malpractice, 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.

Any professional society in this state comprised primarily of osteopathic physicians or physicians and surgeons of other schools of medicine which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, professional

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malpractice, moral turpitude, or drug or alcohol abuse, shall report in writing to the board within 60 days of a final decision the name of such member, together with all pertinent information relating to such action.

Every person, partnership, corporation, association, insurance company, professional society, or other organization providing professional liability insurance to an osteopathic physician in this state shall submit to the board the following information within 30 days from any judgment, dismissal, or settlement of a civil action or of any claim involving the insured: The date of any judgment, dismissal, 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 such other information required by the board.

Within 30 days after a person known to be an osteopathic physician licensed or otherwise lawfully practicing medicine and surgery 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 such osteopathic physician 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 §29A-5-1 et seq. of this code. After reviewing the record of such hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a civil penalty of not less than $1,000 nor more than $10,000 against such violator. The board shall notify anyone 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 30 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 such civil action, the court’s review of the board’s action shall be conducted in accordance with the provisions of §29A-5-4 of this code.

Any person may report to the board relevant facts about the conduct of any osteopathic physician in this state which in the opinion of such person amounts to professional malpractice 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

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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 osteopathic physicians or physicians and surgeons of other schools of medicine to suspend, restrict, or revoke the privileges or membership of such osteopathic physician.

(c) In every case considered by the board under this article regarding suspension, revocation, or issuance of a license 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 cause to suspend, revoke, or refuse to issue a license as set forth in §30-14-11(a) of this code. If such probable cause is found to exist, all proceedings on such charges shall be open to the public who are entitled to all reports, records, and nondeliberative materials introduced at such hearing, including the record of the final action taken: Provided, That any medical records, which were introduced at such hearing and which pertain to a person who has not expressly waived his or her right to the confidentiality of such records, shall not be open to the public nor is the public entitled to such records. If a finding is made that probable cause does not exist, the public has a right of access to the complaint or other document setting forth the charges, the findings of fact and conclusions supporting such finding that probable cause does not exist, if the subject osteopathic physician consents to such access.

(d) If the board receives notice that an osteopathic physician has been subjected to disciplinary action or has had his or her credentials suspended or revoked by the board, a medical peer review committee, a hospital or professional society, as defined in §30-14-12(a) of this code, for three or more incidents in a five-year period, the board shall require the osteopathic physician to practice under the direction of another osteopathic physician for a specified period to be established by the board.

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

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