# WEST VIRGINIA CODE CHAPTER 30 ARTICLE 14

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## §30-14-1. License required.

It is unlawful for any person to practice or offer to practice medicine and surgery as an osteopathic physician and surgeon in this state without a license or permit issued by the West Virginia Board of Osteopathic Medicine: Provided, That any license heretofore issued under the laws of this state, authorizing its holder to practice osteopathy and surgery, shall in no way be affected by the enactment of this article; except that the holder of every such license shall be subject to all of the provisions of this article respecting the requirements and obligations herein prescribed for the continuance in force of such license.

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**§30-14-2. Definitions.**

"Accreditation Council for Graduate Medical Education" (ACGME) is the body responsible for accrediting the majority of graduate medical education programs for physicians (both medical doctors and doctors of osteopathic medicine), including medical internship, residency, and fellowship programs;

"Accredited osteopathic college" means a college of osteopathy and surgery which requires as a minimum prerequisite for admission preprofessional training of at least two years of academic work in specified scientific subjects, as prescribed by the board or by the college accrediting agency of the American Osteopathic Association, in an accredited college of arts and sciences and which requires for graduation a course of study approved by the board in accordance with the minimum standards established by the American Osteopathic Association;

"American Osteopathic Association" (AOA) is the entity that serves as the primary certifying body for osteopathic physicians and is the accrediting agency for osteopathic graduate medical education. Prior to the implementation of a single accreditation system for graduate medical education in the United States of America under the ACGME, which began in 2015 and will be fully implemented by July 1, 2020, the AOA also served as the accrediting body for osteopathic graduate medical education programs in the United States of America;

"Approved program of post-graduate clinical training" means a program of clinical training approved by, or subject to approval by, the American Osteopathic Association or approved by the Accreditation Council for Graduate Medical Education for the purposes of intern or resident training;

"Board" means the West Virginia Board of Osteopathic Medicine: *Provided,* That where used elsewhere in the code, the West Virginia Board of Osteopathy and Board of Osteopathy shall also mean the West Virginia Board of Osteopathic Medicine;

"License" means legal authorization issued by the board to a fully qualified osteopathic physician to engage in the regular practice of osteopathic medicine and surgery;

"Osteopathy" means that system of the healing art which places the chief emphasis on the structural integrity of the body mechanism as being the most important single factor in maintaining the well-being of the organism in health and disease;

"Permit" means a limited, legal authorization issued by the board to an osteopathic physician to practice osteopathic medicine and surgery in this state while serving under special circumstances of public need or while undergoing post-graduate clinical training as a prerequisite to licensure;

"Reciprocal endorsement" means a duly authenticated verification of the board, addressed to a board or agency of another country, state, territory, province, or the District of

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Columbia, vouching that a license issued to an osteopathic physician and surgeon pursuant to the laws of this state is currently valid and not suspended or revoked for any cause or causes specified in this article.

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## §30-14-3. Board of Osteopathic Medicine.

(a) The West Virginia Board of Osteopathy is continued and effective July 1, 2012 shall be known as the West Virginia Board of Osteopathic Medicine. The members of the board shall continue to serve until a successor is appointed and may be reappointed.

(b) The Governor shall appoint, by and with advice and consent of the Senate, two additional members and stagger their initial terms:

(1) One person who is a licensed osteopathic physician or surgeon; and

(2) One person who is a licensed osteopathic physician assistant.

(c) The board consists of the following seven members, who are appointed to staggered terms by the Governor with the advice and consent of the Senate:

(1) Four licensed osteopathic physicians and surgeons;

(2) One licensed osteopathic physician assistant; and

(3) Two citizen members, who are not associated with the practice of osteopathic medicine.

(d) After the initial appointment, a board member's term shall be for 5 years.

(e) The West Virginia Osteopathic Medical Association may submit recommendations to the Governor for the appointment of an osteopathic physician board member, and the West Virginia Association of Physician Assistants may submit recommendations to the Governor for the appointment of an osteopathic physician assistant board member.

(f) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for a period of not less than five years immediately preceding the appointment.

(g) Each member of the board must be a U.S. citizen and a resident of this state for a period of not less than five years immediately preceding the appointment and while serving as a member of the board.

(h) A member may not serve more than two consecutive full terms. A member having served two consecutive full terms may not be appointed for one year after completion of his or her second full term. A member may continue to serve until a successor has been appointed and has qualified.

(i) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the vacancy.

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(j) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(k) A member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked, he or she is convicted of a felony under the laws of any jurisdiction, or he or she becomes a nonresident of this state.

(l) The board shall elect annually one of its members as a chairperson and one of its members as a secretary who shall serve at the will of the board.

(m) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.

(n) A simple majority of the membership serving on the board at a given time constitutes a quorum.

(o) The board shall hold at least two meetings each year. Other meetings may be held at the call of the chairperson or upon the written request of two members, at the time and place as designated in the call or request.

(p) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

(q) The members of the board when acting in good faith, without malice and within the scope of their duties as board members shall enjoy immunity from individual civil liability.

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## §30-14-4. Application for license or educational permit.

(a) Each applicant for examination by the board, with the exception of assistants to osteopathic physicians and surgeons, as hereinafter provided, shall submit an application therefor on forms prepared and furnished by the board.

(b) Each applicant for a license shall furnish evidence, verified by oath and satisfactory to the board, establishing that the applicant has satisfied the following requirements:

(1) The applicant is 18 years of age or over;

(2) The applicant has graduated from an accredited osteopathic college;

(3) The applicant has successfully completed a minimum of one year of post-doctoral, clinical training in a program approved by the American Osteopathic Association or the Accreditation Council for Graduate Medical Education.

(c) Each applicant for an educational permit shall furnish evidence, verified by oath and satisfactory to the board, establishing that the applicant has satisfied the following requirements:

(1) The applicant is 18 years of age or over;

(2) The applicant has graduated from an accredited osteopathic college; and

(3) The applicant is under contract as an intern or resident in an approved program of post-graduate clinical training.

(d) The board may not issue a license or permit to any person until the applicant has paid the application fee established by legislative rule of the board.

(e) In order to give timely effect to the amendments to this section and §30-14-10 of this article, the board is authorized to propose a legislative rule consistent with these amendments as an emergency rule under the provisions of §29A-3-15 of this code.

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## §30-14-5. Examination.

In order to receive a license to practice osteopathic medicine and surgery, an applicant must satisfactorily complete a standard, national examination, specified through legislative rule of the board or an examination administered by the licensing authority of another state and approved by the board as equivalent to the national examination or to the former West Virginia state examination.

The examination for a license to practice medicine and surgery as an osteopathic physician and surgeon shall cover substantive and clinical knowledge in all the essential branches of medicine and surgery including anatomy, physiology, chemistry, pharmacology, pathology, public health--preventive medicine, surgery, obstetrics and gynecology, osteopathic medicine, materia medica principles and practice of osteopathy. The list of subjects may be expanded or regrouped at the discretion of the board.

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## §30-14-6. Issuance of license without examination; fee.

The board may at its discretion issue a license without examination to an applicant who has been licensed by the national board of examiners for osteopathic physicians and surgeons, and to an applicant who has been licensed by examination in any country, state, territory, province or the District of Columbia, provided the requirements for licensure in the country, state, territory, province or the District of Columbia in which the applicant is licensed are deemed by the board to have been equivalent to requirements for licensure in this state at the date such license was issued. The board may also at its discretion issue a license without examination to an osteopathic physician and surgeon who is a graduate of an accredited osteopathic college and who has passed the examination for admission into the medical corps of any of the armed services of the United States or the United States Public Health Service. But no license shall be issued under the provisions of this section until the person applying therefor shall have paid to the board a reasonable fee, the amount of such reasonable fee to be set by the board rules, and any other fees applicable to investigation.

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## §30-14-7. Reciprocal endorsement fee.

For the issuance of any reciprocal endorsement, the board shall collect a reasonable fee, the amount of such reasonable fee to be set by the board rules.

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## §30-14-8. Temporary permits.

A temporary permit to practice in areas where medical services are needed, as determined by the board, may be granted by the board to a qualified applicant eligible for licensure who applies for examination during the period between examinations or regular meetings of the board. A temporary permit may also be granted by the board to a qualified applicant eligible for licensure by national boards or reciprocity for a period of thirty days, in which time applicant must appear before one of the board members for an interview for permanent licensure. Such temporary permit shall be effective until its holder has either been granted or denied a license at the next regular meeting of the board. Such permit shall be subject to revocation when, in the opinion of the board, the terms and conditions prescribed in the permit have been violated.

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**§30-14-8A.**

Repealed.

Acts, 1988 Reg. Sess., Ch. 99.

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## §30-14-9. Duties and rights of osteopathic physicians and surgeons.

Osteopathic physicians and surgeons licensed hereunder shall have the same rights and privileges as physicians and surgeons of other schools of medicine.

Osteopathic physicians and surgeons shall observe and be subject to all state and municipal regulations relative to reporting births and deaths and all matters pertaining to the public health with equal rights and obligations as physicians of other schools of medicine, and such reports shall be accepted by the officers of the department to which the same are made.

Osteopathic physicians and surgeons licensed hereunder shall have the same rights and privileges as physicians and surgeons of other schools of medicine with respect to the treatment of cases or the holding of health offices or offices in public institutions.

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**§30-14-9a. Osteopathic medical corporations — Application for registration; fee; notice to Secretary of State of issuance of certificate; action by secretary of state.**

(a) One or more osteopathic physicians, allopathic physicians, or physician assistants may form an osteopathic medical corporation. An osteopathic physician or osteopathic physician assistant shall file a written application with the board on a form prescribed by the board, and shall furnish proof satisfactory to the board that the signer or all of the signers of such application is or are duly licensed. A reasonable fee, to be set by the board rules, shall accompany the application, no part of which shall be returnable.

(b) If the board finds that the signer or all of the signers of the application are licensed, the board shall notify the Secretary of State that a certificate of authorization has been issued.

(c) When the Secretary of State receives notification from the board that a certain individual or individuals has or have been issued a certificate of authorization, he or she shall attach the authorization to the corporation application and upon compliance by the corporation with §31-1-1 et seq. of this code, the Secretary of State shall notify the incorporators that the corporation may engage in the appropriate practice.

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**§30-14-9b. Same - Rights and limitations generally; biennial registration; fee; when practice to cease; admissibility and effect of certificate signed by board; penalty.**

(a) An osteopathic medical corporation may practice osteopathic medicine and surgery only through individual osteopathic physicians and surgeons duly licensed to practice osteopathic medicine or surgery in the State of West Virginia, but such osteopathic physicians and surgeons may be employees rather than shareholders of such corporation, and nothing herein contained shall be construed to require a license for or other legal authorization of any individual employed by such corporation to perform services for which no license or other legal authorization is otherwise required. Nothing contained in sections five and nine-a and this section of this article is meant or intended to change in any way the rights, duties, privileges, responsibilities and liabilities incident to the osteopathic physician-patient relationship nor is it meant or intended to change in any way the personal character of the osteopathic physician-patient relationship. A corporation holding such certificate of authorization shall register biennially, on or before June 30, on a form prescribed by the board, and shall pay an annual reasonable registration fee, the amount of such reasonable fee to be set by the board rules.

(b) An osteopathic medical corporation holding a certificate of authorization shall cease to engage in the practice of osteopathic medicine and surgery upon being notified by the board that any of its shareholders is no longer a duly licensed osteopathic physician or surgeon, or when any shares of such corporation have been sold or disposed of to a person who is not a duly licensed osteopathic physician or surgeon: Provided, That the personal representative of a deceased shareholder shall have a period, not to exceed twelve months from the date of such shareholder's death, to dispose of such shares; but nothing contained herein shall be construed as affecting the existence of such corporation or its right to continue to operate for all lawful purposes other than the practice of osteopathic medicine and surgery.

(c) No corporation shall practice osteopathic medicine or surgery, or any of its branches, or hold itself out as being capable of doing so, without a certificate from the board; nor shall any corporation practice osteopathic medicine or surgery or any of its branches, or hold itself out as being capable of doing so, after its certificate has been revoked, or if suspended, during the term of such suspension. A certificate signed by the secretary of the board to which is affixed the official seal of the board to the effect that it appears from the records of the board that no such certificate to practice osteopathic medicine or surgery or any of its branches in the state has been issued to any such corporation specified therein or that such certificate has been revoked or suspended shall be admissible in evidence in all courts of this state and shall be prima facie evidence of the facts stated therein.

(d) Any officer, shareholder or employee of such corporation who participates in a violation of any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not exceeding $1,000.

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## §30-14-10. Renewal of license; fee; refresher training a prerequisite; effect of failure to renew; reinstatement; educational permit.

(a) All holders of licenses to practice as osteopathic physicians and surgeons in this state shall renew the licenses biennially on or before July 1, by the payment of a renewal fee, to the board. The board shall notify each licensee of the necessity of renewing his or her license at least thirty days prior to the expiration of the license.

(b) As a prerequisite to renewal of a license issued by the board, each licensee shall furnish biennially to the board satisfactory evidence of having completed thirty-two hours of educational refresher course training, of which the total amount of hours must be approved by the American Osteopathic Association, and fifty percent of the required thirty-two hours shall be classified as category (1). The continuing medical education requirement shall include completion of medical education in nutrition.

(c) The failure to renew a license shall operate as an automatic suspension of the rights and privileges granted by its issuance. The board may propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, providing that an osteopathic physician may renew a license on an inactive basis.

(d) A license suspended by a failure to make a biennial renewal thereof may be reinstated by the board upon compliance of the licensee with the following requirements:

(1) Presentation to the board of satisfactory evidence of educational refresher training of quantity and standard approved by the board for the previous two years;

(2) Payment of all fees for the previous two years that would have been paid had the suspended licensee maintained his or her license in good standing; and

(3) Payment to the board of a reinstatement fee specified by legislative rule of the board.

(e) An educational permit authorizes the holder to practice osteopathic medicine and surgery only for work performed within an approved program of post-graduate clinical training under the supervision of a duly licensed osteopathic or allopathic physician. The first educational permit issued to a graduate of an accredited osteopathic college may be valid for a period of fifteen months and subsequent educational permits issued to the same person may be valid for not more than twelve months. An educational permit shall expire upon the termination of the permit holder from an approved program of post-graduate clinical training and may also be suspended or revoked by the board at any time upon grounds defined by the board by legislative rule.

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**§30-14-11. Refusal, suspension or revocation of license; suspension or revocation of certificate of authorization.**

(a) The board may refuse to issue a license, suspend or revoke a license, fine a licensee, order restitution or rehabilitative action by a licensee, or order a combination thereof for any one or more of the following causes:

(1) Conviction of a felony, as shown by a certified copy of the record of the trial court: Provided, That if the conviction is for an offense that involves the transfer, delivery or illicit possession of a prescription drug, then the board shall revoke or refuse to issue the license of the convicted physician or physician's assistant for a period of time until the physician or physician's assistant demonstrates a record of rehabilitation and that he or she has the integrity, moral character and professional competence to practice in this state;

(2) Conviction of a misdemeanor involving moral turpitude;

(3) Violation of any provision of this article regulating the practice of osteopathic physicians and surgeons;

(4) Fraud, misrepresentation or deceit in procuring or attempting to procure admission to practice;

(5) Gross malpractice;

(6) Advertising by means of knowingly false or deceptive statements;

(7) Advertising, practicing or attempting to practice under a name other than one's own;

(8) Habitual drunkenness, or habitual addiction to the use of morphine, cocaine or other habit-forming drugs; or

(9) Knowingly failing to report to the board any act of gross misconduct committed by another licensee of the board.

(b) The board shall also have the power to suspend or revoke for cause any certificate of authorization issued by it. It shall have the power to reinstate any certificate of authorization suspended or revoked by it.

(c) An osteopathic physician licensed under this article may not be disciplined for providing expedited partner therapy in accordance with article four-f, chapter sixteen of this code.

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**§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 assistant are public information.

(h) (1) In order to encourage voluntary participation in monitored alcohol, chemical

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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 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

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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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## §30-14-12. Offenses; penalties.

(a) Each of the following acts constitutes a misdemeanor, punishable upon conviction by a fine of not less than $1,000 nor more than $10,000:

(1) The obtaining of or an attempt to obtain a license or permit to practice in the profession for money or any other thing of value, by fraudulent misrepresentation;

(2) The making of any willfully false oath or affirmation whenever an oath or affirmation is required by this article; and

(3) Advertising, practicing or attempting to practice under a name other than one's own.

(b) Any person who practices or attempts to practice osteopathic medicine without a license or permit 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.

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**§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 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.

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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 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.

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(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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**§30-14-12b. 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 osteopathy who wish to donate their expertise for the medical care and treatment of indigent and needy patients in the clinical 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 Osteopathic 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 but may donate to the clinic the proceeds of any reimbursement, 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 person engaged in the active practice of osteopathy in this state whose license is in good standing may donate their expertise for the medical care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the physician's office or the clinical setting.

(c) Any physician who renders any medical service to indigent and needy patients of clinics 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 or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) 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 $1 million per occurrence.

(d) Notwithstanding the provisions of subsection (a) of this section, a clinic organized, in



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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 said subsection or who renders such services pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

(e) 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.

(f) 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.

(g) 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 or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

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## §30-14-12c. License to practice as an osteopathic physician and surgeon 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 as an osteopathic physician and surgeon in this state without examination to a physician that currently holds a license to practice as an osteopathic physician and surgeon 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 osteopathic physician shall maintain an valid, unrestricted license to practice osteopathic medicine in another state.

(b) The practice for which an osteopathic physician and surgeon 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.

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**§30-14-12d. Telemedicine practice; requirements; exceptions; definitions; rulemaking.**

(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 nonmalignant 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 or registered by the West Virginia Board of Osteopathic Medicine to practice osteopathic 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 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, audio only telephone calls, or other means of interaction between a physician in one location and a patient in another location, with or without an intervening health care provider.

(5) "Telemedicine technologies" means technologies and devices which enable secure 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, or audio only telephone calls, to provide or support health care delivery by replicating the interaction of a traditional in-person encounter between a physician and a patient.

(b) *Licensure or registration*. –

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

(2) A physician who practices telemedicine must be licensed as provided in this article or registered as provided in §30-1-1 *et seq.* of this code.

(3) This section does not apply to:

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

(B) Furnishing of medical assistance by a physician in case of an emergency or disaster if no



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charge is made for the medical assistance.

(c) Physician-patient relationship through telemedicine encounter. –

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

Text-based communications such as e-mail, Internet questionnaires, text-based messaging, or other written forms of communication.

(2) If an existing physician-patient relationship is not present prior to the utilization to telemedicine technologies, or if services are rendered solely through telemedicine technologies, a physician-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 encounter;

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

(C) Through the use of audio-only calls or conversations that occur in real time. Patient communication though audio-visual communication is preferable, if available or possible. Audio-only calls or conversations that occur in real time may be used to establish the physician-patient relationship.

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

(d) *Telemedicine practice*. – A physician using telemedicine technologies to practice medicine shall:

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

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

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

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

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

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

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

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

(9) The requirements of §30-3-13(a)(1) through §30-3-13(a)(8) of this code do not apply to the practice of pathology or radiology medicine through store and forward telemedicine.

(e) *Standard of care*. –

The practice of medicine provided via telemedicine technologies, including the establishment of a physician-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 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 and the patient, consistent with the laws and legislative rules governing patient health care records. All laws governing the confidentiality of health care information and governing patient access to medical records shall apply to records of practice of medicine provided through telemedicine technologies. A physician 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: *Provided*, That the prescribing limitations contained in this section do not apply to a physician or a member of the same group practice with an established patient.

(2) The prescribing limitations in this subsection do not apply when a physician is providing treatment to patients who are minors, or if 18 years of age or older, who are enrolled in a primary or secondary education program and are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder, Autism, or a traumatic brain injury in accordance with guidelines as set forth by organizations such as the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry, or the American Academy of Pediatrics. The physician must maintain records supporting the diagnosis and the continued need of treatment.

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(3) The prescribing limitations in this subsection do not apply to a hospital, excluding the emergency department, when a physician submits an order to dispense a controlled substance, listed in Schedule II of the Uniform Controlled Substances Act, to a hospital patient for immediate administration in a hospital.

(4) A physician or podiatrist may not prescribe any pain-relieving controlled substance listed in Schedule II of the Uniform Controlled Substance Act as part of a course of treatment for chronic nonmalignant pain solely based upon a telemedicine encounter: *Provided*, That the prescribing limitations contained in this section do not apply to a physician or a member of the same group practice with an established patient.

(5) A physician or health care provider may not prescribe any drug with the intent of causing an abortion. The term "abortion" has the same meaning ascribed to it in §16-2F-2 of this code.

(h) *Exceptions*. –

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

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

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

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

(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 §29A-3-1, of this code to implement standards for and limitations upon the utilization of telemedicine technologies in the practice of medicine in this state. The West Virginia Board of Medicine and the West Virginia Board of Osteopathic Medicine may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to implement the provisions of the bill passed during the 2021 session of the Legislature.

(j) *Preservation of the traditional physician-patient relationship*. –

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

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## §30-14-13. Limitation of article.

The practice of medicine and surgery by persons possessing the degree of doctor of medicine 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.

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## §30-14-14. Rulemaking.

(a) The board shall propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Standards and requirements for licenses and permits;

(2) Procedures for examinations and reexaminations;

(3) Requirements for third parties to prepare or administer, or both, examinations and reexaminations;

(4) Educational and experience requirements;

(5) Standards for approval of courses and curriculum;

(6) Procedures for the issuance and renewal of licenses and permits;

(7) A fee schedule;

(8) Regulation of osteopathic medical corporations;

(9) Regulation of profession limited liability companies;

(10) Regulation of osteopathic physician assistants;

(11) Continuing education requirements for licensees;

(12) The standards for and limitations upon the utilization of telemedicine technologies;

(13) The procedures for denying, suspending, restricting, revoking, reinstating or limiting the practice of licensees and permittees;

(14) Adopting a standard for ethics;

(15) Requirements for revoked licenses or permits; and

(16) Any other rules necessary to effectuate the provisions of this article.

(b) All of the board's rules in effect and not in conflict with these provisions shall remain in effect until they are amended or rescinded.

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§30-14-15

Repealed

Acts, 2017 Reg. Sess., Ch. 119.

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## §30-14-16. Combining staff functions with West Virginia Board of Medicine.

The West Virginia Board of Osteopathic Medicine may employ investigators, attorneys, clerks and administrative staff in collaboration with the West Virginia Board of Medicine to share duties and functions between the two boards when it may be efficient and practical for the functioning of the boards. Any sharing of staff or staff resources shall be documented and performed pursuant to the provisions of section nineteen, article one of this chapter.

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**§30-14-17. Prohibited practice.**

(a) For the purposes of this section:

"Gender" means the psychological, behavioral, social, and cultural aspects of being male or female.

"Gender altering medication" means the prescribing or administering of the following for the purpose of assisting an individual with a gender transition:

(1) Gonadotropin-releasing hormone (GnRH) analogues or other puberty blocking medication to stop or delay normal puberty; and

(2) Supraphysiologic doses of testosterone, estrogen, or other androgens than would normally be produced endogenously in a healthy individual of the same age and sex.

"Gender reassignment surgery" means a surgical procedure performed for the purpose of assisting an individual with a gender transition, including any of the following:

(1) Penectomy, orchiectomy, vaginoplasty, clitoroplasty, vulvoplasty, hysterectomy, or ovariectomy;

(2) Metoidioplasty, phalloplasty, vaginectomy, scrotoplasty, or implantation of erection or testicular prostheses; and

(3) Augmentation mammoplasty, and subcutaneous mastectomy, or any plastic, cosmetic, or aesthetic surgery that feminizes or masculinizes the facial or other body features of an individual.

"Gender transition" means the process in which a person goes from identifying with and living as a gender that corresponds to the person’s sex to identifying with and living as a gender different from the person’s sex and may involve social, legal, or physical changes.

"Sex” means the state of being either male or female as observed or clinically verified at birth. There are only two sexes, and every individual is either male or female: *Provided*, That individuals with congenital and medically verifiable "DSD conditions" (sometimes referred to as "differences in sex development", "disorders in sex development", or "intersex conditions") are not members of a third sex and must be accommodated consistent with state and federal law.

(b) A physician may not provide gender reassignment surgery or gender altering medication to a person who is under 18 years of age.

(c) A physician may provide any of the following to a person who is under 18 years of age:

(1) Services provided to an individual born with a medically verifiable disorder of sex

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development, including, but not limited to, a person with external sex characteristics that are irresolvably ambiguous, such as an individual born with 46 xx chromosomes with virilization, 46 xy chromosomes with undervirilization, or having both ovarian and testicular tissue;

(2) Services provided to an individual when a physician has otherwise diagnosed a disorder of sexual development and in which the physician has determined through genetic or biochemical testing that the individual does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action;

(3) The treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of gender transition procedures, whether or not these procedures were performed in accordance with state and federal law; and

(4) Any procedure undertaken because the individual suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the person in imminent danger of death, or impairment of a major bodily function unless surgery is performed.

(d) The provisions of this section are effective on January 1, 2024. The amendments made to this article during the 2025 regular session of the Legislature shall be effective on August 1, 2025.

(e) If a physician provides either gender reassignment surgery or gender altering medication to a person who is under 18 years of age, the appropriate licensing board shall find the physician in violation of this section and shall immediately revoke the license of the physician.

(f) A person may assert an actual or threatened violation of this section as a claim or defense in a judicial or administrative proceeding and obtain compensatory damages, injunctive relief, declaratory relief, reasonable attorneys' fees, and any other appropriate relief. A person shall bring a claim for a violation of this section not later than two years after the day the cause of action accrues. A minor may bring an action before reaching 18 years of age through a parent or guardian and may bring an action in the minor's own name upon reaching 18 years of age at any time from that point until 20 years after. Inasmuch as the Legislature intends to make unlawful the provision of gender reassignment surgery or gender altering medication to a minor, it is the intent of the Legislature that this section be exempt from compliance with §55-7B-6 of this code.

(g) The Attorney General may bring an action to enforce compliance with this section. Nothing in this section shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the state, or any agency, officer, or employee of the state to institute or intervene in any proceeding.

(h) If any provision of this section, or the application thereof to any provision or

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circumstance, shall be held unconstitutional or otherwise invalid, such invalidity or unconstitutionality shall not affect the provisions or application of this section which can be given effect without the unconstitutional or invalid provisions of application, and to this end the provisions of this section are declared to be severable.

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