

# WEST VIRGINIA CODE: §30-16-11

## §30-16-11. Disciplinary actions.

(a) The board may take disciplinary action against any licensee or certificate holder holding a license or certificate issued under this article after giving reasonable notice and an opportunity to be heard pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, when it finds that any person has engaged in conduct in violation of the rules adopted by the board, including, but not limited to, the following:

- (1) Fraud or misrepresentation in applying for or procuring a chiropractic license or in connection with applying for or procuring periodic renewal of a chiropractic license;
- (2) Cheating on or attempting to subvert the chiropractic licensing examination or examinations;
- (3) Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude or directly relates to the practice of chiropractic. Any plea of nolo contendere is a conviction for the purposes of this subdivision;
- (4) Conduct likely to deceive, defraud or harm the public;
- (5) Making a false or misleading statement regarding his or her skill or the efficiency or value of the chiropractic treatment;
- (6) Representing to a patient that an incurable condition, sickness, disease or injury can be cured;
- (7) Willfully or negligently violating the confidentiality between chiropractic physician and patient except as required by law;
- (8) Negligence in the practice of chiropractic as determined by the board;
- (9) Being found mentally incompetent or insane by any court of competent jurisdiction;
- (10) Being physically or mentally unable to engage safely in the practice of chiropractic;
- (11) Practice or other behavior that demonstrates an incapacity or incompetence to practice chiropractic;
- (12) Use of any false, fraudulent or deceptive statement in any document connected with the practice of chiropractic;
- (13) Practicing chiropractic under a false or assumed name;

- (14) Aiding or abetting the practice of chiropractic by an unlicensed, incompetent or impaired person;
- (15) Allowing another person or organization to use his or her license to practice chiropractic;
- (16) Commission of any act of sexual abuse, sexual misconduct or sexual exploitation related to the licensee's practice of chiropractic;
- (17) Being addicted or habituated to a drug or intoxicant;
- (18) Obtaining any fee by fraud, deceit or misrepresentation;
- (19) Employing abusive billing practices;
- (20) Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually rendered: Provided, That this prohibition does not preclude the legal functioning of lawful professional partnerships, corporations or associations;
- (21) Disciplinary action of another state or jurisdiction against a license or other authorization to practice chiropractic based upon acts or conduct by the licensee similar to acts or conduct that constitute grounds for action as defined in this section, a certified copy of the record of the action taken by the other state or jurisdiction being conclusive evidence thereof;
- (22) Failure to report to the board within thirty days of any adverse action, disciplinary action, sanctions or punishment taken against him or her by another state licensing board or licensing jurisdiction, United States or foreign, by a peer review body, health care institution, professional or chiropractic society or association, governmental agency, law-enforcement agency or court for acts or conduct similar to acts or conduct that constitute grounds for action as defined in this section;
- (23) Failure to report to the board within thirty days of the surrender of a license or other authorization to practice chiropractic in another state or jurisdiction or surrender of membership on any chiropractic staff or in any chiropractic or professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that constitute grounds for action as defined in this section;
- (24) Any adverse judgment, award or settlement against the licensee resulting from a chiropractic liability claim related to acts or conduct similar to acts or conduct that constitute grounds for action as defined in this section;
- (25) Failure to report to the board within thirty days any adverse judgment, settlement or award arising from a chiropractic liability claim related to acts or conduct similar to acts or

conduct that constitute grounds for action as defined in this section;

(26) Failure to transfer or release pertinent and necessary chiropractic records to another physician in a timely fashion when legally requested to do so by the subject patient or by a legally designated representative of the subject patient;

(27) Improper management of chiropractic patient records;

(28) Failure to furnish the board, its investigators or representatives, information legally requested by the board;

(29) Failure to cooperate with a lawful investigation conducted by the board; or

(30) Violation of any provision of this article or the rules of the board or of an action, stipulation or agreement with the board.

(b) Upon a finding of a violation by a chiropractor of one or more of the grounds for discipline contained in subsection (a) of this section, the board may impose one or more of the following penalties:

(1) Revocation of the chiropractic license;

(2) Suspension of the chiropractic license;

(3) Probation;

(4) Stipulations, limitations, restrictions and conditions relating to practice;

(5) Reprimand;

(6) Monetary redress to another party;

(7) A period of free public or charity service;

(8) Satisfactory completion of an educational, training or treatment program, or a combination of programs;

(9) Imposition of an administrative penalty, not to exceed \$1,000 per day per violation; or

(10) Payment of administrative costs for the disciplinary action, including, but not limited to, attorney fees, investigation expenses, hearing examiner fees, witness fees and cost of monitoring compliance with the board's orders.

(c) The board may issue a confidential letter of concern to a licensee when, though evidence does not warrant formal proceedings, the board has noted indications of possible misconduct of a licensee that could lead to serious consequences and formal action. In the letter of concern, the board is also authorized at its discretion to request clarifying information from

the licensee.

(d) The board may require professional competency, physical, mental or chemical dependency examinations of any applicant or licensee including withdrawal and laboratory examination of bodily fluids.

(e) In every disciplinary case considered by the board pursuant to this article, whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination whether probable cause exists to substantiate charges due to any reasons set forth in this section. If probable cause is not found in the complaint, all proceedings relating to the complaint and the response of the licensee or his or her representative shall be held confidential and may not be made available to the public or to any other state or federal agency or court. If probable cause is found to exist, all proceedings on the charges shall be open to the public, who are entitled to all reports, records and nondeliberative materials introduced at the hearing, including the record of any final action taken: Provided, That any medical records pertaining to the person who has not waived his or her right to the confidentiality of the records are not open to the public. For purposes of the hearing, the board has the power to subpoena witnesses, documents or any other tangible evidence. The board may, in its discretion, meet in an informal conference with the accused licensee who seeks or agrees to the conference. Disciplinary action taken against a licensee as a result of the informal conference and agreed to in writing by the board and the accused licensee is binding and a matter of public record. The holding of an informal conference does not preclude an open formal hearing if the board determines it is necessary.

(f) If the board determines that the evidence in its possession indicates that a chiropractor's continuation in practice or unrestricted practice constitutes an immediate threat to the public health and safety or when a licensee is convicted of a felony, whether or not related to the practice of chiropractic, the board may seek an injunction in the circuit court of proper jurisdiction for immediate relief implementing any of the board's authority provided in this article.

(g) All disciplinary actions taken by the board shall be reported to the federation of licensing boards, appropriate federal agencies and any other state boards with which the disciplined licensee may also be registered or licensed and all the actions, including related findings of fact and conclusions of law, are matters of public record. Voluntary surrender of and voluntary limitations on a chiropractic license of any person are also matters of public record and shall also be reported to the appropriate agencies.