WEST VIRGINIA CODE: §30-3-9

§30-3-9. 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 physicians, podiatrists, and 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. The record may include, in accordance with rules established by the board, additional items relating to the individual's record of professional practice that will facilitate proper review of such individual's professional competence.

(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) A physician, podiatrist, physician assistant or applicant, or authorized representative thereof, has the right, upon request, to examine his or her own individual historical record 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. The statement shall at all times accompany that part of the record in contention.

(d) A physician, podiatrist, 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) A physician, podiatrist, physician assistant or applicant shall be provided written notice within 30 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.

(f) Except for information relating to biographical background, education, professional training and practice, a voluntary agreement entered into pursuant to §30-3-9(h) of this code 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 historical record unless it has initiated a proceeding for a hearing upon such information within two years of the placing of the information into the historical record.

(g) Orders and decisions of the board relating to disciplinary action against a physician, podiatrist or physician assistant are public information and shall be placed into the historical record.

(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, a physician, podiatrist or 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 physician health program as defined in §30-3D-2 of this code. The agreement between the physician, podiatrist 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) The voluntary agreement is the result of the physician, podiatrist 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, podiatrist or physician assistant relating to an alcohol, chemical dependency or major mental illness affecting the care and treatment of patients, nor received any reports pursuant to §30-3-14(b) of this code relating to an alcohol or chemical dependency impairment; and

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

(3) If any physician, podiatrist or 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 24 hours. The board may initiate disciplinary proceedings pursuant to §30-3-14(a)(1), of this code or may permit continued participation in the physician health program or both.

(4) If the board has not instituted any disciplinary proceeding as provided for in this article, any information received, maintained or developed by the board relating to the alcohol or chemical dependency impairment of any physician, podiatrist or 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 Legislature required under §30-3-7 of this code, the board shall include information regarding the success of the voluntary agreement mechanism established therein: *Provided*, That in making the report, the board may not disclose any personally identifiable information relating to any physician, podiatrist or physician assistant participating in a voluntary agreement as provided herein.

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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 may be appropriate.

(i) When the board receives a report submitted pursuant to the provisions of §30-3-14 of this code, or when the board receives or initiates a complaint regarding the conduct of anyone practicing 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. The final disposition of a complaint is public information and shall be placed in the physician, podiatrist, or physician assistant's historical record.

(j) Any physician-patient or provider-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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