WEST VIRGINIA CODE CHAPTER 30 ARTICLE 3

WV Legislature

§30-3-1. Legislative findings.

The Legislature hereby finds and declares that the practice of medicine and surgery and the practice of podiatry is a privilege and not a natural right of individuals. As a matter of public policy, it is necessary to protect the public interest through enactment of this article and to regulate the granting of such privileges and their use.

WV Legislature

§30-3-2. Purpose.

The purpose of this article is to provide for the licensure and professional discipline of physicians and podiatrists and for the licensure and professional discipline of physician assistants and to provide a professional environment that encourages the delivery of quality medical services within this state.

WV Legislature

§30-3-3. Short title.

This article shall be known and may be cited as the "West Virginia Medical Practice Act."

WV Legislature

§30-3-4. Definitions.

As used in this article:

"ABMS" means the American Board of Medical Specialties.

"ACGME" means the Accreditation Council of Graduate Medical Education.

"Administrative medicine" means administration or management related to the practice of medicine or to the delivery of health care services using the medical knowledge, skill, and judgment of a licensed physician that may affect the health of the public or medical research, excluding clinical trials on humans. Administrative medicine does not include the authority to practice clinical medicine; examine, care for, or treat patients; prescribe medications, including controlled substances; or direct or delegate medical acts or prescriptive authority to others.

"Administrative medicine license" means a medical license restricted to the practice of administrative medicine. A physician with an administrative medicine license may manage the integration of clinical medicine, strategy, operations, and other business activities related to the delivery of health care services, advise organizations, both public and private, on health care matters; authorize and deny financial payments for care; organize and direct research programs; review care provided for quality; and perform other similar duties that do not require or involve direct patient care.

"APMLE" means the American Podiatric Medical Licensing Examination.

"Approved graduate medical education" means education received through: (1) an internship, residency, or clinical fellowship program conducted in the United States and accredited by either the ACGME or AOA; or (2) a residency program conducted in Canada and accredited by RCPSC.

"Approved medical school" means an allopathic school of medicine approved by the LCME or the board and which confers the degree of medical doctor or its equivalent upon graduation.

"Board" means the West Virginia Board of Medicine established in §30-3-5 of this code.

"Clinical medicine" includes, but is not limited to:

(A) Direct involvement in patient evaluation, diagnosis, and treatment;

(B) Prescribing, administering, or dispensing any medication;

(C) Delegating medical acts, service, or prescriptive authority; and

(D) Supervision of physicians or podiatrists who practice clinical medicine, physicians and podiatrists engaged in graduate medical education, physician assistants who render medical

WVLegislature

services in collaboration with physicians, and/or the clinical practice of any other medical professional.

"ECFMG" means the Educational Commission for Foreign Medical Graduates.

"LCME" means the Liaison Committee on Medical Education.

"License" means the legal authorization issued by the board to: a fully qualified allopathic physician to engage in the regular practice of medicine and surgery; a fully qualified podiatrist to engage in the practice of podiatric medicine and surgery; or a fully qualified physician assistant to practice in collaboration with physicians licensed under this article or §30-14-1 *et seq.* of this code.

"Medical peer review committee" means a committee of, or appointed by, a state or local professional medical society, or a committee of, or appointed by, a medical staff of a licensed hospital, long-term care facility or other health care facility, or any health care peer review organization as defined in §30-3C-1 of this code, or any other organization of professionals in this state formed pursuant to state or federal law and authorized to evaluate medical and health care services.

"Practice of medicine and surgery" means the diagnosis or treatment of, or operation or prescription for, any human disease, pain, injury, deformity or other physical or mental condition. "Surgery" includes the use on humans of lasers, ionizing radiation, pulsed light and radiofrequency devices. The provisions of this section do not apply to any person who is a duly licensed health care provider under other pertinent provisions of this code and who is acting within the scope of his or her license.

"Practice of podiatry" means the examination, diagnosis, treatment, prevention and care of conditions and functions of the human foot and ankle by medical, surgical and other scientific knowledge and methods; with surgical treatment of the ankle authorized only when a podiatrist has been granted privileges to perform ankle surgery by a hospital's medical staff credentialing committee based on the training and experience of the podiatrist; and medical and surgical treatment of warts and other dermatological lesions of the hand which similarly occur in the foot. When a podiatrist uses other than local anesthesia, in surgical treatment of the foot, the anesthesia must be administered by, or under the direction of, an anesthesiologist or certified registered nurse anesthetist authorized under the State of West Virginia to administer anesthesia. A medical evaluation shall be made by a physician of every patient prior to the administration of other than local anesthesia.

"Practice credential" or "credential" means any permit, certification, registration, or authorization, other than a license, issued by this Board which authorizes the credential holder to practice allopathic or podiatric medicine and surgery, or to practice as a physician assistant, to patients in West Virginia within the limits established for the specific credential type.

WV Legislature

"RCPSC" means the Royal College of Physicians and Surgeons of Canada.

"State health officer" means a physician licensed to practice in this state who has been appointed pursuant to §16-1-5 of this code. The state health officer or, in the absence of an appointed state health officer, the West Virginia licensed physician designated by the appointing authority to serve as interim state health officer, shall serve as secretary of the board and shall carry out any and all responsibilities assigned in this article to the secretary of the board.

"USMLE" means the United States Medical Licensing Examination.

WV Legislature

§30-3-5. West Virginia Board of Medicine powers and duties continued; appointment and terms of members; vacancies; removal.

(a) The West Virginia Board of Medicine has assumed, carried on, and succeeded to all the duties, rights, powers, obligations, and liabilities heretofore belonging to or exercised by the Medical Licensing Board of West Virginia. All the rules, orders, rulings, licenses, certificates, permits, and other acts and undertakings of the Medical Licensing Board of West Virginia as heretofore constituted have continued as those of the West Virginia Board of Medicine until they expired or were amended, altered, or revoked. The board remains the sole authority for the issuance of licenses to practice allopathic medicine and surgery and podiatry, and to practice as physician assistants in this state in collaboration with physicians licensed under this article. The board shall continue to be a regulatory and disciplinary body for the practice of medicine and surgery, the practice of podiatry, and for physician assistants in this state.

(b) The board shall consist of the following 15 members:

(1) The state health officer, who shall serve ex officio, with the right to vote as a member of the board, for the length of his or her term as state health officer;

(2) Eight allopathic physicians;

(3) One podiatrist;

(4) Two physician assistants; and

(5) Three citizen members.

(c) With the exception of the state health officer, all members shall be appointed by the Governor with the advice and consent of the Senate. In making appointments to the board, the Governor shall, so far as practicable, select the members from different geographical sections of the state.

(d) A person is not eligible for membership on the board who is a member of any political party executive committee or, with the exception of the state health officer, who holds any public office.

(e) To be eligible to serve on the board, physicians, podiatrists, and physician assistants shall:

(1) Reside in West Virginia;

(2) Hold an active, full and unrestricted license to practice as an allopathic physician, podiatrist, or physician assistant in West Virginia, and have held such license for at least five years; and

WV Legislature

(3) Be engaged in active clinical practice in this state as a licensed provider and have a history of active clinical practice in West Virginia for the five years prior to the date of appointment. "Active clinical practice" means that the licensee is engaged in the full-time practice of clinical medicine in West Virginia for a minimum of 50 percent of the licensee's professional practice.

(f) To be eligible to serve on the board, citizen members, who represent the interests of health care consumers, and who are appointed to the board after January 1, 2026:

(1) Shall reside in West Virginia and have a history of residing in West Virginia for at least five years prior to appointment;

(2) May not be licensed under the provisions of this article and shall never have performed any services as a licensed health care provider; and

(3) May not have a financial interest in the practice of the professions regulated by the board. A person shall be deemed to have a financial interest in the practice of the professionals regulated by the board if the individual:

(A) Owns or operates a business that is engaged in the delivery of health care services or the provision of health care related goods, services, or staffing;

(B) Is married to a health care provider who is licensed to practice in this state; or

(C) Is employed by an entity which provides health care goods or services to West Virginia patients if the individual’s work responsibilities relate, in whole or in part, to the delivery of health care services, health care administration, management, or policy.

(g) Board membership terms shall begin on October 1 of the applicable year, and a member may not be appointed to more than two consecutive full terms on the board.

(h) When a vacancy on the board occurs and less than one year remains in the unexpired term, the appointee shall be eligible to serve the remainder of the unexpired term and two consecutive full terms on the board.

(i) A member whose term has expired may continue to serve until an eligible successor has been appointed.

(j) A member who has served two consecutive full terms may not be selected for re-appointment for at least one year after completion of his or her second full term.

(k) Excepting the state health officer, whose term shall be limited to their service in that office, a member of the board immediately and automatically forfeits membership to the board if:

(1) The member’s license to practice is suspended, revoked, surrendered, expired, or placed

WV Legislature

in inactive status;

(2) The member is convicted of a felony under the laws of any jurisdiction;

(3) The member no longer meets the active clinical practice requirement;

(4) The member becomes a non-resident of this state; or

(5) A citizen member commences providing health care services or develops a financial interest in the practice of the professions regulated by the board.

(l) No member may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, or gross immorality.

WV Legislature

§30-3-6. Conduct of business of West Virginia Board of Medicine; meetings; officers; compensation; expenses; quorum.

Every two years the board shall elect from among its members a president and vice president. Regular meetings shall be held as scheduled by the rules of the board. Special meetings and emergency meetings of the board may be called by the joint action of the president and vice president or by any three members of the board. With the exception of the state health officer, members of the board shall receive compensation and expense reimbursement in accordance with §30-1-11 of this code.

A majority of the membership of the board constitutes a quorum for the transaction of business, and business is transacted by a majority vote of a quorum, except for disciplinary actions which shall require the affirmative vote of not less than five members or a majority vote of those present, whichever is greater.

Meetings of the board shall be held in public session. Disciplinary proceedings, prior to a finding of probable cause as provided in §30-3-14(p) of this code, shall be held in closed sessions, unless the party subject to discipline requests that the proceedings be held in public session.

WV Legislature

§30-3-7. Powers and duties of West Virginia Board of Medicine.

(a) The board is autonomous and, in accordance with this article, shall determine qualifications of applicants for licenses and other practice credentials to practice medicine and surgery, to practice podiatry, and to practice as a physician assistant in collaboration with physicians licensed under this article or §30-14-1 *et. seq* of this code, and shall issue licenses and other practice credentials to qualified applicants and shall regulate the professional conduct and discipline of such individuals. In carrying out its functions, the board may:

(1) Adopt such rules as are necessary to carry out the purposes of this article;

(2) Hold hearings and conduct investigations, subpoena witnesses and documents and administer oaths;

(3) Institute proceedings in the courts of this state to enforce its subpoenas for the production of witnesses and documents and its orders and to restrain and enjoin violations of this article and of any rules promulgated under it;

(4) Employ investigators, attorneys, hearing examiners, consultants and such other employees as may be necessary, who shall be exempt from the classified service of the Division of Personnel and who shall serve at the will and pleasure of the board.

(5) Enter into contracts and receive and disburse funds according to law;

(6) Establish and certify standards for physician assistants;

(7) Authorize medical and podiatry corporations in accordance with the limitations of §30-3-15 of this code to practice medicine and surgery or podiatry through duly licensed physicians, podiatrists or physician assistants;

(8) Establish the circumstances under which the approval of applications and the issuance of licenses and other practice credentials may be delegated to board staff; and

(9) Perform such other duties as are set forth in this article or otherwise provided for in this code.

(b) The board shall submit an annual report of its activities to the Legislature. The report shall include a statistical analysis of complaints received, charges investigated, charges dismissed after investigation, the grounds for each such dismissal and disciplinary proceedings and disposition.

WV Legislature

§30-3-7a. Findings and Rule-making authority.

[Repealed.]

WV Legislature

§30-3-8. State health officer to act as secretary of the board.

The state health officer, in addition to being a member of the board, shall act as its secretary. He or she shall, together with the president of the board, sign all licenses, reports, orders and other documents that may be required by the board in the performance of its duties.

With the authorization of the board president and secretary, the board may utilize electronic signatures on licenses and other practice credentials.

WV Legislature

§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 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

WV Legislature

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.

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

WV Legislature

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.

WV Legislature

§30-3-10. Licenses to practice allopathic and podiatric medicine and surgery.

(a) License to Practice Allopathic Medicine and Surgery. – Graduates of approved medical schools located in the United States, Canada, or Puerto Rico. The board may grant a license to practice allopathic medicine and surgery to an applicant who has graduated and received the degree of doctor of medicine or its equivalent from a school of medicine located within the United States, the Commonwealth of Puerto Rico, or Canada, and is approved by the LCME or by the board, and who:

(1) Submits a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board's satisfaction that the applicant:

(A) Is physically and mentally capable of engaging in the practice of medicine and surgery;

(B) Has, within 10 consecutive years, passed all component parts of the USMLE or any prior examination or examination series approved by the board which relates to a national standard, is administered in the English language, and is designed to ascertain an applicant's fitness to practice medicine and surgery: *Provided*, That the board may accept an examination sequence which was successfully completed in more than 10 consecutive years if the applicant holds current specialty board certification from a member board of ABMS;

(C) Has successfully completed one year of approved graduate medical education; and

(D) Meets any other criteria for licensure set forth in this article or in rules promulgated by the board pursuant to §30-3-7 of this code and in accordance with §29A-3-1 *et seq.* of this code.

(b) License to Practice Allopathic Medicine and Surgery – International Medical Graduates who have completed approved graduate medical education.

The board may grant a license to practice allopathic medicine and surgery to an applicant who has received the degree of doctor of medicine or its equivalent from an approved school of medicine located outside of the United States, the Commonwealth of Puerto Rico, and Canada, who:

(1) Submits a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board's satisfaction that the applicant:

(A) Is physically and mentally capable of engaging in the practice of medicine and surgery;

WV Legislature

(B) Has, within 10 consecutive years, passed all component parts of the USMLE or any prior examination or examination series approved by the board which relates to a national standard, is administered in the English language, and is designed to ascertain an applicant's fitness to practice medicine and surgery: *Provided*, That the board may accept an examination sequence which was successfully completed in more than 10 consecutive years if the applicant holds current specialty board certification from a member board of ABMS;

(C) Has successfully completed:

(i) Two years of approved graduate medical education; or (ii) One year of approved graduate medical education and the applicant holds a current certification by a member board of the ABMS;

(D) Holds a valid ECFMG certification or:

(i) Holds a full, unrestricted, and unconditional license to practice medicine and surgery under the laws of another state, the District of Columbia, Canada, or the Commonwealth of Puerto Rico;

(ii) Has been engaged in the practice of medicine on a full-time professional basis within the state or jurisdiction where the applicant is fully licensed for a period of at least five years; and

(iii) Is not the subject of any pending disciplinary action by a medical licensing board and has not been the subject of professional discipline reportable to the National Practitioner Data Bank by a medical licensing board in any jurisdiction;

(E) Can communicate in the English language; and

(F) Meets any other criteria for licensure set forth in this article or in rules promulgated by the board pursuant to §30-3-7 of this code and in accordance with §29A-3-1 *et seq.* of this code.

(c) License to Practice Allopathic Medicine and Surgery – International Medical Graduates who have not completed two years of approved graduate medical education.

The board may grant a license to practice allopathic medicine and surgery to an applicant who has received the degree of doctor of medicine or its equivalent from an approved school of medicine located outside of the United States, the Commonwealth of Puerto Rico, and Canada and who has not completed approved graduate medical education in the United States or Canada if the applicant:

(1) Satisfies all the requirements of §30-3-10(b) of this code except for the completion of approved graduate medical education;

(2) Has successfully completed all requirements of an international graduate medical

WV Legislature

education residency training program;

(3) Has successfully completed a minimum of two complete years of non-accredited fellowship training in the United States in a clinical field related to the applicant's international residency training. *Provided*, That the training was completed at an institution that sponsors or operates an ACGME-accredited residency program in the same clinical field or a related clinical field. One complete year of approved graduate medical education may be substituted for one year of non-accredited training;

(4) The applicant submits evidence that he or she has an offer of employment to practice medicine and surgery in this state; and

(5) The proposed employer submits a letter of sponsorship identifying the physician's proposed practice plans and endorsing the physician for licensure.

(d) Administrative medicine license - Administrative medicine licensees may not practice clinical medicine.

(1) The board may issue an administrative medicine license to a physician who:

(A) Files a complete application;

(B) Pays the applicable fees;

(C) Meets all qualifications and criteria for licensure set forth in §30-3-10(a) or §30-3-10 (b) of this code and the board's legislative rules; and

(D) Demonstrates competency to practice administrative medicine.

(2) A physician applying to renew an administrative medicine license must pay the same fees and meet the same requirements for renewing an active status license, including submission of certification of participation in and successful completion of a minimum of 50 hours of continuing medical education satisfactory to the board during the preceding two-year period.

(3) The board may deny an application for an administrative medicine license and may discipline an administrative medicine licensee who, after a hearing, has been adjudged by the board as unqualified due to any reason set forth in §30-3-14 of this code or the board's rules and pursuant to the processes set forth therein.

(4) The board shall propose legislative rules pursuant to the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this section and to regulate the practice of administrative medicine.

(e) License to practice podiatric medicine and surgery - The board may grant a license to practice podiatric medicine and surgery to an applicant who:

WV Legislature

(1) Submits a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board's satisfaction that the applicant:

(A) Is physically and mentally capable of engaging in the practice of podiatric medicine and surgery;

(B) Has graduated and received the degree of doctor of podiatric medicine or its equivalent from a school of podiatric medicine approved by the Council of Podiatric Medical Education or by the board;

(C) Has, within 10 consecutive years, passed all component parts of the APMLE, or any prior examination or examination series approved by the board which relates to a national standard, is administered in the English language, and is designed to ascertain an applicant's fitness to practice podiatric medicine;

(D) Has successfully completed a minimum of one year of graduate clinical training in a program approved by the Council on Podiatric Medical Education or the Colleges of Podiatric Medicine. The board may consider a minimum of two years of graduate podiatric clinical training in the United States armed forces or three years' private podiatric clinical experience in lieu of this requirement; and

(E) Meets any other reasonable criteria for licensure set forth in this article or in legislative rules promulgated by the board.

(f) An applicant for a license may be required by the board, in its discretion, to appear for a personal interview and may be required to produce original documents for review by the board.

(g) All licenses to practice medicine and surgery granted prior to July 1, 2008, and valid on that date shall continue in full effect for the term and under the conditions provided by law at the time of the granting of the license.

(h) The board may not issue a license to a person not previously licensed in West Virginia whose license has been revoked or suspended in another state until reinstatement of his or her license in that state.

(i) The board may not issue an initial license, reinstate, or reactivate a license, to any individual whose license has been revoked, suspended, surrendered, or deactivated in another state based upon conduct which is substantially equivalent to an act of unprofessional conduct prohibited by §30-3-14(c) of this code or the board's legislative rules, until reinstatement of his or her license in that state.

(j) The board need not reject a candidate for a nonmaterial technical or administrative error

WV Legislature

or omission in the application process that is unrelated to the candidate's professional qualifications as long as there is sufficient information available to the board to determine the eligibility and qualifications of the candidate for licensure.

WV Legislature

§30-3-10a. 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 medicine 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 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 medicine in this state whose license is in good standing may donate their expertise for the medical care and treatment of indigent and needy patients under 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 under 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 a clinic 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

WV Legislature

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 whole or in part, for the delivery of health care services without charge is not 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 subsection (a) of this section or 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: Provided, That this subsection shall not apply to a terminated policy, terminated contract of liability insurance or extended reporting endorsement attached thereto that provides "tail insurance" as defined by section two, article twenty-d, chapter thirty-three of this code: Provided, however, That nothing within this subsection shall be construed to extend coverage under a terminated policy or terminated contract of liability insurance or any extended reporting endorsement attached thereto to: (1) Alter or amend the effective policy period of any policy, contract of liability insurance or extended reporting endorsement; or (2) cover the treatment of indigent and needy 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.

WV Legislature

§30-3-10b. Special license types.

(a) The special license types set forth in this section may be issued by the board without examination. "Without examination" means that the board may not require an applicant to sit for the USMLE or any prior examination or examination series approved by the board to be eligible for licensure. However, "without examination" does not include failure of any step of the USMLE or any prior examination series approved by the board examination to be eligible for a license. Individuals who have failed one or more steps of an approved licensing examination are not eligible for licensure pursuant to this section until such time as the failed test attempt has been superseded by a successful exam attempt.

(b) Restricted License Issued in Extraordinary Circumstances. – A restricted license issued in extraordinary circumstances may be limited as directed by the board based upon the facts and circumstances of the application. Notwithstanding any of the provisions of this article, the board may, without examination, issue a restricted license to an allopathic physician applicant in extraordinary circumstances who submits a complete application and pays the applicable fee under the following conditions:

(1) Upon a finding by the board that based on the applicant's exceptional education, training, and practice credentials, the applicant's practice in the state would be beneficial to the public welfare;

(2) Upon a finding by the board that the applicant's education, training, and practice credentials are substantially equivalent to the requirements of licensure established in this article;

(3) Upon a finding by the board that the applicant received his or her post-graduate medical training outside of the United States and its territories;

(4) That the restricted license issued under extraordinary circumstances is approved by a vote of three fourths of the members of the board; and

(5) That orders denying applications for a restricted license under this subsection are not appealable.

(c) Medical School Faculty License. – The medical practice of a physician licensed under this subsection is limited to the medical center of the medical school to where the physician holds an academic faculty member appointment. A limited license issued under this section is valid for a term of one year from the effective date of the faculty appointment.

(1) The board shall issue a limited license to practice allopathic medicine and surgery, without examination, to an individual appointed to a West Virginia medical school faculty who holds a valid license to practice medicine and surgery from another state, the District of Columbia, the Commonwealth of Puerto Rico, or Canada and who:

(A) Submits a complete application;

WV Legislature

(B) Pays the applicable fees;

(C) Demonstrates to the board's satisfaction that the applicant:

(i) Is physically and mentally capable of engaging in the practice of medicine and surgery;

(ii) Is able to communicate in English;

(iii) Is a graduate of an international school of medicine which is approved by the LCME or by the World Health Organization or by the board with the degree of doctor of medicine or its equivalent;

(iv) Has successfully completed one year of approved graduate medical education or has received other training which the board determines to be substantially equivalent or in excess of this requirement;

(v) Has not committed any act in this or any other jurisdiction which would constitute the basis for disciplining a physician under §30-3-14 of this code; and

(vi) Has been offered and has accepted a faculty appointment to teach in a medical school in this state.

(2) A medical school faculty license issued pursuant to this section shall automatically expire and be void, without notice to the physician, when the physician's faculty appointment is terminated. The dean of the medical school shall notify the board within five days of the termination of a faculty appointment of a physician licensed pursuant to this section.

(3) A physician issued a medical school faculty license under this section shall keep all medical licenses issued by other jurisdictions in good standing and shall notify the board, within 15 days of its occurrence, of any denial, suspension or revocation of or any limitation placed on a medical license issued by another jurisdiction.

(d) Summer Camp License. - The board shall process, without fee, an allopathic or podiatric physician application for a license to provide services at a children's summer camp for not more than one specifically designated three-week period annually. Applicants shall hold unrestricted medical licensure in a U.S. state, Puerto Rico or Canada and provide evidence of graduation from an approved medical school. The license shall be issued for a period of the specifically designated three weeks only, on an annual basis.

(e) The board shall investigate applicants seeking special license types set forth in this section and may require a personal interview to review the applicant's qualifications and professional credentials.

(f) The board may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code that establish and regulate the special license types set forth herein, pursuant to the provisions of this section.

WV Legislature

(g) A physician licensed under subsections (b) and (c) of this section may apply for license renewal. The board may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code that establish and regulate the renewal and continuing education requirements for licenses issued pursuant to this section.

WV Legislature

§30-3-11. Endorsement of licenses to practice medicine and surgery and podiatry; fees; temporary license; summer camp doctors.

[Repealed.]

WV Legislature

§30-3-11a. Endorsement of licenses to practice medicine and surgery as medical school faculty.

[Repealed.]

WV Legislature

§30-3-11b. License to practice medicine and surgery at certain state veterans nursing home facilities.

[Repealed.]

WV Legislature

§30-3-11c. Administrative medicine license.

[Repealed.]

WV Legislature

§30-3-12. Biennial renewal of license to practice medicine and surgery or podiatry; continuing education; rules; fee; inactive license; denial for conviction of felony offense.

(a) A license to practice medicine and surgery or podiatry in this state is valid for a term of two years.

(b) The license shall be renewed:

(1) Upon receipt of a reasonable fee, as set by the board;

(2) Submission of an application on forms provided by the board; and

(3) A certification of participation in and successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, during the preceding two-year period.

(c) The application may not require disclosure of a voluntary agreement entered into pursuant to subsection (h), section nine of this article.

(d) Continuing medical education satisfactory to the board is continuing medical education designated as Category I by the American Medical Association or the Academy of Family Physicians and alternate categories approved by the board. The continuing medical education requirement shall include completion of medical education in nutrition.

(e) Continuing podiatric education satisfactory to the board is continuing podiatric education approved by the Council on Podiatric Education and alternate categories approved by the board.

(f) Notwithstanding any provision of this chapter to the contrary, beginning July 1, 2007, failure to timely submit to the board a certification of successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, shall result in the automatic expiration of any license to practice medicine and surgery or podiatry until such time as the certification, with all supporting written documentation, is submitted to and approved by the board.

(g) If a license is automatically expired and reinstatement is sought within one year of the automatic expiration, the former licensee shall:

(1) Provide certification with supporting written documentation of the successful completion of the required continuing education;

(2) Pay a renewal fee; and

(3) Pay a reinstatement fee equal to fifty percent of the renewal fee.

WV Legislature

(h) If a license is automatically expired and more than one year has passed since the automatic expiration, the former licensee shall:

(1) Apply for a new license;

(2) Provide certification with supporting written documentation of the successful completion of the required continuing education; and

(3) Pay such fees as determined by the board.

(i) Any individual who accepts the privilege of practicing medicine and surgery or podiatry in this state is required to provide supporting written documentation of the continuing education represented as received within thirty days of receipt of a written request to do so by the board. If a licensee fails or refuses to provide supporting written documentation of the continuing education represented as received as required in this section, such failure or refusal to provide supporting written documentation is prima facie evidence of renewing a license to practice medicine and surgery or podiatry by fraudulent misrepresentation.

(j) The board may renew, on an inactive basis, the license of a physician or podiatrist who is currently licensed to practice medicine and surgery or podiatry in, but is not actually practicing, medicine and surgery or podiatry in this state. A physician or podiatrist holding an inactive license shall not practice medicine and surgery or podiatry in this state.

(k) An inactive license may be converted by the board to an active license upon a written request by the licensee to the board that:

(1) Accounts for his or her period of inactivity to the satisfaction of the board; and

(2) Submits written documentation of participation in and successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, during each preceding two-year period.

(l) An inactive license may be obtained upon receipt of a reasonable fee, as set by the board, and submission of an application on forms provided by the board on a biennial basis.

(m) The board may not require any physician or podiatrist who is retired or retiring from the active practice of medicine and surgery or the practice of podiatry and who is voluntarily surrendering their license to return to the board the license certificate issued to them by the board.

(n) The board may deny or refuse to reissue a license to any person who has been convicted of a felony under the laws of this state, any other state, the United States or the laws of any other country or state outside of the United States.

WV Legislature

§30-3-12a. Emeritus physician licenses; rulemaking.

(a) In acknowledgement of the important service physicians, podiatric physicians, and physician assistants provide to the citizens of West Virginia, the board may issue, without a fee, an emeritus license to a provider who holds a current, valid license issued by the board, who has fully retired from clinical professional practice in this state and who submits an application on the form required by the board that confirms that the individual meets the following qualifications for emeritus status:

(1) The applicant is not under investigation for a violation of professional conduct standards by the Board or by any professional licensing board where the applicant holds a professional license;

(2) The applicant has practiced as a licensed physician, podiatric physician or physician assistant in West Virginia for at least 10 years;

(3) The applicant has not been the subject of disciplinary action in a jurisdiction where the individual is licensed, that resulted in the revocation, surrender or suspension of the individual's license and the applicant does not hold a license in any jurisdiction that is subject to probation; and

(4) The applicant has voluntarily and fully retired from the active practice of the applicant's profession and does not hold an active registration with the federal drug enforcement administration.

(b) Until July 1, 2030, the Board is further authorized to issue, without a fee, an emeritus license to a provider whose license expired prior to July 1, 2025, and who submits an application on the form required by the Board which confirms that the retired provider meets all other criteria for emeritus licensure set forth in subsection (a) of this section.

(c) An emeritus license is an honorific license and does not authorize the holder to practice any profession in this state or engage in any clinical practice whatsoever. Licensees in emeritus status are not required to complete continuing education to retain licensure and are exempted from any requirements to the contrary.

(d) An emeritus license may not be used to obtain a license or privileges to practice in another state, whether by endorsement or reciprocity or through a licensure compact.

(e) An emeritus license may not be converted to a license to practice the holder's profession. Emeritus licensees who seek to return to active clinical practice must apply to reactivate licensure and meet all of the requirements for reactivation, including any continuing education requirements.

(f) An emeritus license shall be valid for the life of the holder, without periodic renewal, unless the holder returns to active clinical practice or the board revokes the license.

WV Legislature

(g) The board shall promulgate rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to effectuate the provisions of this article. The rules shall establish:

(1) The application process for an emeritus license, which shall, at a minimum, require the applicant to demonstrate eligibility in compliance with this section;

(2) Grounds for denial or revocation of an emeritus license, including but not limited to:

(A) Evidence of active clinical practice in any jurisdiction;

(B) Evidence that the provider retired while under or to avoid a pending board complaint or investigation process; or

(C) Evidence that the provider's West Virginia license was on probation, suspended, revoked or subject to disciplinary surrender prior to retirement.

(3) A process for voluntary relinquishment an emeritus license.

WV Legislature

§30-3-13. Licensing requirements for the practice of medicine and surgery or podiatry; exceptions; unauthorized practice; notice; criminal penalties.

(a) It is unlawful for any person who does not hold an active, unexpired license issued pursuant to this article, or who is not practicing pursuant to the licensure exceptions set forth in this section, to:

(1) Engage in the practice of medicine and surgery or podiatry in this state;

(2) Represent that he or she is a physician, surgeon or podiatrist authorized to practice medicine and surgery or podiatry in this state; or

(3) Use any title, word or abbreviation to indicate or induce others to believe that he or she is licensed to practice medicine and surgery or podiatry in this state.

(b) It is unlawful for any person who does not hold an active, unexpired license issued pursuant to this article to engage in the practice of telemedicine within this state. As used in this section, the "practice of telemedicine" means the practice of medicine using communication tools such as electronic communication, information technology or other means of interaction between a licensed health care professional in one location and a patient in another location, with or without an intervening health care provider, and typically involves secure real time audio/video conferencing or similar secure audio/video services, remote monitoring, interactive video and store and forward digital image or health data technology to provide or support health care delivery by replicating the interaction of a traditional in person encounter between a provider and a patient. The practice of telemedicine occurs in this state when the patient receiving health care services through a telemedicine encounter is physically located in this state.

(c) It is not unlawful for a person:

(1) Who is a licensed health care provider under this code to act within his or her scope of practice;

(2) Who is not a licensed health care professional in this state to provide first aid care in an emergency situation; or

(3) To engage in the bona fide religious tenets of any recognized church in the administration of assistance to the sick or suffering by mental or spiritual means.

(d) The following persons are exempt from the licensure requirements under this article:

(1) A person enrolled in a school of medicine approved by the Liaison Committee on Medical Education or by the board;

(2) A person enrolled in a school of podiatric medicine approved by the Council of Podiatry

WV Legislature

Education or by the board;

(3) A person engaged in graduate podiatric training in a program approved by the Council on Podiatric Education or by the board;

(4) A physician or podiatrist engaged in the performance of his or her official duties holding one or more licenses from another state or foreign country and who is a commissioned medical officer of, a member of or employed by:

(A) The United States Military;

(B) The Department of Defense;

(C) The United States Public Health Service; or

(D) Any other federal agency;

(5) A physician or podiatrist holding one or more unrestricted licenses granted by another state or foreign country serving as visiting medical faculty engaged in education, training or research duties at a medical school or institution recognized by the board for up to six months if:

(A) The physician does not engage in the practice of medicine and surgery or podiatry outside of the auspices of the sponsoring school or institution; and

(B) The sponsoring medical school or institution provides prior written notification to the board including the physician's name, all jurisdictions of licensure and the beginning and end date of the physician's visiting medical faculty status;

(6) A physician or podiatrist holding one or more unrestricted licenses granted by another state present in the state as a member of an air ambulance treatment team or organ harvesting team;

(7) A physician or podiatrist holding one or more unrestricted licenses granted by another state or foreign country providing a consultation on a singular occasion to a licensed physician or podiatrist in this state, whether the consulting physician or podiatrist is physically present in the state for the consultation or not;

(8) A physician or podiatrist holding one or more unrestricted licenses granted by another state or foreign country providing teaching assistance, in a medical capacity, for a period not to exceed seven days;

(9) A physician or podiatrist holding one or more unrestricted licenses granted by another state or foreign country serving as a volunteer in a noncompensated role for a charitable function for a period not to exceed seven days; and

WV Legislature

(10) A physician or podiatrist holding one or more unrestricted licenses granted by another state or foreign country providing medical services to a college or university affiliated and/or sponsored sports team or an incorporated sports team if:

(A) He or she has a written agreement with that sports team to provide care to team members, band member, cheerleader, mascot, coaching staff and families traveling with the team for a specific sporting event, team appearance or training camp occurring in this state;

(B) He or she may only provide care or consultation to team members, coaching staff and families traveling with the team no longer than seven consecutive days per sporting event;

(C) He or she is not authorized to practice at a health care facility or clinic, acute care facility or urgent care center located in this state, but the physician may accompany the patient to the facility and consult; and

(D) The physician or podiatrist may be permitted, by written permission from the executive director, to extend his or her authorization to practice medicine for a maximum of seven additional consecutive days if the requestor shows good cause for the extension.

(e) A physician or podiatrist who does not hold a license issued by the board and who is practicing medicine in this state pursuant to the exceptions to licensure set forth in this section may practice in West Virginia under one or more of the licensure exceptions for no greater than a cumulative total of thirty days in any one calendar year.

(f) The executive director shall send by certified mail to a physician not licensed in this state a written order that revokes the privilege to practice medicine under this section if the executive director finds good cause to do so. If no current address can be determined, the order may be sent by regular mail to the physician's last known address.

(g) A person who engages in the unlawful practice of medicine and surgery or podiatry while holding a license issued pursuant to this article which has been classified by the board as expired for ninety days or fewer is guilty of a misdemeanor and, upon conviction, shall be fined not more than $5,000 or confined in jail not more than twelve months, or both fined and confined.

(h) A person who is found to be engaging in the practice of medicine and: (1) Has never been licensed by the board under this article; (2) holds a license which has been classified by the board as expired for greater than ninety days; or (3) holds a license which has been placed in inactive status, revoked, suspended or surrendered to the board 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.

(i) Upon a determination by the board that any report or complaint submitted to it concerns allegations of the unlawful practice of medicine and surgery by an individual who is licensed under another article of this chapter, the board shall refer the complaint to the appropriate

WV Legislature

licensing authority. Additionally, whenever the board receives credible information that an individual is engaging in the unlawful practice of medicine and surgery or podiatry in violation of this section, the board may report such information to the appropriate state and/or federal law enforcement authority and/or prosecuting attorney.

WV Legislature

§30-3-13a. Telemedicine practice; requirements; exceptions; definitions; rule-making.

(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 Medicine to practice allopathic 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 or podiatrist 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 or podiatrist 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 or podiatrist 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 or podiatrist 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 or podiatrist who is licensed to practice medicine or podiatry in this state: *Provided*, That the physician or podiatrist requesting the opinion retains authority and responsibility for the patient's care; and

WV Legislature

(B) Furnishing of medical assistance by a physician or podiatrist in case of an emergency or disaster, if no charge is made for the medical assistance.

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

(1) A physician-patient or podiatrist-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 or podiatrist-patient relationship does not exist prior to the utilization to telemedicine technologies, or if services are rendered solely through telemedicine technologies, a physician-patient or podiatrist-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 or podiatrist-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 or podiatrist-patient relationship has been established, either through an in-person encounter or in accordance with subdivision (2) of this subsection, the physician or podiatrist may utilize any telemedicine technology that meets the standard of care and is appropriate for the patient presentation.

(d) *Telemedicine practice.* –

A physician or podiatrist using telemedicine technologies to practice medicine or podiatry shall:

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

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

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

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

WV Legislature

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

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

(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 or podiatry provided via telemedicine technologies, including the establishment of a physician-patient or podiatrist-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 or podiatrist-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 or podiatrist 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 or podiatry provided through telemedicine technologies. A physician or podiatrist 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

www.legislature

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.

(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 article does not prohibit the use of audio-only or text-based communications by a physician or podiatrist who is:

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

(2) Providing cross coverage for a physician or podiatrist who has established a physician-patient or podiatrist-patient 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 and podiatry in this state.

(j) *Preserving traditional physician-patient or podiatrist-patient relationship*. –

Nothing in this section changes the rights, duties, privileges, responsibilities, and liabilities incident to the physician-patient or podiatrist-patient relationship, nor is it meant or

WV Legislature

intended to change in any way the personal character of the physician-patient or podiatrist-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.

WV Legislature

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to medical professional liability and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determination; referral to law-enforcement authorities; rulemaking.

(a) (1) The board may independently initiate disciplinary proceedings as well as initiate disciplinary proceedings based on information received from medical peer review committees, physicians, podiatrists, hospital administrators, professional societies, the Board of Pharmacy, and others.

(2) The board may initiate investigations as to professional incompetence or other reasons for which a licensed physician or podiatrist may be adjudged unqualified based upon criminal convictions; complaints by citizens, pharmacists, physicians, podiatrists, peer review committees, hospital administrators, professional societies, or others; or unfavorable outcomes arising out of medical professional liability. The board shall initiate an investigation if it 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 the physician or podiatrist within a five-year period. The board may not consider any judgments or settlements as conclusive evidence of professional incompetence or conclusive lack of qualification to practice.

(b) (1) 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 physician or podiatrist known to that medical peer review committee. Copies of the requests for information from a medical peer review committee may be provided to the subject physician or podiatrist if, in the discretion of the board, the provision of such copies will not jeopardize the board's investigation. If copies are provided, the subject physician or podiatrist is allowed 15 days to comment on the requested information and the comments shall be considered by the board.

(2) The chief executive officer of every hospital shall, within 60 days after the completion of the hospital's formal disciplinary procedure and also within 60 days after the commencement of and again after the conclusion of any resulting legal action, report in writing to the board the name of any member of the medical staff or any other physician or podiatrist 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 physician or podiatrist by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical professional liability, 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. Voluntary cessation of hospital privileges for reasons unrelated to professional competence or ethics need not be reported.

(3) Any managed care organization operating in this state which provides a formal peer review process shall report in writing to the board, within 60 days after the completion of any formal peer review process and also within 60 days after the commencement of and again after the conclusion of any resulting legal action, the name of any physician or podiatrist whose credentialing has been revoked or not renewed by the managed care organization. The managed care organization shall also report in writing to the board any other disciplinary action taken against a physician or podiatrist relating to professional ethics, professional liability, moral turpitude, or drug or alcohol abuse within 60 days after completion of a formal peer review process which results in the action taken by the managed care organization. For purposes of this subsection, "managed care organization" means a plan that establishes, operates, or maintains a network of health care providers who have entered into agreements with and been credentialed by the plan to provide health care services to enrollees or insureds to whom the plan has the ultimate obligation to arrange for the provision of or payment for health care services through organizational arrangements for ongoing quality assurance, utilization review programs, or dispute resolutions.

(4) Any professional society in this state comprised primarily of physicians or podiatrists which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, medical professional liability, moral turpitude, or drug or alcohol abuse shall report in writing to the board within 60 days of a final decision the name of the member, together with all pertinent information relating to the action.

(5) Any person licensed or authorized by the board to provide health care services to patients in this state shall submit a written report to the board of any of the following incidents the person reasonably believes to have occurred involving a person licensed or authorized by the board to provide health care services to patients in this state:

(A) Exercising influence within a provider-physician relationship for the purpose of engaging a patient in sexual activity;

(B) Engaging in sexual misconduct with a patient;

(C) Violating established medical or professional protocols regarding transferring controlled substances or prescribing controlled substances;

(D) Engaging in conduct which jeopardizes patient safety; or

(E) Other gross misconduct.

All reports required by this subdivision shall be submitted to the board within 30 days of the reportable incident, or if the licensee or other authorized person with a duty to report gained knowledge of the incident after it occurred, within 30 days of the licensee or other

authorized person's knowledge of the incident. Failure of a licensee or other authorized person to report any such incidents to the board constitutes unprofessional conduct and is grounds for disciplinary action by the board. A physician who is licensed by the board and who obtains responsive information exclusively while functioning as the executive director or employee of a board-approved professional health program shall only be required to report in conformity with §30-3-9(h) of this code.

(6) Every person, partnership, corporation, association, insurance company, professional society, or other organization providing professional liability insurance to a physician or podiatrist in this state, including the state Board of Risk and Insurance Management, shall submit to the board the following information within 30 days from any judgment or settlement of a civil or medical professional liability action excepting product liability actions: the name of the insured; the date of any judgment 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 other information required by the board.

(7) Within 30 days from the entry of an order by a court in a medical professional liability action or other civil action in which a physician or podiatrist licensed by the board is determined to have rendered health care services below the applicable standard of care, the clerk of the court in which the order was entered shall forward a certified copy of the order to the board.

(8) Within 30 days after a person known to be a physician or podiatrist licensed or otherwise lawfully practicing medicine and surgery or podiatry 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 the physician or podiatrist or applicant, the nature of the offense committed, and the final judgment and sentence of the court.

(9) 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 §29A-5-1 *et seq*. of this code. After reviewing the record of the 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 the violator. The board shall notify any person so 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 civil action, the court's review of the board's action shall be conducted in accordance with §29A-5-4 of this

code. Notwithstanding any other provision of this article to the contrary, when there are conflicting views by recognized experts as to whether any alleged conduct breaches an applicable standard of care, the evidence shall be clear and convincing before the board may find that the physician or podiatrist has demonstrated a lack of professional competence to practice with a reasonable degree of skill and safety for patients.

(10) Any person may report to the board relevant facts about the conduct of any physician or podiatrist in this state which in the opinion of that person amounts to medical professional liability or professional incompetence.

(11) The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.

(12) 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 physicians or podiatrists to suspend, restrict, or revoke the privileges or membership of the physician or podiatrist.

(13) Any person who reports pursuant to this subsection, in good-faith and without fraud or malice, is immune from civil liability. Reports made in bad-faith, fraudulently, or maliciously constitute unprofessional conduct and, if made by persons licensed or authorized to practice by the board, are grounds for disciplinary action pursuant to § 30-3-14(c) of this code.

(c) The board may deny an application for a license or other authorization to practice medicine and surgery or podiatry in this state and may discipline a physician or podiatrist licensed or otherwise lawfully practicing in this state who, after a hearing, has been adjudged by the board as unqualified due to any of the following reasons:

(1) Attempting to obtain, obtaining, renewing, or attempting to renew a license or other authorization to practice medicine and surgery or podiatry by bribery, fraudulent misrepresentation, or through known error of the board;

(2) Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude, or directly relates to the practice of medicine. Any plea of nolo contendere is a conviction for the purposes of this subdivision;

(3) False or deceptive advertising;

(4) Aiding, assisting, procuring, or advising any unauthorized person to practice medicine and surgery or podiatry contrary to law;

(5) Making or filing a report that the person knows to be false; intentionally or negligently failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record required by state or federal law; or inducing another person to do any of the foregoing. The reports and records covered in this

WV Legislature

subdivision mean only those that are signed in the capacity as a licensed physician or podiatrist;

(6) Requesting, receiving, or paying directly or indirectly a payment, rebate, refund, commission, credit, or other form of profit or valuable consideration for the referral of patients to any person or entity in connection with providing medical or other health care services or clinical laboratory services, supplies of any kind, drugs, medication, or any other medical goods, services, or devices used in connection with medical or other health care services;

(7) Unprofessional conduct by any physician or podiatrist in referring a patient to any clinical laboratory or pharmacy in which the physician or podiatrist has a proprietary interest unless the physician or podiatrist discloses in writing such interest to the patient. The written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed or any pharmacy for purposes of purchasing any prescribed drug or any other medical goods or devices used in connection with medical or other health care services;

As used in this subdivision, "proprietary interest" does not include an ownership interest in a building in which space is leased to a clinical laboratory or pharmacy at the prevailing rate under a lease arrangement that is not conditional upon the income or gross receipts of the clinical laboratory or pharmacy;

(8) Exercising influence within a patient-physician relationship for the purpose of engaging a patient in sexual activity or engaging in other sexual misconduct;

(9) Making a deceptive, untrue, or fraudulent representation in the practice of medicine and surgery or podiatry;

(10) Soliciting patients, either personally or by an agent, through the use of fraud, intimidation, or undue influence;

(11) Failing to keep written records justifying the course of treatment of a patient, including, but not limited to, patient histories, examination and test results, and treatment rendered, if any;

(12) Exercising influence on a patient in such a way as to exploit the patient for financial gain of the physician or podiatrist or of a third party. Any influence includes, but is not limited to, the promotion or sale of services, goods, appliances, or drugs;

(13) Prescribing, dispensing, administering, mixing, or otherwise preparing a prescription drug, including any controlled substance under state or federal law, other than in good-faith and in a therapeutic manner in accordance with accepted medical standards and in the course of the physician's or podiatrist's professional practice. A physician who discharges his or her professional obligation to relieve the pain and suffering and promote the dignity

WV Legislature

and autonomy of dying patients in his or her care and, in so doing, exceeds the average dosage of a pain relieving controlled substance, as defined in Schedules II and III of the Uniform Controlled Substance Act, does not violate this article;

(14) Performing any procedure or prescribing any therapy that, by the accepted standards of medical practice in the community, would constitute experimentation on human subjects without first obtaining full, informed, and written consent;

(15) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the person knows or has reason to know he or she is not competent to perform;

(16) Delegating professional responsibilities to a person when the physician or podiatrist delegating the responsibilities knows or has reason to know that the person is not qualified by training, experience, or licensure to perform them;

(17) Violating any provision of this article or a rule or order of the board or failing to comply with a subpoena or subpoena duces tecum issued by the board;

(18) Conspiring with any other person to commit an act or committing an act that would tend to coerce, intimidate, or preclude another physician or podiatrist from lawfully advertising his or her services;

(19) Gross negligence in the use and control of prescription forms;

(20) Professional incompetence;

(21) The inability to practice medicine and surgery or podiatry with reasonable skill and safety due to physical or mental impairment, including deterioration through the aging process, loss of motor skill, or abuse of drugs or alcohol. A physician or podiatrist adversely affected under this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that he or she may resume the competent practice of medicine and surgery or podiatry with reasonable skill and safety to patients. In any proceeding under this subdivision, neither the record of proceedings nor any orders entered by the board shall be used against the physician or podiatrist in any other proceeding; or

(22) Knowingly failing to report to the board any act of gross misconduct committed by another licensee of the board or failing to comply with any reporting requirement set forth in §30-3-14(b) of this code.

(d) The board shall deny any application for a license or other authorization to practice medicine and surgery or podiatry in this state to any applicant, and shall revoke the license of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing, or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally

WV Legislature

accepted therapeutic purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the same effect as a verdict or plea of guilt. Upon application of a physician that has had his or her license revoked because of a drug-related felony conviction, upon completion of any sentence of confinement, parole, probation, or other court-ordered supervision, and full satisfaction of any fines, judgments, or other fees imposed by the sentencing court, the board may issue the applicant a new license upon a finding that the physician is, except for the underlying conviction, otherwise qualified to practice medicine: *Provided*, That the board may place whatever terms, conditions, or limitations it deems appropriate upon a physician licensed pursuant to this subsection.

(e) The board may refer any cases coming to its attention to an appropriate committee of an appropriate professional organization for investigation and report. Except for complaints related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by bribery or fraudulent misrepresentation, any complaint filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of grounds for the complaint shall be dismissed: *Provided*, That in cases of conduct alleged to be part of a pattern of similar misconduct or professional incapacity that, if continued, would pose risks of a serious or substantial nature to the physician's or podiatrist's current patients, the investigating body may conduct a limited investigation related to the physician's or podiatrist's current capacity and qualification to practice and may recommend conditions, restrictions, or limitations on the physician's or podiatrist's license to practice that it considers necessary for the protection of the public. Any report shall contain recommendations for any necessary disciplinary measures and shall be filed with the board within 90 days of any referral. The recommendations shall be considered by the board and the case may be further investigated by the board. The board after full investigation shall take whatever action it considers appropriate, as provided in this section.

(f) The investigating body, as provided in §30-3-14(e) of this code, may request and the board under any circumstances may require a physician or podiatrist or person applying for licensure or other authorization to practice medicine and surgery or podiatry in this state to submit to a physical or mental examination by a physician or physicians approved by the board. A physician or podiatrist submitting to an examination has the right, at his or her expense, to designate another physician to be present at the examination and make an independent report to the investigating body or the board. The expense of the examination shall be paid by the board. Any individual who applies for or accepts the privilege of practicing medicine and surgery or podiatry in this state is considered to have given his or her consent to submit to all examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication. If a person fails or refuses to submit to an examination under circumstances which the board finds are not beyond his or her control, failure or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry competently and in compliance with the standards of acceptable and prevailing medical practice.

WV Legislature

(g) In addition to any other investigators it employs, the board may appoint one or more licensed physicians to act for it in investigating the conduct or competence of a physician.

(h) In every disciplinary or licensure denial action, the board shall furnish the physician or podiatrist or applicant with written notice setting out with particularity the reasons for its action. Disciplinary and licensure denial hearings shall be conducted in accordance with §29A-5-1 *et seq*. of this code. However, hearings shall be heard upon sworn testimony and the rules of evidence for trial courts of record in this state shall apply to all hearings. A transcript of all hearings under this section shall be made, and the respondent may obtain a copy of the transcript at his or her expense. The physician or podiatrist has the right to defend against any charge by the introduction of evidence, the right to be represented by counsel, the right to present and cross examine witnesses and the right to have subpoenas and subpoenas duces tecum issued on his or her behalf for the attendance of witnesses and the production of documents. The board shall make all its final actions public. The order shall contain the terms of all action taken by the board.

(i) In disciplinary actions in which probable cause has been found by the board, the board shall, within 20 days of the date of service of the written notice of charges or 60 days prior to the date of the scheduled hearing, whichever is sooner, provide the respondent with the complete identity, address, and telephone number of any person known to the board with knowledge about the facts of any of the charges; provide a copy of any statements in the possession of or under the control of the board; provide a list of proposed witnesses with addresses and telephone numbers, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing: *Provided*, That the board may not be required to furnish or produce any materials which contain opinion work product information or would be a violation of the attorney-client privilege. Within 20 days of the date of service of the written notice of charges, the board shall disclose any exculpatory evidence with a continuing duty to do so throughout the disciplinary process. Within 30 days of receipt of the board's mandatory discovery, the respondent shall provide the board with the complete identity, address, and telephone number of any person known to the respondent with knowledge about the facts of any of the charges; provide a list of proposed witnesses, with addresses and telephone numbers, to be called at hearing, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing.

(j) Whenever it finds any person unqualified because of any of the grounds set forth in §30-3-14(c) of this code, the board may enter an order imposing one or more of the following:

(1) Deny his or her application for a license or other authorization to practice medicine and surgery or podiatry;

(2) Administer a public reprimand;

(3) Suspend, limit, or restrict his or her license or other authorization to practice medicine and surgery or podiatry for not more than five years, including limiting the practice of that person to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;

(4) Revoke his or her license or other authorization to practice medicine and surgery or podiatry or to prescribe or dispense controlled substances for any period of time, including for the life of the licensee, that the board may find to be reasonable and necessary according to evidence presented in a hearing before the board or its designee;

(5) Require him or her to submit to care, counseling, or treatment designated by the board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry;

(6) Require him or her to participate in a program of education prescribed by the board;

(7) Require him or her to practice under the direction of a physician or podiatrist designated by the board for a specified period of time; and

(8) Assess a civil fine of not less than $1,000 nor more than $10,000.

(k) Notwithstanding the provisions of §30-1-8 of this code, if the board determines the evidence in its possession indicates that a physician's or podiatrist's continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may take any of the actions provided in §30-3-4(j) of this code on a temporary basis and without a hearing if institution of proceedings for a hearing before the board are initiated simultaneously with the temporary action and begin within 15 days of the action. The board shall render its decision within five days of the conclusion of a hearing under this subsection.

(l) Any person against whom disciplinary action is taken pursuant to this article has the right to judicial review as provided in §29A-5-1 *et seq*. and §29A-6-1 *et seq*. of this code: *Provided*, That a circuit judge may also remand the matter to the board if it appears from competent evidence presented to it in support of a motion for remand that there is newly discovered evidence of such a character as ought to produce an opposite result at a second hearing on the merits before the board and:

(1) The evidence appears to have been discovered since the board hearing; and

(2) The physician or podiatrist exercised due diligence in asserting his or her evidence and that due diligence would not have secured the newly discovered evidence prior to the appeal.

www.legislature

A person may not practice medicine and surgery or podiatry or deliver health care services in violation of any disciplinary order revoking, suspending, or limiting his or her license while any appeal is pending. Within 60 days, the board shall report its final action regarding restriction, limitation, suspension, or revocation of the license of a physician or podiatrist, limitation on practice privileges, or other disciplinary action against any physician or podiatrist to all appropriate state agencies, appropriate licensed health facilities and hospitals, insurance companies or associations writing medical malpractice insurance in this state, the American Medical Association, the American Podiatry Association, professional societies of physicians or podiatrists in the state, and any entity responsible for the fiscal administration of Medicare and Medicaid.

(m) Any person against whom disciplinary action has been taken under this article shall, at reasonable intervals, be afforded an opportunity to demonstrate that he or she can resume the practice of medicine and surgery or podiatry on a general or limited basis. At the conclusion of a suspension, limitation, or restriction period the physician or podiatrist may resume practice if the board has so ordered.

(n) Any entity, organization, or person, including the board, any member of the board, its agents or employees, and any entity or organization or its members referred to in this article, any insurer, its agents or employees, a medical peer review committee and a hospital governing board, its members or any committee appointed by it acting without malice and without gross negligence in making any report or other information available to the board or a medical peer review committee pursuant to law and any person acting without malice and without gross negligence who assists in the organization, investigation, or preparation of any such report or information or assists the board or a hospital governing body or any committee in carrying out any of its duties or functions provided by law is immune from civil or criminal liability, except that the unlawful disclosure of confidential information possessed by the board is a misdemeanor as provided in this article.

(o) A physician or podiatrist may request in writing to the board a limitation on or the surrendering of his or her license to practice medicine and surgery or podiatry or other appropriate sanction as provided in this section. The board may grant the request and, if it considers it appropriate, may waive the commencement or continuation of other proceedings under this section. A physician or podiatrist whose license is limited or surrendered or against whom other action is taken under this subsection may, at reasonable intervals, petition for removal of any restriction or limitation on or for reinstatement of his or her license to practice medicine and surgery or podiatry.

(p) In every case considered by the board under this article regarding discipline or licensure, 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 disqualification due to any reason set forth in §30-3-14(c) of this code. 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 the final action taken: *Provided*,

WV Legislature

That any medical records, which were introduced at the hearing and which pertain to a person who has not expressly waived his or her right to the confidentiality of the records, may not be open to the public nor is the public entitled to the records.

(q) If the board receives notice that a physician or podiatrist has been subjected to disciplinary action or has had his or her credentials suspended or revoked by the board, a hospital, or a professional society, as defined in §30-3-14(b) of this code, for three or more incidents during a five-year period, the board shall require the physician or podiatrist to practice under the direction of a physician or podiatrist designated by the board for a specified period of time to be established by the board.

(r) Notwithstanding any other provisions of this article, the board may, at any time, on its own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the West Virginia State Bar's mediator referral service of certified mediators with expertise in professional disciplinary matters. The board and the physician or podiatrist may choose a mediator from that list. If the board and the physician or podiatrist are unable to agree on a mediator, the board shall designate a mediator from the list by neutral rotation. The mediation may not be considered a proceeding open to the public, and any reports and records introduced at the mediation shall not become part of the public record. The mediator and all participants in the mediation shall maintain and preserve the confidentiality of all mediation proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the disciplinary or licensure matter mediated: *Provided*, That any confidentiality agreement and any written agreement made and signed by the parties as a result of mediation may be used in any proceedings subsequently instituted to enforce the written agreement. The agreements may be used in other proceedings if the parties agree in writing.

(s) A physician licensed under this article may not be disciplined for providing expedited partner therapy in accordance with §16-4F-1 *et seq*. of this code.

(t) 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.

(u) The board shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code which define sexual misconduct and identify prohibited professional misconduct, including sexual misconduct, for which an application may be denied and/or a license or other authorization to practice may be subject to disciplinary action by the board pursuant to this section.

WV Legislature

§30-3-15. Certificate of authorization requirements for medical corporations.

(a) Unlawful acts. — It is unlawful for any corporation to practice or offer to practice medicine, surgery, podiatric medicine, or to perform medical acts through one or more physician assistants in this state without a certificate of authorization issued by the board designating the corporation as an authorized medical corporation.

(b) Certificate of authorization for in-state medical corporation. —The board may issue a certificate of authorization for a medical corporation to one or more individuals licensed by the board. Licensees of the West Virginia Board of Osteopathic Medicine may join with licensees of the board to receive a certificate of authorization from the board. Eligible licensees may apply for a certificate of authorization by:

(1) Filing a written application with the board on a form prescribed by the board;

(2) Furnishing satisfactory proof to the board that each shareholder of the proposed medical or podiatry corporation is a licensed physician pursuant to this article, §30-3E-1 et seq., or §30-14-1 et seq. of this code; and

(3) Submitting applicable fees which are not refundable.

(c) Certificate of authorization for out-of-state medical corporation. — A medical corporation formed outside of this state for the purpose of engaging in the practice of medicine, surgery, and/or podiatric medicine may receive a certificate of authorization from the board to be designated a foreign medical corporation by:

(1) Filing a written application with the board on a form prescribed by the board;

(2) Furnishing satisfactory proof to the board that the medical corporation has received a certificate of authorization or similar authorization from the appropriate authorities as a medical corporation or professional corporation in its state of incorporation and is currently in good standing with that authority;

(3) Furnishing satisfactory proof to the board that at least one shareholder of the proposed medical corporation is a licensed physician or podiatric physician pursuant to this article and is designated as the corporate representative for all communications with the board regarding the designation and continuing authorization of the corporation as a foreign medical corporation;

(4) Furnishing satisfactory proof to the board that all of the medical corporation’s shareholders are licensed physicians, podiatric physicians, or physician assistants in one or more states and submitting a complete list of the shareholders, including each shareholder’s name, their state or states of licensure, and their license number(s); and

(5) Submitting applicable fees which are not refundable.

WV Legislature

(d) Notice of certificate of authorization to Secretary of State. — When the board issues a certificate of authorization to a medical corporation, then the board shall notify the Secretary of State that a certificate of authorization has been issued. When the Secretary of State receives a notification from the board, he or she shall attach that certificate of authorization to the corporation application and, upon compliance by the corporation with the pertinent provisions of this code, shall notify the incorporators that the medical corporation, through licensed physicians, podiatrists, and/or physician assistants may engage in the practice of medicine, surgery, or the practice of podiatry in West Virginia.

(e) Authorized practice of medical corporation. — An authorized medical corporation may only practice medicine and surgery through individual physicians, podiatric physicians, or physician assistants licensed to practice medicine and surgery in this state. Physicians, podiatric physicians, and physician assistants may be employees rather than shareholders of a medical corporation, and nothing herein requires a license for or other legal authorization of, any individual employed by a medical corporation to perform services for which no license or other legal authorization is otherwise required.

(f) Renewal of certificate of authorization. — A medical corporation holding a certificate of authorization shall register biennially, on or before the expiration date on its certificate of authorization, on a form prescribed by the board, and pay a biennial fee. If a medical corporation does not timely renew its certificate of authorization, then its certificate of authorization automatically expires.

(g) Renewal for expired certificate of authorization. — A medical corporation whose certificate of authorization has expired may reapply for a certificate of authorization by submitting a new application and application fee in conformity with subsection (b) or (c) of this section.

(h) Ceasing operation - In-state medical corporation. — A medical corporation formed in this state and holding a certificate of authorization shall cease to engage in the practice of medicine, surgery, or podiatry when notified by the board that:

(1) One of its shareholders is no longer a duly licensed physician, podiatric physician, or physician assistant in this state; or

(2) The shares of the medical corporation have been sold or transferred to a person who is not licensed by the board or the Board of Osteopathic Medicine. The personal representative of a deceased shareholder shall have a period, not to exceed 12 months from the date of the shareholder’s death, to transfer the shares. Nothing herein affects the existence of the medical corporation or its right to continue to operate for all lawful purposes other than the professional practice of licensed physicians, podiatric physicians, and physician assistants.

(i) Ceasing operation - Out-of-state medical corporation. — A medical corporation formed outside of this state and holding a certificate of authorization shall immediately cease to engage in practice in this state if:

WV Legislature

(1) The corporate shareholders no longer include at least one shareholder who is licensed to practice in this state pursuant to this article;

(2) The corporation is notified that one of its shareholders is no longer a licensed physician, podiatric physician, or physician assistant; or

(3) The shares of the medical corporation have been sold or transferred to a person who is not a licensed physician, podiatric physician, or physician assistant. The personal representative of a deceased shareholder shall have a period, not to exceed 12 months from the date of the shareholder's death, to transfer the shares. In order to maintain its certificate of authorization to practice medicine and surgery, podiatric medicine, or to perform medical acts through one or more physician assistants during the 12-month period, the medical corporation shall, at all times, have at least one shareholder who is licensed in this state pursuant to this article. Nothing herein affects the existence of the medical corporation or its right to continue to operate for all lawful purposes other than the professional practice of licensed physicians, podiatric physicians, and physician assistants.

(j) Notice to Secretary of State. — Within 30 days of the expiration, revocation, or suspension of a certificate of authorization by the board, the board shall submit written notice to the Secretary of State.

(k) Unlawful acts. — It is unlawful for any corporation to practice or offer to practice medicine, surgery, podiatric medicine, or to perform medical acts through one or more physician assistants after its certificate of authorization has expired or been revoked, or if suspended, during the term of the suspension.

(l) Application of section. — Nothing in this section is meant or intended to change in any way the rights, duties, privileges, responsibilities, and liabilities incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to change in any way the personal character of the practitioner-patient relationship. Nothing in this section shall be construed to require a hospital licensed pursuant to §16-5B-1 et seq. of this code to obtain a certificate of authorization from the board so long as the hospital does not exercise control of the independent medical judgment of physicians and podiatric physicians licensed pursuant to this article.

(m) Court evidence. — A certificate of authorization issued by the board to a corporation to practice medicine and surgery, podiatric medicine, or to perform medical acts through one or more physician assistants in this state that has not expired, been revoked, or suspended is admissible in evidence in all courts of this state and is prima facie evidence of the facts stated therein.

(n) Penalties. — Any officer, shareholder, or employee of a medical corporation who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 per violation.

www.legislature

§30-3-16. Educational Permit.

(a) Beginning July 1, 2019, no person shall participate in a program of graduate medical training in this state unless such person holds a license to practice medicine and surgery in this state or has been issued an educational permit issued by the board.

(b) An educational permit issued by the board authorizes the recipient to practice medicine and surgery only within the parameters of the recipient's training program.

(c) An applicant for an educational permit shall file an application with the board and furnish evidence establishing that the applicant has satisfied the following requirements:

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

(2) The applicant has paid the applicable fee;

(3) The applicant is of good moral character;

(4) The applicant has:

(A) Graduated from an allopathic college approved by the Liaison Committee on Medical Education;

(B) Graduated from a medical college that meets requirements for certification by the Educational Commission for Foreign Medical Graduates; or

(C) Completed an alternate pathway for meeting initial entry requirements or prerequisite or transfer requirements recognized by the Accreditation Council for Graduate Medical Education;

(5) The applicant:

(A) Is under contract as a resident in a program of post-graduate clinical training approved by the Accreditation Council for Graduate Medical Education; or

(B) Has completed a residency program approved by the Accreditation Council for Graduate Medical Education or a residency program recognized by the Educational Commission for Foreign Medical Graduates and is under contract as a fellow in an approved program of post-graduate clinical training sponsored by an institution that is accredited to provide graduate medical education;

(6) The applicant has never held a license to practice medicine and surgery in West Virginia; and

(7) The applicant has fulfilled any other reasonable requirement specified in rule by the Board.

WV Legislature

(d) An educational permit shall be valid for up to one year of post-graduate training. An educational permit may be renewed if the holder remains eligible to receive a renewed permit.

(e) The Board may deny an application or suspend or revoke a permit at any time upon grounds defined by the board by legislative rule.

(f) In order to give timely effect to this section, the board may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code, including:

(1) An implementation schedule for the issuance of educational permits prior to July 1, 2019;

(2) The extent to which residents and fellows may practice medicine and surgery pursuant to an educational permit;

(3) Criteria for the issuance of reciprocal educational permits for out of state allopathic medical residents seeking to complete a residency rotation in West Virginia;

(4) Requirements for educational permits and the renewal of such permits, including eligibility criteria for renewal;

(5) Criteria for when an educational permit application may be denied;

(6) Grounds for permit suspension or revocation;

(7) A fee schedule;

(8) Procedures for transitioning existing medical education trainees prior to implementation; and

(9) Any other rules necessary to effectuate and implement the provisions of this section.

WV Legislature

§30-3-16a.

Repealed.

Acts, 2014 Reg. Sess., Ch. 142.

WV Legislature

§30-3-17. Limitation of article.

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

WV Legislature

§30-3-18. Combining staff functions with West Virginia Board of Osteopathic Medicine.

The West Virginia Board of Medicine may employ investigators, attorneys, clerks and administrative staff in collaboration with the West Virginia Board of Osteopathic 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.

WV Legislature

§30-3-19. West Virginia Board of Medicine investigators' authority to carry concealed weapon.

(a) Notwithstanding any provision of this code to the contrary, the board may allow, consistent with this section, an investigator employed or contracted by the board to carry a concealed firearm while performing his or her official duties.

(b) An investigator employed by the board or contracted by the board may carry a concealed firearm while performing his or her official duties solely for the purposes of defense of self or others if the investigator has:

(1) Obtained approval by a majority vote of the board;

(2) Been determined not to be prohibited from possessing a firearm under state or federal law;

(3) Obtained and maintains a concealed handgun license pursuant to §61-7-1 *et seq*. of this code; and

(4) Successfully completed a firearms training and certification program equivalent to that provided to officers attending an entry level law-enforcement certification course provided at the West Virginia State Police Academy. The investigator must thereafter successfully complete an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by legislative rule. The board may reimburse the investigator for the cost of the training and requalification.

(c) Neither the state, a political subdivision, an agency, nor an employee of the state acting in an official capacity may be held personally liable for an act of an investigator employed by the board if the act or omission was done in good faith while the investigator was performing official duties on behalf of the board.

WV Legislature

§30-3-20. 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, 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

WV Legislature

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 are 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

WV Legislature

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.

WV Legislature