

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1949



# ENROLLED

HOUSE BILL No. 134

(By Mr. Speaker, Mr. Flannery)



PASSED February 21 1949

In Effect July 1, 1949 Passage



134

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(By MR. SPEAKER, MR. FLANNERY)

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AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article two-a, and by amending article three by adding thereto a new section, to be designated section four-a, and by amending and reenacting sections three to eight, inclusive of said article three; by amending and reenacting sections one, three, four and five, article eleven; and by amending and reenacting sections one to five, inclusive and sections thirteen and fifteen, article sixteen; relating to the creation, organization, powers and duties of a medical licensing board for the licensing of physicians and surgeons, chiroprodists, and chiropractors; providing for the licensing, revocation and suspension of license, and biennial registration of physicians and surgeons, and for the licensing and the revoca-

tion and suspension of license of chiropodists and chiropractors, all relating to the licensure by the medical licensing board of physicians and surgeons, chiropodists and chiropractors.

*Be it enacted by the Legislature of West Virginia:*

That chapter thirty of the code of West Virginia, one thousand, nine hundred thirty-one, as amended, be amended by adding thereto a new article, to be designated article two-a; by amending article three by adding thereto a new section, to be designated section four-a; and by amending and reenacting sections three to eight, inclusive, of said article three; by amending and reenacting sections one, three, four and five, article eleven; and by amending and reenacting sections one to five, inclusive, and sections thirteen and fifteen, article sixteen; all to read as follows:

**Article 2-a. Medical Licensing Board**

Section 1. *Medical Licensing Board; Creation and Mem-*

bership.—There is hereby created a medical licensing board to be known as “The Medical Licensing Board of West Virginia”.

The medical licensing board shall consist of eleven

6 members. One of such members shall be the state director of health ex officio whose term as such member shall continue for the period that he holds office as state director of health. The other ten members shall be appointed by the governor with the advice and consent of the senate. The term of all members, except the state director of health, shall be five years, except that the persons originally appointed shall be designated to serve, two for a term of one year, two for a term of two years, two for a term of three years, two for a term of four years, and two for a term of five years. Upon the expiration of such initial appointments, the term of each new appointee shall be five years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each member shall serve until the appointment and qualification of his successor. Before appointing any member, the governor shall request the state professional society of the profession practiced by any proposed appointee to furnish to the governor a full and complete report con-

27 cerning the qualifications and suitability of the proposed  
28 appointee.

29 Of the members to be appointed by the governor, six  
30 shall be physicians or surgeons holding the degree of doc-  
31 tor of medicine, two shall be chiropodists, and two shall  
32 be chiropractors. All persons appointed to membership  
33 on the board shall be citizens of this state and shall have  
34 been citizens and residents of the state for at least five  
35 years prior to the date of their appointment. Each  
36 such person shall have been duly licensed to practice  
37 his profession in this state on the date of his appoint-  
38 ment and shall have been so licensed and have been  
39 actively practicing his profession for at least five years  
40 immediately preceding the date of such appointment.

41 The chiropodists who are members of the medical  
42 licensing board, shall participate in its proceedings and  
43 vote as members of the board only on matters per-  
44 taining to the licensure, examination, or suspension, re-  
45 vocation, or reinstatement of the licenses of chiropodists.

46 The chiropractors who are members of the medical li-

47 censing board, shall participate in its proceedings and vote  
48 as members of the board only on matters pertaining to  
49 the licensure, examination, or suspension, revocation or  
50 reinstatement of the licenses of chiropractors.

51 No more than three doctors of medicine, one chiroprac-  
52 tor and one chiropodist appointed by the governor as  
53 members of the board shall belong to the same political  
54 party. No person shall be eligible for membership on the  
55 board who is a member of any political party executive  
56 committee, or, with the exception of the state director of  
57 health, who holds any public office or public employment  
58 under the Federal government or under the government  
59 of this state, or any of its political subdivisions, or who  
60 is an appointee or employee of the state board of health.  
61 All members shall be eligible for reappointment.

62 In making appointments to the board, the governor  
63 shall, so far as may be possible and practicable, select the  
64 several members from different geographical sections of  
65 the state.

66 No member may be removed from office except for of-

67 ficial misconduct, incompetence, neglect of duty or gross  
68 immorality: *Provided, however,* That the expiration or  
69 revocation of the professional license of a member of the  
70 board shall be cause for his removal: *Provided further*  
71 That the state director of health shall cease to be a mem-  
72 ber of the medical licensing board upon the expiration  
73 or termination of his appointment as state director of  
74 health.

Sec. 2. *Medical Licensing Board; Powers and Duties.*—

2 The medical licensing board of West Virginia shall as-  
3 sume, carry on, and succeed, to all the duties, rights,  
4 powers, obligations and liabilities heretofore belonging  
5 to, exercised by, or assumed by the public health council,  
6 with regard to the licensure of physicians and surgeons,  
7 chiropractors and chiropodists.

8 The medical licensing board shall examine all qualified  
9 applicants for license to practice medicine and surgery,  
10 chiropody and chiropractic, and it shall license all such ap-  
11 plicants who are qualified under applicable statutes and  
12 who pass any examination that may be required by stat-

13 ute or by any legally adopted rule or regulation.

14 The said board shall have the power to make such  
15 examination of all applicants appearing before it for any  
16 type of license as may be necessary to determine that the  
17 applicant is qualified. The said board shall also have the  
18 power to revoke or suspend any license issued by it, for  
19 cause, after having given the person whose license is  
20 sought to be revoked or suspended, an opportunity to be  
21 heard in the manner provided by section eight, article  
22 one, chapter thirty of this code. It shall have the power  
23 to reinstate any license revoked or suspended by it.

24 The said board is authorized and empowered to hold  
25 and conduct hearings and investigations on the issuance,  
26 suspension, revocation, or reinstatement of licenses.

27 The said board shall have the power to hire, fix the  
28 compensation of, and discharge such employees as are  
29 necessary for the performance of the powers and duties  
30 vested in the said board by law.

*Sec. 3. Medical Licensing Board; Organization and*

2 *Officers.*—The board shall organize by electing from  
3 among its members, a chairman, who shall serve as such

4 for a period of two years. Such chairman shall have the  
5 power to act for and in the name of the board in all  
6 matters within the lawful powers of the board and duly  
7 authorized by a majority of its members.

8 An office shall be established and maintained by the  
9 board in the city of Charleston. In addition, the board  
10 may establish and maintain such other offices within the  
11 state as it may deem necessary or expedient.

Sec. 4. *State Director of Health to Act as Secretary of*  
2 *Medical Licensing Board.*—The state director of health,  
3 in addition to being a member of the medical licensing  
4 board, shall act as its secretary and shall be in charge of  
5 its offices and responsible to the board for the maintenance  
6 of the said offices, and the preparation of application  
7 forms, licenses, reports and all other papers or documents  
8 which may be required by the board in the performance  
9 of its duties. He shall, together with the chairman of the  
10 board, sign all licenses, reports and other documents.

### **Article 3. Physicians and Surgeons**

Section 3. *Examination by Medical Licensing Board.*—

2 The medical licensing board of West Virginia shall ex-

3 amine all qualified applicants for license to practice  
4 medicine and surgery in this state, and issue certificates  
5 of license to all applicants who are legally entitled to  
6 receive the same; and said certificates shall be signed by  
7 the chairman of the said board and by the director of  
8 health as secretary thereof.

Sec. 4. *Who Permitted to Practice Medicine and Sur-*  
2 *gery in This State; Licensing of Licensed Practitioners*  
3 *From Other States; Permits to Practice in Prescribed*  
4 *Areas.*—The following persons and no others shall here-  
5 after be permitted to practice medicine and surgery in  
6 this state: (a) All such persons as shall be legally en-  
7 titled to practice medicine and surgery in this state at  
8 the time of the adoption of this act; (b) all such persons  
9 as shall be graduates of class “A” medical schools, as  
10 classified by the Council on Medical Education and Hos-  
11 pitals of the American Medical Association, the American  
12 Association of Medical Colleges, the American Institute  
13 of Homeopathy and the National Eclectic Medical Asso-  
14 ciation, and then only from such schools, when so classi-  
15 fied, as require, as a condition to entrance upon the study

16 of medicine, at least two years of academic work of col-  
17 legiate grade in a standard college of arts and sciences of  
18 equal rank with the college of arts and sciences in the  
19 West Virginia University, and who shall pass an exami-  
20 nation before the medical licensing board and shall re-  
21 ceive a certificate therefrom as hereinafter provided: *Pro-*  
22 *vided, however,* That the said board, or a majority of  
23 them, may accept in lieu of an examination, the certificate  
24 of the national board of medical examiners, or the cer-  
25 tificate of license to practice medicine and surgery legally  
26 granted by the state board of registration or examination  
27 or licensing board of another state, territory or any for-  
28 eign country, whose standard of qualification for the prac-  
29 tice of medicine and surgery is equivalent to that of this  
30 state, and grant to such applicant a certificate of license  
31 to practice medicine and surgery in this state, provided  
32 such state, territory or foreign country accords like privi-  
33 leges to licentiates of this state: *Provided further,* That  
34 whenever in the judgment of the medical licensing board  
35 a condition exists in which medical service may be re-  
36 quired, the said board is authorized to grant permits for

37 the practice of medicine to qualified physicians in pre-  
38 scribed areas, and such permits shall be subject to revoca-  
39 tion when the agreement, under which they were issued,  
40 has been violated.

Sec. 4-a. *Biennial Registration of Physicians and Sur-*  
2 *geons.*—Every person who, on or before the thirty-first  
3 day of August, one thousand nine hundred forty-nine, is  
4 licensed as a physician or surgeon to practice medicine  
5 and surgery in this state, shall, on or before the said  
6 thirty-first day of August, one thousand nine hundred  
7 forty-nine, make application to the medical licensing  
8 board for registration, and shall be registered by the said  
9 board, as the holder of such license, which registration  
10 shall be for the period ending on the thirtieth day of  
11 June, one thousand nine hundred fifty-one. On or before  
12 the said thirtieth day of June, one thousand nine hundred  
13 fifty-one, and biennially thereafter, on or before the thir-  
14 tieth day of June of each biennial period, every person  
15 licensed as a physician or surgeon in this state, shall apply  
16 to the said board for registration, or a renewal of registra-  
17 tion, as such license holder: *Provided*, That no registration

18 shall be required of any holder of a certificate of licensure  
19 for the biennial period, or any portion thereof, during  
20 which such certificate is issued.

21 Each applicant for registration or renewal thereof shall  
22 remit to the board, with his application, a fee of two  
23 dollars.

24 The failure of any person to comply with the provisions  
25 of this section shall operate automatically, and without  
26 further proceedings, to cancel the certificate of such per-  
27 son, and the license issued thereunder. Continued prac-  
28 tice by any such person after such cancellation of his  
29 certificate and license shall constitute practicing without  
30 a license, and any person so practicing shall be subject to  
31 all of the penalties provided by law for practicing  
32 without a license.

33 Any certificate and license cancelled pursuant to the  
34 provisions of this section, and not for any other reason,  
35 shall be reinstated by the said board upon submission to  
36 it of an application for registration by the person whose  
37 certificate has been cancelled, together with current and  
38 delinquent fees, and ten dollars reinstatement fee.

Sec. 5. *Examinations; Certificates; Adherents of Particular Schools or Theories of Medicine.*—The medical licensing board shall, at such times as a majority of them deem proper, hold examinations for the licensing of applicants for license to practice medicine and surgery in this state. No fewer than two examinations shall be held during the year, at such place in the state as may be determined by the medical licensing board. At such examination written and oral questions shall be submitted to the applicants, covering all the essential branches of the sciences of medicine and surgery, and the examination shall be a thorough and decisive test of the knowledge and ability of the applicant. The chairman and secretary of the board shall issue certificates to all who successfully pass the said examination and to all whose certificates said board, or a majority of them, shall accept in lieu of an examination, as hereinbefore provided. Such certificates shall be deemed licenses to practice medicine and surgery in all their branches in this state. The medical licensing board shall give reasonable notice of the time and place of holding such examinations in at least three

22 newspapers of general circulation in this state, and all  
23 such persons wishing to present themselves for examina-  
24 tion shall notify the secretary and comply with the rules  
25 of the board. No applicant for license to practice medicine  
26 and surgery in this state shall be rejected because of his  
27 adherence to any particular school or theory of medicine.  
28 The medical licensing board may call to its assistance in  
29 the examination of any applicant who professes the  
30 homeopathic or eclectic school of medicine, a homeopathic  
31 or eclectic physician entitled to practice medicine in this  
32 state under this article, and such homeopathic or eclectic  
33 physician so called to the assistance of the board shall be  
34 allowed the same per diem and actual expenses incurred  
35 as are allowed the regular members of the said board.

Sec. 6. *Refusal to Issue, Suspension or Revocation of*  
2 *License.*—The medical licensing board may refuse to  
3 grant a certificate of license to a person guilty of felony  
4 or gross immorality or addicted to drunkenness or the  
5 habitual use of narcotic drugs, and may suspend or revoke  
6 a certificate for like cause, or for malpractice, or for  
7 fraud in procuring the certificate; but no such refusal,

8 suspension or revocation shall be ordered by reason of  
9 the individual belonging to or practicing in any partic-  
10 ular school or system of medicine.

Sec. 7. *Fees.*—The medical licensing board shall be  
2 entitled to charge and collect the following fees, in addi-  
3 tion to those provided in article one of this chapter: For  
4 granting to a licensed physician or surgeon from another  
5 state, territory or foreign country, a license to practice  
6 medicine in this state, under the provisions of section  
7 four of this article, one hundred dollars; for a reciprocal  
8 indorsement, ten dollars.

Sec. 8. *Division of Fees by Physicians or Surgeons;*  
2 *Penalties; Revocation of Certificate.*—It shall be unlawful  
3 for any physician or surgeon in this state, directly or  
4 indirectly, to divide, or agree to divide, any fee or com-  
5 pensation of any sort whatsoever, charged for a surgical  
6 operation or for medical services, with any other physi-  
7 cian, surgeon or other person who brings, sends or recom-  
8 mends a patient to such surgeon or physician for treat-  
9 ment, without the express knowledge and consent,  
10 previously had, of the person paying such fee or compen-

11 sation, or against whom the same may be charged. It  
12 shall be unlawful for any physician, surgeon or other  
13 person residing in this state to accept any fee or other  
14 compensation from any other surgeon, physician or other  
15 person not residing in this state for taking, sending or  
16 recommending a patient for treatment to such nonresi-  
17 dent physician, surgeon or other person. Any person  
18 violating the provisions of this section shall be guilty of  
19 a misdemeanor, and, upon conviction thereof, shall be  
20 fined not less than one hundred nor more than one thou-  
21 sand dollars for each offense, and in the discretion of the  
22 court, may be imprisoned in the county jail not to exceed  
23 twelve months in addition to said fine. If any person  
24 shall be convicted of a second offense under the provisions  
25 of this section, the medical licensing board shall revoke  
26 the certificate licensing such person to practice medicine  
27 and surgery in this state.

#### **Article 11. Chiropractors**

Section 1. *Chiropractic; License Required.*—It shall be

2 unlawful for any person to practice or offer to practice  
3 in this state the branch of medicine known as chiropractic,

4 as hereinafter defined, unless duly licensed so to do by  
5 the medical licensing board of this state, after examina-  
6 tion conducted by such board or a committee thereof,  
7 under rules and regulations prepared and promulgated  
8 by it, except as hereinafter provided: *Provided, however,*  
9 That the provisions of this section shall not apply to any  
10 person legally entitled to practice chiropody in this state  
11 at the time of the adoption of this act.

Sec. 3. *Qualifications of Applicant for License.*—An ap-  
2 plicant for license shall furnish to the medical licensing  
3 board satisfactory proof that he is: (a) Twenty-one years  
4 of age or over; (b) of good moral character; (c) a grad-  
5 uate of a school of chiropody registered by the state  
6 department of education as being of proper standard, or  
7 that he has been in the practice of chiropody in some  
8 other state for at least five years, and of good standing  
9 in such state, in which said state an examination is re-  
10 quired by law equal to the requirements of this state,  
11 and that said applicant has taken the examination in said  
12 state and received a license therein; (d) possessed of a  
13 minimum education equivalent to two years' attendance

14 at a high school recognized by the state department of  
15 education as being of proper standard; (e) a bona fide  
16 resident of the state of West Virginia at the time of appli-  
17 cation.

Sec. 4. *Examination for License; Issuance of License.*—

2 The medical licensing board shall conduct examinations  
3 for license to practice chiropody at the times and places  
4 designated by it for conducting examinations for license  
5 to practice medicine. Examinations shall be in English,  
6 and in writing, and shall be of a scientific and practical  
7 character. They shall cover the subjects of anatomy and  
8 physiology of the foot, chemistry, materia medica, there-  
9 putics and minor surgery, including bandaging. The  
10 medical licensing board shall issue licenses to practice  
11 chiropody to successful applicants therefor.

Sec. 5. *Offenses; Penalties.*—Whoever, not being law-

2 fully authorized to practice chiropody within the state of  
3 West Virginia, holds himself out as a practitioner of  
4 chiropody, or advertises himself as such, or whoever  
5 practices chiropody under a false or assumed name, or  
6 under a name other than that under which he has license

7 to practice chiropody as aforesaid, or whoever imper-  
8 sonates another practitioner of a like or a different name,  
9 or whoever lends his name or his professional connection  
10 with anyone who has been convicted of any offense, as  
11 herein provided, shall be guilty of a misdemeanor, and,  
12 upon conviction thereof, shall be fined not less than fifty  
13 nor more than two hundred dollars, or confined in the  
14 county jail not less than one nor more than four months,  
15 or both, for each and every offense, and in addition, the  
16 medical licensing board may suspend or revoke his license  
17 for an indefinite period, but for not less than six months.  
18 A person so convicted shall not be entitled to any fee  
19 for services rendered, and, if a fee has been paid, the  
20 patient or guardian or heir may recover the same as debts  
21 of like amount are now recovered by law.

#### **Article 16. Chiropractors**

Section 1. *Chiropractic; License Required.*—It shall be  
2 unlawful for any person to practice, or offer to practice, in  
3 this state chiropractic, as hereinafter defined, unless duly  
4 licensed to do so by the medical licensing board of this  
5 state, after examination conducted by such board or a

6 committee thereof, under rules and regulations prepared  
7 and promulgated by it, except as hereinafter provided:  
8 *Provided, however,* That the provisions of this section  
9 shall not apply to any person legally entitled to practice  
10 chiropractic in this state at the time of the adoption of  
11 this act.

Sec. 2. *Application for License; Qualifications of Ap-*  
2 *plicant.*—Any person wishing to practice chiropractic in  
3 this state shall apply to the secretary of the medical licen-  
4 sing board for a license so to practice. Each applicant shall  
5 be a graduate of a chiropractic school or college recognized  
6 by the American Chiropractic Association, or other recog-  
7 nized <sup>*national*</sup> ~~chiropractic~~ society, which teaches a resident course  
8 of at least three calendar years of eight months each and  
9 requires active attendance upon the same, and shall be a  
10 graduate of an accredited high school giving a four-year  
11 course or have an education equivalent to the same, and  
12 shall have attended for at least two years an academic col-  
13 lege equal in standing to the West Virginia university, as  
14 preliminary education.

15 Each application shall be accompanied by a certificate

16 from the school or college attended by the applicant, which  
17 certificate shall set forth in full the training of said appli-  
18 cant, showing his studies and the length of his clinical  
19 practice. The medical licensing board shall require of all  
20 applicants satisfactory evidence of good moral character.

Sec. 3. *Examination by Medical and Chiropractic Mem-*  
2 *bers of Medical Licensing Board.*—Applicants to practice  
3 chiropractic in this state shall be examined by the medical  
4 physicians who are members of the state medical licensing  
5 board in the following subjects: Anatomy, histology,  
6 physiology, pathology, symptomatology, physical diag-  
7 nosis, hygiene, sanitation, chemistry and bacteriology.

8 The chiropractic members of the medical licensing  
9 board shall give an examination in the following subjects:  
10 Chiropractic philosophy, chiropractic analysis, nerve  
11 tracing, palpation and the art of adjusting.

12 All applicants shall be required to secure an average  
13 grade of eighty per cent in all subjects: sixty-five per  
14 cent shall be the minimum grade in any subject.

Sec. 4. *Licensing Chiropractors From Other States.*—

2 Persons licensed to practice chiropractic under the laws

3 of any other state having requirements equivalent to those  
4 of this article, and extending like privileges to practi-  
5 tioners of this state, may in the discretion of the medical  
6 licensing board, be licensed to practice in this state with-  
7 out examination.

Sec. 5. *Refusal to Issue, Suspension or Revocation of*  
2 *License.*—The medical licensing board may refuse to  
3 grant, or may suspend or revoke, a license to practice  
4 chiropractic in this state upon any of the following  
5 grounds, to-wit: The employment of fraud or deception  
6 in applying for a license or in passing the examination  
7 provided for in this article; the practice of chiropractic  
8 under a false or an assumed name or the impersonation  
9 of another practitioner of like or different name; the con-  
10 viction of a crime involving moral turpitude; or habitual  
11 intemperance in the use of intoxicating liquors or nar-  
12 cotic drugs. In addition to the above stated grounds, the  
13 medical licensing board shall revoke or refuse to grant  
14 a license to anyone practicing, under the guise of chiro-  
15 practic, any health science or mode of healing other than  
16 chiropractic as defined in this article.

Sec. 13. *Unlawful to Practice Chiropractic Without License.*—No person shall practice chiropractic in this state without first having obtained a license so to do, or after revocation and before renewal, or during suspension, of such license as provided in this article.

Sec. 15. *Duties of Prosecuting Attorneys and Secretary of Medical Licensing Board.*—It shall be the duty of the several prosecuting attorneys of this state to enforce the provisions of this article, and it shall be the duty of the secretary of the medical licensing board, under the direction of said board, to aid such attorneys in such enforcement.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Joseph L. Mcner*  
Chairman Senate Committee

*Donnaugh*  
Chairman House Committee

Originated in the House of Delegates

Takes effect July 1, 1949 passage.

*Howard Meyer*  
Clerk of the Senate

*LaRue*  
Clerk of the House of Delegates

*W. B. H. H. H.*  
President of the Senate

*W. E. H.*  
Speaker House of Delegates

The within approved this the 26th  
day of FEBRUARY, 1949.

*Okey L. Patterson*  
Governor



Filed to the Clerk of the Secretary of State  
of West Virginia

**FEB 28 1949**  
D. PITT O'BRIEN,  
SECRETARY OF STATE