WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1977

ENROLLED
Committee Substitute for
SENATE BILL NO. 575

(By Mr. Branthaw, Mr. Breece, et al.)

PASSED April 9, 1977

In Effect July 1, 1977
AN ACT to repeal sections eighteen and nineteen, article one, chapter sixteen; to repeal section six, article four-d of said chapter sixteen; to repeal section nine, article five-b of said chapter sixteen; to repeal article five-d of said chapter sixteen; to repeal article five-e of said chapter sixteen; to repeal section one, article six of said chapter sixteen; to repeal sections four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article fourteen of said chapter sixteen; to repeal article twenty-four of said chapter sixteen; to amend and reenact sections one, two, three, five, six, seven, eight, ten, eleven, thirteen, fourteen, fifteen and seventeen, article one; sections one, two, three and four, article two; sections three, seven and eight, article two-a; section one, article two-b; sections one, two, five, six, ten and twelve, article three; sections six, seven and twenty-one, article four; section three, article four-a; sections two, four, five, six, nine and ten, article four-c; sections three and four, article four-d; sections two, three, four, five, six, twenty-eight and thirty-two, article five; sections one, two, three, four and five, article five-a; sections one, two, four, six, eight, eleven, and twelve, article five-b; sections one, two, three, four, five, six, seven, eight, nine, ten, eleven,
twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article five-c; sections two, four, five, seven, eight, nine, ten and twenty-four, article six; section three, article seven; and sections one and three, article fourteen, all of said chapter sixteen; to amend and reenact sections six and nine, article one; sections one, three, four and five, article two; section one, article two-a; section one, article four; sections three, seven and nine, article five; section one, article six-a; section five, article seven; sections one, two-a and three, article eight; section one, article nine; section two, article fourteen; and section two, article fifteen, all of chapter twenty-seven; and to further amend said chapter twenty-seven by adding thereto a new section, designated section six, article two; and to further amend said chapter twenty-seven by adding thereto a new article, designated article three; to amend and reenact section fifteen, article one, chapter thirty; section two, article three-b; sections one and three, article six; and section two, article seventeen; to further amend said chapter thirty by adding thereto a new section, designated section four-a, article one; to further amend said chapter thirty by adding thereto three new articles, designated articles twenty-five, twenty-six and twenty-seven; and to amend and reenact sections three, four, five, six, seven and fourteen, article twelve, chapter sixty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reorganizing and consolidating health and mental health services in the state; increasing the membership of the board of health; providing that the board of health have rule-making power; transferring certain administrative powers from the board of health to the director of health; increasing rule-making authority of the board of health; authorizing the board of health to establish certain advisory councils; providing for the appointment of the director of health by the governor with Senate confirmation; consolidating the functions of the present department of mental health into the department of health; requiring the director of health to report to the governor and the Legislature as to consolidation and reorganization; establishing an executive secretary to consolidate the ad-
ministrative functions of professional medical-related licensing boards; abolishing the nursing home licensing board and transferring its powers to the department of health; establishing a health resources advisory council to be headed by a chairman appointed by the governor with Senate confirmation; transferring certain state hospitals from the commissioner of public institutions to the department of health; setting forth a legislative purpose; providing for composition of the department of health; continuing civil service coverage; relating to membership, appointment, removal and composition of the board of health; relating to powers and duties of the board of health; relating to appointment, compensation, qualifications, term, oath, bond and vacancy of the director of health; relating to the powers and duties of the director of health, including the power of condemnation; relating to the state hygienic laboratory and branches; relating to disposition of moneys received by the director, reports to auditor compliance; authorizing the director of health to cooperate with state health planning and development agency and federal government; relating to receipt and disbursement of federal aid and other moneys for health purposes; relating to employees of the department of health; relating to county and municipal boards of health and officers; reports by physicians; relating to full-time county and municipal officers and nurse; relating to counties and municipalities combining in employment of officers, equipment and boards; relating to director of health's supplanting local health authority; relating to family planning and child spacing; relating to prevention and control of communicable and other infectious diseases; relating to venereal diseases; relating to prenatal examination; providing that the director and board of health be given authority with respect to emergency medical service; providing that the office of emergency medical services become a part of the department of health; providing the director and board of health with the authority to supervise vital statistics; providing the director and board of health with the authority in cancer control; providing the director and board of health authority to
license and oversee hospitals and health facilities including those for ambulatory health care and ambulatory surgical care; providing for the director to license, inspect and oversee nursing homes and personal care homes; requiring the department of health to publish certain information about nursing homes in the state; providing for enforcement of provisions relating to nursing homes and personal care homes; providing the director with authority to license and oversee personal care facilities; relating to revising the general laws regarding the regulation of nursing homes by expanding the board's jurisdiction to include personal care homes, expanding the powers and duties of the board, and revising the rights, duties and obligations of nursing homes, personal care homes and patients; transferring to the director of health authority previously vested in the hotel inspector; providing the director of health with authority concerning pure food and drugs; the committee of barbers and beauticians and transferring some of its authority to the department of health; transferring certain benevolent institutions from the commissioner of public institutions to the department of welfare or the department of health; providing for management supervision fees and transfers of residents in benevolent institutions transferred to the department of health; providing that certain state hospitals and mental health facilities operated by the department of mental health shall be transferred to the department of health; continuing civil service coverage; relating to operation and administration of such state hospitals and mental health facilities; authorizing the department of health to establish, maintain, and operate comprehensive health centers, and providing how such institutions are to be operated; restricting the department of health from operating certain comprehensive health centers; relating to defining confidential medical information; relating to the authority of the department of health concerning voluntary hospitalization; concerning custody for medical examinations; relating to hospitalization by agency of the United States; relating to authority of department of health for commitment of persons charged or convicted of a crime; relating to authority of department of health concerning escapees...
and veterans in mental health facilities; relating to funding of state hospitals; relating to authority of department of health in local mental health programs; relating to authority of director of health in providing care of patients in boarding homes; relating to authority of director of health in licensing of institutions providing care and treatment of the mentally ill or mentally retarded; providing that the director of health shall be compact administrator for the Interstate Compact on Mental Health; relating to the Interstate Compact on the Mentally Disordered Offender; providing lay members on health profession boards; establishing an office of executive secretary for health profession licensing boards; relating to mobile intensive care paramedics; and funeral directors; relating to the board of sanitarians; creating a nursing home administrators licensing board to provide for licensing of nursing home administrators, including provisions for suspensions and revocations; relating to the board of hearing-aid dealers and fitters within the department of health including suspension, removal, prohibited acts, offenses and penalties; extending requirements for examinations before anyone can be fitted for a hearing aid; creating a board of barbers and beauticians with certain powers and duties including licensing provisions, violations, penalties and validity of prior certificates; providing that the office of medical examinations is to be operated under the control and supervision of the director of health; and providing penalties for violations of the sections, articles and chapters amended or enacted within.

Be it enacted by the Legislature of West Virginia:

That sections eighteen and nineteen, article one, chapter sixteen be repealed; that section six, article four-d of said chapter sixteen be repealed; that section nine, article five-b of said chapter sixteen be repealed; that article five-d of said chapter sixteen be repealed; that article five-e of said chapter sixteen be repealed; that section one, chapter sixteen be repealed; that sections three, five and six, article five-c of said chapter sixteen be repealed; that article five-d of said chapter sixteen be repealed; that section one, article six of said chapter sixteen be repealed; that sections four, five, six, seven, eight, nine, ten,
eleven, twelve, thirteen, fourteen, fifteen, sixteen, and seventeen, article fourteen of said chapter sixteen be repealed; that article twenty-four of said chapter sixteen be repealed; that sections one, two, three, four, five, six, seven, eight, ten, eleven, thirteen, fourteen, fifteen and seventeen, article one; sections one, two, three, and four, article two; sections three, seven and eight, article two-a; section one, article two-b; sections one, two, five, six, ten and twelve, article three; sections six, seven and twenty-one, article four; section three, article four-a; sections two, four, five, six, nine and ten, article four-c; sections three and four, article four-d; sections two, three, four, five, six, twenty-eight and thirty-two, article five; sections one, two, three, four and five, article five-a; sections one, two, four, six, eight, eleven and twelve, article five-b; sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article five-c; sections two, four, five, seven, eight, nine, ten and twenty-four, article six; section three, article seven; and sections one and three, article fourteen, all of said chapter sixteen be amended and reenacted; that sections six and nine, article one; sections one, three, four and five, article two; section one, article two-a; section one, article four; sections three, seven and nine, article five; section one, article six-a; section five, article seven; sections one, two-a and three, article eight; section one, article nine; section two, article fourteen; and section two, article fifteen, all of chapter twenty-seven, be amended and reenacted; that said chapter twenty-seven be further amended by adding thereto a new section, designated section six, article two; that said chapter twenty-seven be further amended by adding thereto a new article, designated article three; that section fifteen, article one, chapter thirty be amended and reenacted; that section two, article three-b; sections one and three, article six; and section two, article seventeen; and that said chapter thirty be further amended by adding thereto a new section, designated section four-a, article one; that said chapter thirty be further amended by adding thereto three new articles, designated articles twenty-five, twenty-six and twenty-seven; and that sections three, four, five, six, seven and fourteen, article twelve, chapter sixty-one be amended and reenacted, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:
CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-1. Purpose.

1 It is the policy of this state to effect a significant improvement in the delivery of health and mental health services for the benefit of the citizens of this state; to develop and implement a coordinated and comprehensive continuum of health and mental health services to meet current and future needs at a reasonable cost; to promote the delivery of preventive care by emphasis on primary care and community based services; to achieve equal access to all types of quality care for all citizens of the state; to encourage the active participation of the citizens of this state in matters relating to the delivery of health and mental health services; to avoid duplication of services and costs created and fostered by separation of such services; to review and regulate the delivery of health care services to contain the spiraling costs of health care; to integrate a broad variety of health services and functions and to reorganize and innovatively modify existing responsibilities, and where necessary, plan and develop new responsibilities for the most effective and efficient delivery of services; and thereby, to provide quality health and mental health services to the citizens of this state.

§16-1-2. Health resources advisory council creation, and composition.

1 There is hereby created the “Health Resources Advisory Council”, hereinafter referred to as the “council.” The council shall be made up of twenty-nine members, all of whom are citizens and residents of this state appointed by the governor, by and with the advice and consent of the Senate. Members of the council shall include:

(1) Fourteen representatives of the health professions licensed and certified in the state and of the allied health professions;

(2) Five representatives of health professional schools and programs;
(3) Five representatives of voluntary health agencies; and

(4) Five representatives of the consumer public.

Members shall be representative of the geographic areas and congressional districts of the state. Members shall be appointed so that each of the congressional districts shall have at least five representatives on the advisory council who shall be residents of the district. No more than fifteen members of the council shall belong to the same political party.

Members of the council, except for the chairman, shall be appointed for terms of three years each, except that of the members first appointed, nine members shall be appointed for terms of one year, ten members for terms of two years, and nine members for terms of three years. Members shall be eligible for reappointment for a second three-year term. Vacancies shall be filled in the same manner as the original appointments, for the duration of the unexpired term. The governor shall appoint, by and with the advice and consent of the Senate, a chairman of the council who shall serve at the pleasure of the governor.

A majority of the members of the council shall constitute a quorum for the transaction of business. The council shall elect from among its members a vice-chairman and such other officers as it shall deem necessary. The council shall meet at least four times during the calendar year, and meetings shall be held upon a call of the chairman or a majority of the members.

§16-1-3. Powers of health resources advisory council; report; duration.

The council shall serve as an advisory body to the governor on the development of guidelines for the supply, distribution, and organization of health resources. Recognizing that it is critical to identify current and prospective health manpower needs, the council shall study and advise the governor on the supply of health manpower including consideration of the interrelationship among the different types of health manpower; shall
study and advise the governor on the distribution of health manpower within and without institutions and geographically in the state; and shall study and advise the governor on the most effective organization of health manpower, including consideration of the relationship of health manpower to institutions and the relationship among different types of health manpower.

The council shall also undertake a study of national standards for health resources, determine the appropriateness of such standards for the citizens of this state, and make recommendations for such additional standards as it may deem necessary in order to best serve the need of the citizens of this state.

On or before January first of each year, the council shall submit a written report to the governor and the Legislature summarizing its activities and findings of the preceding year, in addition to such other recommendations and studies as it may submit from time to time.

Unless hereinafter extended by the Legislature, the provisions of section two and three of this article shall expire and be of no further force and effect on or after the first day of July, one thousand nine hundred eighty-three.

§16-1-5. Composition of department.

There shall be a state department of health which shall consist of the board of health, the director of the department, the subdivisions of the board of health and other employees as hereinafter provided. Any person employed by the state department of health or any local boards of health who on the effective date of this article is a classified civil service employee shall, within the limits contained in section two, article six of chapter twenty-nine of this code, remain in the civil service system as a covered employee.

§16-1-6. Board of health; membership; appointment and removal of members; compensation.

There shall be a state board of health, to be known as the West Virginia board of health. The state board of health shall consist of fifteen members, who shall be
appointed by the governor, by and with the advice and consent of the Senate. Three members of the board shall be physicians or surgeons holding the degree of doctor of medicine, one shall be a dentist, one shall be an osteopathic physician, one shall be a registered nurse, one shall be a pharmacist, three shall be from mental health disciplines, one shall be an administrator of a licensed hospital, one shall be an optometrist and three shall be representative citizens, none of which representative citizens shall be an employee of, spouse of an employee of, or receive any other financial benefit from any health facility located in this state, and none of whom shall be a member of, or the spouse, child, or parent of, or connected in any way with, any of the professions named.

All persons appointed to membership on the state board of health shall be citizens of this state and shall have been such citizens and residents of the state for at least five years prior to the date of their appointment. Every professional member of the said board shall be duly licensed to practice such profession on the date of appointment and shall have been so licensed and in active practice of the profession for at least five years immediately preceding the date of such appointment. Before appointing any professional member, the governor shall request any professional society of the profession practiced by the proposed appointee to furnish to the governor a full and complete report concerning the qualifications and suitability of the proposed appointee. All members of the board shall be appointed for terms of five years each: Provided, That persons appointed prior to the effective date of this section shall continue until the completion of their terms of original appointment: Provided, however, That in the case of the initial appointments of the representative citizens, one shall be designated to serve for a term of one year, one for a term of two years and one for a term of four years; and in the case of the initial appointments of the members from mental health disciplines, one shall be designated to serve for a term of two years, one for a term of three years and
one for a term of five years. Thereafter, the term of each
new appointee shall be five years except in the case of
any vacancy on the board which shall be filled by the
governor by appointment for the unexpired term. No
member shall be eligible for more than two terms.

No more than eight of the members of the board shall
belong to the same political party. At least one member,
but not more than four, shall be appointed from each
congressional district. No person shall be eligible for
appointment to membership on the state board who is a
member of any political party executive committee, or
who holds any public office or employment under the
federal government or under the government of this
state or any of its political subdivisions.

No member may be removed from office by the gov-
ernor except for official misconduct, incompetence,
neglect of duty or gross immorality and then only in the
manner prescribed by law for the removal by the gov-
ernor of state elective officers: Provided, That the expira-
tion, suspension or revocation of the professional license
of any professional member of the board shall be cause
for removal.

The members of the board shall be paid the sum of
thirty-five dollars for each day actually served in atten-
dance at official meetings of the board. Each member
shall be reimbursed for travel at the rate of fifteen cents
per mile if by private automobile and actual cost if
travel is by common carrier. Each member shall also be
reimbursed for other actual expenses incurred in the
performance of the duties of his office; except that in
the event the expenses are paid, or are to be paid, by a
third party, the member shall not be reimbursed by
the state.

The director of health shall serve as secretary to the
board, but shall not be entitled to vote. He shall be in
charge of the offices of the board and shall be respon-
sible to the board for the preparation of reports and the
collection and dissemination of data and other public
information relating to the development of drafts and
§16-1-7. Powers and duties of the board of health.

The state board of health shall have the power to promulgate such rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code, as are necessary and proper to effectuate the purposes of this chapter and prevent the circumvention and evasion thereof. The board shall have the power to appoint or designate advisory councils of professionals in the areas of hospitals, nursing homes, barbers and beauticians, post-mortem examinations, mental health and mental retardation centers and such other areas as it deems necessary to advise the board on rules and regulations. Such rules and regulations shall include, but not be limited to, the regulation of:

1. (1) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption, and places where trades or industries are conducted;
2. (2) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities, and plumbing systems, and the qualifications of personnel connected with any of such facilities, without regard to whether such supplies or systems, are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods, swimming pools in this state, whether publicly or privately owned;
3. (3) Food and drug standards, including cleanliness, proscription of additives, proscription of sale, and other requirements in accordance with article seven of this chapter, as are necessary to protect the health of the citizens of this state;
4. (4) The training and examination requirements for
emergency medical service attendants and mobile intensive care paramedics; the designation of the health care facilities, health care services, and the industries and occupations in the state which must have emergency medical service attendants and mobile intensive care paramedics employed, and the availability, communications, and equipment requirements with respect thereto;

(5) The collection of data on health status, the health system and the costs of health care;

(6) Other health-related matters which the department of health is authorized to supervise, and for which the rule-making authority has not been otherwise assigned;

Notwithstanding any other provision of this code to the contrary, whenever in this code there is a reference to the state board of health and such reference does not relate to the making or promulgation of rules and regulations, it shall be construed to mean and shall be a reference to the director of the state department of health.

§16-1-8. Director of health—Appointment; compensation; qualifications; term; oath and bond; vacancy.

The chief executive officer and administrative head of the department shall be appointed by the governor, with the advice and consent of the Senate, and shall serve in the manner prescribed by section two-a, article seven, chapter six of this code and shall hereafter be referred to as the director. The annual salary of the director shall be not more than forty-five thousand dollars. In addition thereto, the director shall be reimbursed for all necessary travel incurred in the performance of his duties; except that in the event the expenses are paid, or are to be paid, by a third party, the director shall not be reimbursed by the state. The director so appointed shall be a physician licensed under the laws of this state to practice medicine or a person holding a doctorate degree in public health administration. Such a person shall have not less than four years' experience in health services administration or a related field. The director shall serve at the will and pleasure of the governor and shall not be actively engaged or employed in any other business, vocation or
employment, serving full time in the duties of the office as prescribed by this article.

Before entering upon the duties of the office, the director shall take and subscribe to the oath of office prescribed by section five, article four of the constitution of this state, and shall execute a bond with surety approved as to form by the attorney general and as to sufficiency by the governor in the penal sum of fifteen thousand dollars, which executed oath and bond shall be filed in the office of the secretary of state. If a vacancy occurs in the position of director, the governor shall make a temporary appointment until the next session of the Legislature, at which time the governor shall present to the Senate the nomination for the office.

As used in this chapter, the term "director" shall mean director of the state department of health or his designee.

§16-1-10. Powers and duties of the director of health.

The director shall be the chief executive, administrative, and fiscal officer of the department of health and shall have the following powers and duties:

(1) To supervise and control the business, fiscal, administrative and health affairs of the department of health, and in that regard and in accordance with law, employ, fix the compensation of, and discharge all persons necessary for the proper execution of the laws of this state relating to health and mental health, and the efficient and proper discharge of the duties imposed upon, and execution of powers vested in the director by law; to that end the director may promulgate such written rules as are necessary and proper to delegate functions, establish divisions, specify duties and responsibilities, prescribe qualifications of division directors and otherwise administer or supervise the department, subject to the safeguards of the state civil service system as it now exists;

(2) To enforce all laws of this state concerning public health, health, and mental health; to that end, the director shall make, or cause to be made, sanitary investigations and inquiries respecting the cause of disease, especially of epidemics and endemic conditions, and the
means of prevention, suppression or control of such conditions; the source of sickness and mortality, and the effects of environment, employment, habits and circumstances of life on the public health. The director shall further make, or cause to be made, inspections and examinations of food, drink and drugs offered for sale or public consumption, in such manner as he shall deem necessary to protect the public health and shall report all violations of laws and regulations relating thereto to the prosecuting attorney of the county in which such violations occur;

(3) To make complaint or cause proceedings to be instituted against any person, corporation or other entity for the violation of any health law before any court or agency, without being required to give security for costs; such action may be taken without the sanction of the prosecuting attorney of the county in which the proceedings are instituted or to which the proceedings relate;

(4) To supervise and coordinate the administration and operation of the state hospitals named in article two, chapter twenty-seven of this code, and any other state facility hereafter created for the mentally ill, mentally retarded or addicted;

(5) To supervise and coordinate the administration and operation of the health and other facilities named in chapter twenty-six of this code, except as otherwise therein provided, and any other state facility hereafter created relating to health, not otherwise provided for;

(6) To supervise and coordinate the administration and operation of the county and municipal boards of health and health officers;

(7) To develop and maintain a state plan of operation which sets forth the needs of the state in the areas of health and mental health; goals and objectives for meeting those needs; methods for achieving the stated goals and objectives; and needed personnel, funds, and authority for achieving the goals and objectives;

(8) To collect data as may be required to foster knowledge on the citizenry's health status, the health system and costs of health care;
(9) To delegate to any appointee, assistant or employee any and all powers and duties vested in the director, including, but not limited to, the power to execute contracts and agreements in the name of the department: Provided, That the director shall be responsible for the acts of such appointees, assistants, and employees;

(10) To transfer any patient or resident between hospitals and facilities under the control of the director and, by agreement with the state commissioner of public institutions or his successor and otherwise in accord with law, accept a transfer of a resident of a facility under the jurisdiction of the state commissioner of public institutions or his successor;

(11) To make periodic reports to the governor and to the Legislature relative to specific subject areas of public health or mental health, the state facilities under the supervision of the director, or other matters affecting the health or mental health of the people of the state;

(12) To accept and use for the benefit of the state, for the benefit of the health of the people of this state, any gift or devise of any property or thing which is lawfully given: Provided, That if any gift is for a specific purpose or for a particular state hospital or facility, it shall be used as specified. Any profit which may arise from any such gift or devise of any property or thing shall be deposited in a special revenue fund with the state treasurer, and shall be used only as specified by the donor or donors;

(13) To acquire by condemnation or otherwise any interest, right, privilege, land or improvement and hold title thereto, for the use or benefit of the state or a state hospital or facility, and, by and with the consent of the governor, to sell, exchange, or otherwise convey any interest, right, privilege, land or improvement acquired or held by the state, state hospital or state facility; which condemnation proceedings shall be conducted pursuant to chapter fifty-four of this code;

(14) To inspect, and enforce rules and regulations to control the sanitary conditions of and license all institutions and health care facilities as set forth in this chapter, including, but not limited to, schools, whether public or
private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption, and places where trades or industries are conducted;

(15) To make inspections, conduct hearings, and to enforce the rules and regulations of the board concerning occupational and industrial health hazards, the sanitary condition of streams, sources of water supply, sewerage facilities, and plumbing systems, and the qualifications of personnel connected with such supplies, facilities or systems without regard to whether they are publicly or privately owned; and to make inspections, conduct hearings and enforce the rules and regulations of the board concerning the design of chlorination and filtration facilities and swimming pools;

(16) To reorganize the functions and divisions of the department of health, structuring all functions previously assigned to the board of health, department of health, department of mental health, and otherwise assigned to the department of health by this chapter, to the end of establishing the most efficient and economic delivery of health services in accord with the purposes of this chapter; to achieve such goal the director shall establish such divisions, and delegate and assign such responsibilities and functions as he deems necessary to accomplish such reorganization. On or before the first day of February, one thousand nine hundred seventy-eight, the director shall submit to the Legislature a report on the reorganization of such department and the effect thereof, including, but not limited to, the cost, the administrative results, and the effect on the delivery of health services;

(17) To direct and supervise the provision of dental services in all state institutions;

(18) To provide for, except as otherwise specified herein, a comprehensive system of community mental health and mental retardation supportive services to the end of preventing the unnecessary institutionalization of persons and
promoting the community placement of persons presently residing in mental health and mental retardation facilities and other institutions and for the planning of the provisions of comprehensive mental health and mental retardation services throughout the state;

(19) To provide for a comprehensive program for the care, treatment and rehabilitation of alcoholics and drug abusers; for research into the cause and prevention of alcoholism and drug abuse; for the training and employment of personnel to provide the requisite rehabilitation of alcoholics and drug abusers; and for the education of the public in relation thereto.

The department's program for the care, treatment, and rehabilitation of alcoholics and drug abusers may include, when intended for such purposes, the establishment of special clinics or wards within, attached to, or upon the grounds of, one or more of the state hospitals under the control of the department of health; the acquisition in the name of the department of real and personal property and the construction of buildings and other facilities; the leasing of suitable clinics, hospitals, or other facilities; and the utilization, through contracts or otherwise, of the available services and assistance of any professional or nonprofessional persons, groups, organizations or institutions in the development, promotion and conduct of the department's program.

The department of health shall not be required to accept any alcoholic or drug abuser voluntarily seeking hospitalization for clinical or hospital care, treatment, or rehabilitation; but the department may accept, pursuant to its adopted and promulgated rules and regulations, responsibility for clinical or hospital care, treatment, or rehabilitation of any alcoholic or drug abuser through arrangements made voluntarily with the department by him or some person acting in his behalf: Provided, That any such person accepted by the department on a voluntary basis shall be charged a minimum fee unless he shows, to the satisfaction of the department, that he is unable to pay the fee.

The department's program of research into the causes,
prevention, and treatment of alcoholism and drug abuse may include the utilization, through contracts or otherwise, of the available services and assistance of any professional or nonprofessional persons, groups, organizations or institutions, as well as cooperation with private and public agencies engaged in research in alcoholism or drug abuse or rehabilitation of alcoholics or drug abusers.

The department's programs shall also provide for the training of personnel to work with alcoholics and drug abusers and the informing of the public as well as interested groups and persons concerning alcoholism and drug abuse and the prevention and treatment thereof.

The department may employ such medical, psychiatric, psychological, secretarial and other assistance as may be necessary to carry out the provisions of this section.

As used in this subdivision (19):

(a) "Alcoholic" shall mean any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control as to the use of such beverages, or, while chronically and habitually under the influence of alcoholic beverages, endangers public morals, health, safety or welfare.

(b) "Alcoholism" shall mean the condition of abnormal behavior or illness resulting directly or indirectly from the chronic and habitual use of alcoholic beverages.

(c) "Drug abuser" shall mean a person who is in a state of psychic or physical dependence, or both, arising from the administration of any controlled substance, as that term is defined in chapter sixty-a of this code, on a continuous basis.

(d) "Drug abuse" shall mean the use of any controlled substance, as that term is defined in said chapter sixty-a, until such time as the user has become dependent upon or addicted to the same; and

(20) To exercise all other powers delegated to the department by this chapter or otherwise in this code, to enforce all health laws and the rules and regulations promulgated by the board, and to pursue all other activi-
ties necessary and incident to the authority and area of
care concerned entrusted to the department or director.

§16-1-11. State hygienic laboratory; branches thereof.
1 The director may establish and maintain a state hygienic
2 laboratory as an aid in performing the duties imposed
3 upon the director of the department of health, and may
4 employ chemists, bacteriologists, and other employees
5 that may be necessary to properly operate such laboratory.
6 The director may establish branches of the state labora-
7 tory at such points within the state as the director may
deem necessary in the interest of the public health.

§16-1-13. Disposition of moneys received by state director of
health; report to auditor; noncompliance.
1 The state director of health shall receive and account
2 for all moneys required to be paid as fees for permits,
3 licenses, or registrations, pursuant to the provisions of
4 this code, and shall pay such moneys into the state trea-
5 sury monthly, on or before the tenth day of the month
6 succeeding the month in which such moneys were receiv-
7 ed. The director of health shall, on the first day of
8 January and the first day of July in each year, or within
9 five days thereafter, certify to the state auditor a detailed
10 statement of all such moneys received by him during the
11 preceding six months. If the director of health shall fail
12 or refuse to comply with the provisions of this section,
13 he shall be guilty of a misdemeanor, and, upon conviction
14 thereof, shall be fined for each offense not less than fifty
15 dollars, nor more than two hundred dollars.

§16-1-14. Director authorized to cooperate with the state health
planning and development agency and federal
government in hospital and other health facility
programs.
1 The director is hereby authorized to cooperate with the
2 state health planning and development agency and the
3 federal government in their programs for construction of
4 public or private hospitals, diagnostic or treatment cen-
5 ters, chronic disease hospitals, rehabilitation facilities,
6 nursing homes, and similar or related facilities and in-
7 stitutions; and is authorized to make such inventories of
existing public health centers, public and private hospitals, diagnostic or treatment centers, chronic disease hospitals, rehabilitation facilities, nursing homes, and similar or related facilities and institutions, and the laboratories and other facilities thereof, to make surveys of the need for construction of such health facilities, and to adopt, develop, and supervise the administration of such state-wide plans or programs for the construction of additional public and private hospitals, public health centers, public or private diagnostic or treatment centers, chronic disease hospitals, rehabilitation facilities, nursing homes, and similar or related facilities and institutions, as may be necessary to comply with the requirements and conditions of federal law in respect to the granting of federal aid for such purposes. The director shall promulgate standards to assure that all requirements to obtain federal funds and meet the commitments therefor are met.

The state health plan of operation set forth in section ten of this article and the state medical facilities plan shall be a part of the state health plan developed by the state health planning and development agency.

§16-1-15. Receipt and disbursement of federal aid and other moneys for health purposes.

The director is authorized to accept, receive and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state or any county or municipality thereof, for public health purposes, or for the establishment or construction of public health facilities, whether such work is to be done by the state, or by such county or municipality, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are, or may be, prescribed by the laws of the United States and any rules or regulations made thereunder. The director is authorized to, and may, act as the agent of the state or any of its agencies, or of any county or municipality of this state, upon the request of any agency of the state or of any such county or municipality, in accepting, receiving, and receipting for such moneys in...
its behalf, for public health facilities financed either in
whole or in part by federal moneys.

The state, or any agency thereof, or any county or
municipality is authorized to, and may, designate the di-
rector as its agent for the purposes above set forth, and
any such agency, county or municipality may enter into
an agreement with the director prescribing the terms and
conditions of such agency in accordance with federal
laws, rules and regulations, and with the laws of this
state. Such moneys as are paid over by the United
States government shall be retained by the state or paid
over to said counties or municipalities under such terms
and conditions as may be imposed by the United States
government in making such grants.

All moneys accepted for disbursement pursuant to
this section shall be deposited in the state treasury, and
unless otherwise prescribed by the authority from which
the money is received, kept in separate funds, designated
according to the purpose for which the moneys were made
available, and held by the state in trust for such purposes.
All such moneys are hereby appropriated for the purposes
for which the same were made available and shall be
expended in accordance with federal laws and regula-
tions and with the laws of this state. The director is
authorized, whether acting for the state or one of its
agencies, or as the agency for any county or municipality,
when requested by the United States government or any
agency or department thereof, or when requested by the
state, a state agency, or any county or municipality for
which the moneys have been made available, to disburse
such moneys for the designated purposes, but this shall
not include any other authorized method of disbursement.

§16-1-17. Administrative and other employees of department;
interfering with inspectors, etc.

The director at such time or times as deemed necessary
may employ such administrative employees, inspectors,
examiners, or other persons as may be necessary to prop-
erly carry out the provisions of the public health laws of
this state. Such inspectors, examiners, and other employ-
ees shall act as the director's representatives and, under
the direction of the director of health, shall enforce the
provisions of the public health laws and all duly promul-
gated rules and regulations of the board of health, and
in the discharge of official duties, shall have the right of
entry into any institution or school, whether public or
private, public conveyances, dairy, creamery, slaughter-
house, workshop, factory, labor camp, place of entertain-
ment, hotel, tourist camp, all other places open to the
general public and inviting public patronage or public
assembly, or tendering to the public any item for human
consumption, and places where hazardous trades or indus-
tries are conducted.

Any person interfering with or attempting to interfere
with any inspector, examiner, or other duly authorized
employee of the department of health in the discharge of
his duties under this section shall be guilty of a misde-
meanor, and, upon conviction thereof, shall be fined not
less than ten dollars, nor more than five hundred dollars.

ARTICLE 2. LOCAL HEALTH OFFICERS.
§16-2-1. County and municipal health officers; reports by
physicians; county board of health; penalty for
noncompliance.

It shall be the duty of the director of the West Virginia
department of health, upon the recommendation of the
county commission of the county, to appoint in each
county of this state a legally qualified physician, who shall
be known as the county health officer. It shall also be the
duty of such director, upon the recommendation of the
municipal council or other governing body of any
municipality, to appoint in such municipality a legally
qualified physician, who shall be known as the municipal
health officer: Provided, That no municipality organized
and existing without a special charter from the Legisla-
ture and located within a county which maintains a full-
time county health officer, shall appoint a part-time
municipal health officer. The county and municipal health
officers in office on the date this section becomes effective
shall, unless sooner removed, continue to serve until
their respective terms expire, and until their successors
have been appointed and have qualified. Beginning on
the first day of July, one thousand nine hundred thirty-three, and on the first day of July of each fourth year thereafter, a county health officer shall be appointed as aforesaid to serve for a term of four years, unless sooner removed by the said county commission or by the West Virginia director of health. Beginning on the first day of July, one thousand nine hundred thirty-one, and on the first day of July of each alternate year thereafter, a municipal health officer shall be appointed as aforesaid to serve for a term of two years, unless sooner removed by the said municipality or by the West Virginia director of health. Should the West Virginia director of health fail to confirm the nomination of the person recommended as county or municipal health officer, or should the West Virginia director of health or the county or municipal authority remove any such officer, another nomination shall at once be made to the West Virginia director of health by the nominating authority.

The county health officer shall receive an official salary of not less than three hundred dollars per annum, and such other amount as the county commission may add for additional services, and actual necessary traveling expenses, unless for work specially done under orders of the state department of health. The salary of the county health officer shall be paid out of the treasury of the county. It shall be the duty of every practicing physician to report to the municipal or county health officer, where there is such official, immediately on diagnosis, every case of communicable or infectious disease that may arise or come under his treatment within the municipality, and to the county health officer cases occurring outside of the municipality, and also, where there is no municipal health officer, cases occurring within such municipality. The health officer receiving such reports shall make to the state health department a weekly report of all such cases, stating the number of each kind of disease reported, the action taken to arrest the infection, and the result.

The county health officer together with the president of the county commission and the prosecuting attorney shall constitute the county board of health, of which the county health officer shall be the executive officer. The county
board of health shall exercise all the powers, and enforce
all the rules and regulations of the West Virginia board
of health, so far as applicable to such county. In a county
which has a full-time county health officer, the jurisdic-
tion of the county board of health and of the county
health officer shall be coextensive with the county, and
shall include every city, town and village therein which
does not have a full-time health officer of its own, but
shall not include any city, town or village therein which
has such full-time health officer. But in a county which
has a part-time health officer only, the jurisdiction of
the county board of health and of such part-time health
officer shall not extend to any city, town or village there-
in having a full-time or part-time health officer of its own.
All county and municipal boards of health and health
officers shall be secondary to the West Virginia board of
health, and the director of the West Virginia department
of health, and subject to all orders of the director of the
West Virginia department of health, who may, if deemed
expedient, act through the county and municipal boards.

Any failure to comply with any of the provisions of
this section shall constitute a misdemeanor, and, upon
conviction thereof, the offender shall be fined not more
than one hundred dollars.

§16-2-2. Full-time county and municipal health officers; full-
time public health nurse; levy.

The county commission of any county or the municipal
council or other governing body of any municipality shall
have the power and authority to provide for a full-time
county or municipal health officer and the expenses of
his administration, and for that purpose may levy a county
or municipal tax, as the case may be, of not exceeding
three cents on each one hundred dollars assessed valu-
action of the taxable property in such county or munici-
pality according to the last assessment thereof. Such health
officer shall be a legally qualified physician, and shall be
nominated and appointed in the manner provided in
section one of this article. He shall serve full time
in the duties of his office in protecting and supervising the
general health and sanitation of his county or munici-
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15 pality, including medical attendance by the county health
16 officer upon the indigent of the county in the infirmary,
17 and shall perform such duties in relation thereto as may
18 be prescribed by order of the county commission or ordi-
19 nance of the municipality duly entered or enacted, or by
20 order of the director of the department of health.
21 The county commission of any county or the municipal
22 council or other governing body of any municipality
23 which has not provided for a full-time health officer,
24 may provide for a full-time public health nurse and the
25 expenses of administration, and for that purpose may levy
26 a county or municipal tax, as the case may be, of not
27 exceeding two cents on each one hundred dollars
28 assessed valuation of the taxable property in such county
29 or municipality according to the last assessment thereof.
30 Such public health nurse shall be a legally qualified nurse
31 suitably trained in sanitary science and the nurse's
32 qualifications shall be satisfactory to the director of the
33 state department of health. The nurse shall be nominated
34 and appointed in the manner provided in section one of
35 this article. The nurse shall serve full time in protecting
36 and supervising the general health and sanitation of the
37 county or municipality, and shall perform such duties
38 in relation thereto as may be prescribed by order of the
39 county commission or ordinance of the municipality
40 duly entered or enacted, or by order of the director of
41 the state department of health.

§16-2-3. Counties, or counties and municipalities, may combine
in employment of officers and installation and
maintenance of equipment; combined local boards
of health.

1 Any two or more counties, or any county or counties
2 and any one or more municipalities within or partially
3 within the said county or counties, may combine to
4 cooperate with the state department of health, by vote of
5 the county commission in the case of a county and by
6 vote of the council or other governing body in the case
7 of a municipality, and may participate in the employ-
8 ment of trained health officers and other agents and
9 employees, or in the installation and maintenance of a
common laboratory and other equipment. Whenever any such units shall decide so to cooperate and shall appropriate a sum or sums of money for such joint or cooperative action, the state department of health is authorized and empowered to pay over and contribute to such cooperating units, and the cooperating units are authorized and empowered to receive and expend for public purposes, such sum or sums of money as may be available from funds included in appropriations made for the state department of health for such purposes: Provided, That the general plan of cooperation, as well as the principal health officers, executive agent or laboratory director employed by the cooperating units, shall first have been approved by the director of the department of health. The amount of any such payment or contribution by the state department of health to such cooperating units shall be determined in accordance with regulations established by the state board of health. Such regulations shall provide a method for determining the amount of any payment or contribution, and this method shall be uniformly applied in determining the amount of any payment or contribution to any such local governmental unit or units.

Each county or municipality participating in any such cooperative action shall select and appoint by vote of the county commission in the case of a county, and by vote of the council or other governing body in the case of a municipality, not less than one nor more than three persons to be members of a combined board of health. No such person shall be selected by, nor represent on, any such combined board, more than one such county or municipality. The number of persons to be selected by each participating county or municipality as members of such board, subject to the limitation contained in the two preceding sentences, shall be agreed upon by the several counties or municipalities participating.

All members of such combined board of health shall be appointed for terms of five years each, except that the persons first appointed pursuant to the provisions of this section, if more than one such person is appointed at the same time by any one county commission or municipal
governing body, shall be individually designated to serve for terms of one, two and three years, respectively, and if only one such person is appointed at such time by each participating county or municipality, the several participating counties or municipalities shall initially appoint such persons to serve for individually designated terms, which shall be agreed upon by the several appointing authorities, of one, two, three, four and five years, respectively. Upon the expiration of the term of such initial appointments, the term of each new appointee shall be five years. Any vacancy on such board shall be filled by appointment, by the original appointing authority, for the unexpired term. All members shall serve until their duly qualified successors have been appointed. The number of members of such board belonging to one political party shall not exceed by more than one the number of members of such board belonging to any other political party. All members of any such board shall be citizens and residents of the county or municipality they are appointed to represent. All members shall be eligible for reappointment.

No member of such board may be removed from office during the term for which he is appointed, except for official misconduct, incompetence, neglect of duty or gross immorality.

No member of such board shall receive any compensation for his services, but each may be reimbursed for all reasonable and necessary travel and other expenses actually incurred by him in the performance of his duties as a member of such board.

Any such combined board of health shall consist of the several members so selected. Such board shall organize by electing a chairman from among its members. It shall have the power to adopt, and from time to time amend, such rules and regulations as it may deem necessary concerning the time and place of its meetings, the procedure and method of conducting its meetings or business, and any other matters affecting, or necessary to, the orderly and efficient discharge of its duties or exercise of its powers. All powers and duties belonging to or
vested in county boards of health or municipal
boards of health under any provision of the code
are hereby vested in, conferred upon, and declared
to be, the powers and duties of any combined board of
health created pursuant to the provisions of this section.
All powers and duties belonging to or vested in county
or municipal health officers, so far as they are applicable
and not in conflict with the provisions of this section,
are hereby vested in, conferred upon, and declared to be,
the powers and duties of any health officer appointed
and employed by any combined board of health. Any
health officer or other employee appointed or employed
by any combined board of health shall be employed and
serve, and may be discharged, at the will and pleasure
of such board. The territorial jurisdiction of any such
combined board of health shall be coextensive with the
boundaries of all of the counties and municipalities which
have been combined to cooperate as herein provided.

Upon the formation of a combined local board of health
as herein provided, and during the period that it continues
to exist, there shall be no separate county board of health
or municipal board of health in any county or munici-
pality represented on the combined board of health.

§16-2-4. State director of health may supplant local health
authority; removal of delinquent local officer.

When, in the opinion of the director of the state health
department, any local health authority shall fail or re-
 fuse to enforce necessary laws and regulations to prevent
and control the spread of communicable or infectious
disease declared to be dangerous to the public health, or
when, in the opinion of the said director, a public health
emergency exists, the director may enforce the rules
and regulations of the state board of health within the
territorial jurisdiction of such local health authorities,
and for that purpose shall have and may exercise all the
powers given by law to local health authorities. All
expenses so incurred shall be a charge against the
counties, cities, or towns concerned. And in such cases
the failure or refusal of any local health officer or local
health body to carry out the lawful orders and regula-

16 tions of the state board of health shall be sufficient cause
17 for the removal of such local health officer or the mem-
18 bers of such local health body from office, and upon such
19 removal the proper county or municipal authorities shall
20 at once nominate a successor, other than the person re-
21 moved, as provided by law.

ARTICLE 2A. ALTERNATIVE METHOD OF ORGANIZING LOCAL
HEALTH AGENCIES.

§16-2A-3. Powers and duties of county and municipal boards
of health; filing of rules and regulations.

1 County or municipal boards of health created and
2 established pursuant to the provisions of this article
3 shall direct, supervise, and control all matters relating
4 to the general health and sanitation of their respective
5 counties or municipalities, and shall possess and exercise
6 such power in relation thereto as may be exercised and
7 is possessed by the state board of health or the director,
8 as the case may be, so far as such powers are applicable
9 to such county or municipality. Such local boards of
10 health shall also have the power and authority to adopt
11 and promulgate and from time to time amend such rules
12 and regulations, consistent with the laws of this state
13 and the rules and regulations of the state board of health,
14 as may be necessary and proper for the protection of
15 the general health of the county or municipality and the
16 prevention of the introduction, propagation and spread
17 of disease therein. All such rules and regulations shall
18 be filed, in the case of a county board, with the clerk of
19 the county commission, and in the case of a municipal
20 board, with the clerk, recorder, or similar officer of the
21 municipality. Such rules and regulations shall be kept
22 by such clerk or recording officer in a separate book and
23 shall be public records.

24 It shall be the duty of such local boards of health to
25 protect the general health and supervise and control the
26 sanitation of their respective counties and municipalities;
27 to enforce the laws of this state pertaining to public
28 health, and the rules and regulations of the state board
29 of health, insofar as they are applicable to such counties
or municipalities, and to perform such duties in relation
to public health as may be prescribed by order of the
county commission of such counties or ordinances of
such municipalities, consistent with the public health
laws of this state and the regulations duly adopted by
the state board of health. All such local boards of health
receiving state or federal funds for health purposes shall
first receive approval by the director of the state depart-
ment of health of their general plans of operation for
health purposes. Such director may, if deemed necessary
or expedient by him, act through any county or municipal
board of health created, established and operated pur-
suant to the provisions of this article.

§16-2A-7. Charges by local boards of health for inspection of
milk distribution, production or pasteurization
facilities outside of state.

1 Any local board of health, whether created and main-
tained pursuant to the provisions of this article or article
two of this chapter, may cause an inspection to be made
of the physical plant and facilities of any distributor,
producer, or pasteurizer of milk whose milk distribution,
production, or pasteurization plant or facilities are located
outside this state but who sells or distributes in this
state, or transports, or causes or permits to be transported,
into this state, milk, or milk products, for resale, use or
consumption in this state and within the territorial juris-
diction of such local board of health. The local board of
health may charge to, and collect from such distributor,
producer, or pasteurizer of milk, all of the expense of
such inspection.

15 The amount of such charge for expense of inspection
shall be based on the number of inspections made, mile-
age traveled, and time consumed by the inspecting offi-
cial in traveling to and from the place of the inspection
and in actually making the inspection: Provided. That in
any case in which such milk distribution, production, or
pasteurization plant or facilities are regularly inspected in
the course of a regular inspection schedule or itinerary
by any duly authorized representative of any agency of
this state or its governmental subdivisions, or any agency
of any other state or its governmental subdivisions, which has been certified as an approved inspection agency by the director of the state department of health, no charge for expense of inspection shall be made by any local board of health unless it is the agency making the regular inspection. In any event, not more than one local board of health shall act as and be deemed, the regular inspection agency for any such milk distribution, production, or pasteurization plant or facility. Where two or more agencies each include any such plant or facility in a regular inspection schedule or itinerary, the director of the health department shall designate one of such agencies as the regular inspection agency for such plant or facility.

§16-2A-8. State director of health may supplant local health authority; removal of delinquent local officers.

When, in the opinion of the director of the health department, any local health authority shall fail or refuse to enforce laws and regulations necessary to prevent and control the spread of communicable or infectious disease declared to be dangerous to the public health, or when, in the opinion of the director, a public health emergency exists, the director may enforce the rules and regulations of the state board of health within the territorial jurisdiction of such local health authority, and for that purpose shall have and may exercise all the powers given by law to local health authorities. All expenses so incurred shall be a charge against the counties, cities, or towns concerned. And in such cases the failure or refusal of any local health officer or local health body to carry out the lawful orders and regulations of the state board of health shall be sufficient cause for the removal of such local health officer, or local health body or its members, from office, and upon such removal a successor or successors to the person or persons removed shall immediately be appointed in the manner, and for the term, provided for in this article.

ARTICLE 2B. FAMILY PLANNING AND CHILD SPACING.

§16-2B-1. Family planning and child spacing; authorized functions; funds.

The state department of health is authorized to pro-
vide printed material, guidance, advice, financial assistance, appliances, devices, drugs, approved methods, and medicines to local boards of health requesting the same for use in the operation of family planning and child spacing clinics to the extent of funds appropriated by the Legislature and any federal funds made available for such purpose.

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.

§16-3-1. State director of health authority to quarantine and to enforce regulations; state board of health authority to issue regulations to control infectious or contagious diseases.

The state director of health is empowered to establish and strictly maintain quarantine at such places as he may deem proper and forbid and prevent the assembling of the people in any place, when the state director of health or any county or municipal health officer deems that the public health and safety so demand, and the state board of health may adopt rules and regulations to obstruct and prevent the introduction or spread of smallpox or other communicable or infectious diseases into or within the state, and the state director of health shall have the power to enforce these regulations by detention and arrest, if necessary. The state director of health shall have power to enter into any town, city, factory, railroad train, steamboat or other place whatsoever, and enter upon and inspect private property for the purpose of investigating the sanitary and hygienic conditions and the presence of cases of infectious diseases, and may, at his discretion, take charge of any epidemic or endemic conditions, and enforce such regulations as the state board of health may prescribe. All expenses incurred in controlling any endemic or epidemic conditions shall be paid by the county or municipality in which such epidemic occurs.

§16-3-2. Powers of county and municipal boards of health to establish quarantine; penalty for violation.

The county board of health of any county may declare
quarantine therein, or in any particular district or place
therein, whenever in their judgment it is necessary to
prevent the spread of any communicable or infectious
disease prevalent therein, or to prevent the introduction
of any communicable or infectious disease prevailing in
any other state, county or place, and of any and all per-
sons and things likely to spread such infection. As soon
as such quarantine is established such board shall, in
writing, inform the director of health thereof, the duty
of whom it shall be to ascertain, as soon as practicable,
the necessity therefor, if any exists, and if the state di-
rector of health finds that no such necessity exists, the
same shall, by the said director, be declared raised. The
said county board of health shall have power and au-
thority to enforce such quarantine until the same is
raised as aforesaid, or by themselves, and may confine
any such infected person, or any person liable to spread
such infection, to the house or premises in which he re-
sides, or if he has no residence in the county, at a place
to be provided by them for the purpose; and if it shall
become necessary to do so, they shall summon sufficient
guard for the enforcement of their orders in the premises.
Every person who shall fail or refuse to comply with any
order made by such board under this section, and every
person summoned as such guard who shall, without a
lawful excuse, fail or refuse to obey the orders and direc-
tions of such board in enforcing said quarantine, shall
be guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not less than twenty-five nor more than two
hundred dollars. In cases of emergency or actual necessity,
and when the county commission or corporate authorities
are from any cause unable to meet or to provide for the
emergency or the necessity of the case, all actual expendi-
tures necessary for local and county quarantine, as pro-
vided for in this section, shall be certified by the county
board of health to the county commission, and the whole,
or as much thereof as the said commission may deem
right and proper, shall be paid out of the county treasury.
The board of health of any city, town or village shall
have, within the municipality, the same powers and per-
form the same duties herein conferred upon and required
of the county board of health in their county. So far as applicable the provisions of this section shall apply to any quarantine established and maintained by the state director of health pursuant to section one of this article.

§16-3-5. Free serum or vaccine preventives of disease.

The state director of health shall purchase vaccine lymph, diphtheria antitoxin, tetanus antitoxin and such other forms of serum or vaccine preventives of disease as he may deem necessary, and shall distribute the same, free of charge, in such quantities as he may deem necessary, to county and municipal health officers, to be used by them for the benefit of, and without expense to the indigent within their respective jurisdictions, and in other cases where it may be urgently necessary to check contagions and control epidemics.

The state director of health shall also deliver, free of charge, to such drugstores or other stores within each county as the health officer of such county may designate as proper depositories, such quantities of diphtheria antitoxin as said director may deem necessary for the use of the indigent of such county, and such antitoxin shall be kept at said drugstores or other stores at all times and in sufficient quantities to permit immediate delivery to any licensed physician who may require the same for the treatment of any indigent person infected with diphtheria, or to prevent such infection, without cost to the patient so treated. The state director of health shall take a receipt from the proprietor of each drugstore or other store for any antitoxin delivered as herein provided.

The auditor of the state shall pay the actual cost of all said serum and vaccine preventives and the cost of delivering said diphtheria antitoxin to any drugstore or other store, upon the presentation of the original invoices thereof, duly verified by affidavit and approved by the state director of health, and shall in addition pay to said drugstores or other stores, for delivery of said diphtheria antitoxin to the physicians aforesaid, a commission of ten percent of the original cost of said antitoxin so delivered.
§16-3-6. Nuisances affecting public health.

1. The state director of health or any county or municipal health officer shall inquire into and investigate all nuisances affecting the public health within his jurisdiction; and the said director or any such officer or the county commission of any county or any municipality is authorized and empowered to apply to the circuit court of the county in which any such nuisance exists, or to the judge thereof in vacation, for an injunction forthwith to restrain, prevent or abate such nuisance.

§16-3-10. Same—Use of silver nitrate drops as prophylactic; birth report.

1. It shall be unlawful for any physician, or midwife, practicing midwifery, to neglect or otherwise fail to instill or have instilled, immediately upon its birth, in the eyes of the newborn babe, one or two drops of a one percent solution of silver nitrate, furnished by the West Virginia director of health. Every physician or midwife shall, in making a report of a birth, state whether or not the above solution was instilled into the eyes of said infant.

§16-3-12. Same—Duties of the state director of health; duties of board of health.

1. It shall be the duty of the state director of health:
   (a) To enforce the provisions of sections seven through thirteen, inclusive, of this article;
   (b) To provide for the gratuitous distribution of one percent solution of silver nitrate outfits, together with proper directions for the use and administration thereof, to all physicians and midwives who may be engaged in the practice of obstetrics, or assisting at childbirth;
   (c) To publish and promulgate such further advice and information concerning the dangers of inflammation of the eyes of the newborn as is necessary for prompt and effective treatment;
   (d) To furnish copies of sections seven through thirteen, inclusive, of this article to all physicians and mid-
wives who may be engaged in the practice of obstetrics, or assisting at childbirth;

(e) To keep a proper record of any and all cases of inflammation of the eyes of the newborn of which reports are filed with the state director of health pursuant to law, or which may come to his attention in any way, and to constitute such records a part of the annual report to the governor; and

(f) To report any and all violations of the public health laws or of any rules or regulations lawfully adopted pursuant thereto that may come to his attention, to the prosecuting attorney of the county wherein said violations may have occurred, and to assist said official in any way possible in the prosecution of such cases.

It shall be the duty of the state board of health to promulgate such rules and regulations as shall be necessary for the purpose of enforcing said provisions, and as the state director of health may deem necessary for the further and proper guidance of local health officers.

ARTICLE 4. VENEREAL DISEASES.

§16-4-6. Reports by physicians.

It shall be the duty of every practicing physician or other person who makes a diagnosis in, or treats a case of, syphilis, gonorrhea or chancroid, to make two reports of the case, as follows: One report shall be made to the local municipal health officer, if the party for whom the diagnosis was made or case treated lives within any municipality having a health officer, and if the municipality has no health officer, or if the party lives outside of a municipality, then to the health officer of the county in which such person lives; the second report shall be made to the director of health of the state. And every superintendent or manager of a hospital, dispensary, or charitable or penal institution in which there is a case of venereal disease shall report the same under like conditions.

The reports above required shall state the street number and address of the person reported as diseased, the
age, sex, color, marital state and occupation of such per-
son, the date of the onset of the disease, the source of
infection, whether said disease is in an infectious state,
and whether the person reported is at the time of making
report engaged in any occupation forbidden under this
article and hereafter mentioned. The reports, when made
out, shall be mailed or handed to the parties to whom
they are directed to be made within forty-eight hours
after a diagnosis is made or treatment started; and the
municipal health officer or county health officer, as the
case may be, shall file and preserve said reports, and
they shall be open to inspection by the director of the
state department of health, and by local health officers,
or officers whose duties are connected with executing the
laws against these diseases.

§16-4-7. False report or information.

Any physician or other person required to make re-
ports of a venereal disease hereunder, or who is re-
quired to report the failure of any patient to return for
further treatment, who fails or refuses to make any
such reports, or who knowingly reports a person under
a false or fictitious name or address, or who makes any
other statements on any report which he has reason to
believe are untrue, shall be guilty of a misdemeanor,
and shall be punished as hereinafter provided; and each
report that should have been made, and each name that
should have been given, and each address that should
have been given, or has been wrongfully reported or
given, shall be a separate offense; and a second convic-
tion of a physician for failure to comply with any pro-
vision of this section shall be sufficient ground and reason
for the director of health, upon the recommendation of
the medical licensing board, to revoke the license of such
physician. Any person suffering with a venereal disease,
whose name is required to be reported hereunder, who
gives to the physician or person required to make reports
herein required a false or fictitious name or address, or
who shall fail or refuse to answer any proper question
required to be reported hereunder, or who makes any
false statement in answer to any such question, shall be guilty of a misdemeanor, and shall be punished as hereinafter provided.

§16-4-21. Quarantine.

In establishing quarantine for a venereal disease under the provisions of this article, the health officer establishing said quarantine may confine any person infected, or reasonably suspected of having such venereal disease, or any other person liable to spread such disease, to the house or premises in which such infected person lives, or he may require any such person to be quarantined in any other place, hospital or institution in his jurisdiction that may have been provided. If no such place has been provided, then such person shall be confined in the county or city jail under a quarantine order, and such jails shall always be available for such purposes. But if such person is to be quarantined in his home, then said health officer shall designate the area, room or rooms, that such person is to occupy while so confined, and no one except the attending physician or his immediate attendants shall enter or leave such room or rooms so designated without permission of said health officer, and no one except the local health officer shall terminate said quarantine, and this shall not be done until the diseased person has become noninfectious as determined by thorough clinical tests, or permission has been given by the West Virginia state director of health. If, to make any quarantine effective as provided herein, it becomes necessary, the local health officer may summon a sufficient guard for the enforcement of his orders in the premises. And every person who fails or refuses to obey or comply with any order made by said health officer hereunder, or under any other section concerning quarantine, and every person summoned as a guard who shall, without a lawful excuse therefor, fail or refuse to obey the orders and directions of the health officer in enforcement of said quarantine, shall be guilty of a misdemeanor, and shall be punished as hereinafter provided.
ARTICLE 4A. PRENATAL EXAMINATION.
§16-4A-3. Identification of specimen; report.

1 Any physician who takes or causes to be taken from a
2 woman in pregnancy or suspected pregnancy a blood test
3 for syphilis shall identify such specimen as being from a
4 pregnant woman, and the laboratory shall provide a
5 report in triplicate on forms prepared and furnished by
6 the state department of health showing the results of
7 such tests. The original of each such report shall be sent
8 at once to the physician submitting the specimen, a dupli-
9 cate shall be forwarded to the state department of health
10 during the week that the test was performed, and the
11 triplicate shall be retained by the laboratory for its files.
12 All laboratory reports shall be confidential and shall not
13 be open to public inspection. The laboratory test for
14 syphilis in compliance with this article shall be performed
15 free of charge by the state hygienic laboratory on the
16 application of any municipal or county health officer or
17 other physician, or any other person permitted by law to
18 secure such specimens.

ARTICLE 4C. EMERGENCY MEDICAL SERVICE.
§16-4C-2. Definitions.

1 As used in this article, unless the context clearly re-
2 quires a different meaning:
3 “Ambulance” means any privately or publicly owned
4 vehicle or aircraft which is designed, constructed or modi-
5 fied; equipped or maintained; and operated for the trans-
6 portation of patients.
7 “Ambulance service” means the transportation, and
8 treatment at the site of pickup and en route, of a patient
9 to or from a place where medical, hospital or clinical
10 service is normally available.
11 “Emergency medical service attendant” means any per-
12 son who is responsible for attending, caring for and
13 giving life-saving or life-preserving treatment to a patient
14 transported in an ambulance. This term includes both
15 the driver of an ambulance and any person assigned to
16 the ambulance to attend patients.
“Governing body” shall have the meaning ascribed to it as applied to a municipality in subsection (b), subdivision (1), section two, article one, chapter eight of this code.

“Municipality” shall have the meaning ascribed to it in subsection (a), subdivision (1), section two, article one, chapter eight of this code.

“Patient” means any sick, injured, wounded or otherwise incapacitated or helpless person, or an expectant mother who needs medical, hospital or clinical service under an existing or imminent emergency situation.

“State board” means the state board of health.

“Director” means the director of the state department of health.

§16-4C-4. Standards for emergency medical service attendants; issuance, renewal, suspension and revocation of emergency medical service attendant certificates; issuance of temporary certificates.

After the first day of January, one thousand nine hundred seventy-five, every ambulance, except those vehicles and aircraft exempted in section three of this article, shall have at least one physician, osteopathic physician, any state licensed health provider qualified to render first aid or mobile intensive care paramedic duly licensed to serve in such capacity under the laws of this state or one person who possesses a valid emergency medical service attendant certificate issued hereunder by the director in its patient compartment at all times when a patient is being transported.

In accordance with the provisions of chapter twenty-nine-a of this code, the state board shall promulgate rules regarding the age, training and physical requirements of emergency medical service attendants. As a minimum training requirement, every emergency medical service attendant shall have earned and possess a valid American red cross advanced first aid certificate, or an advanced first aid certificate issued by the United States bureau of mines (now referred to as the mining enforcement and safety administration, United States department of the interior)
or the equivalent thereof; or have successfully completed
the course on emergency care and transportation of the
sick and injured recommended by the American academy
of orthopedic surgeons or the equivalent thereof, before
he is issued a certificate: Provided, That any member of a
rescue unit organized and engaged in providing ambulance
service prior to the first day of January, one thousand
nine hundred seventy-five, which is operated by a rescue
squad, fire department, police department, county or
municipality of this state, who on that date is certified
by the respective county health officer of the county
wherein such unit is based, or, if there is no county health
officer, by the county commission or governing body of
the jurisdiction wherein such unit is based, that he is
adequately trained and is capable of performing the ser-
vice required of an emergency medical service attendant
shall be issued an original emergency medical service
attendant certificate by the director upon his submitting
proper application for such certificate. The state board
may promulgate rules for emergency medical service
attendants which exceed this minimum training require-
ment.

Any person desiring certification as an emergency
medical service attendant shall apply to the director
using forms and procedures prescribed by the director.
Upon receipt of such application, the director shall
determine if the applicant meets the requirements for
certification and examine the applicant as, in his dis-
cretion, is necessary to make such determination. If it
is determined that the applicant meets all of the require-
ments, the director shall issue an emergency medical
service attendant certificate to the applicant. Emergency
medical service attendant certificates issued by the direc-
tor shall be valid for two years from the date of their is-
suance unless sooner suspended or revoked by the di-
tector. Certificates may be renewed for additional two-
year periods after examination of the certificate holder
and determination by the director that such holder meets
the requirements established for emergency medical ser-
vice attendants: Provided, That if any county health
officer of any county, or, if there is no county health
officer, the county commission or governing body of the
jurisdiction concludes that any area of that jurisdiction
has not been afforded the necessary training or equip-
ment to implement this section, then this section shall
not apply.

The director may issue a temporary emergency medical
service attendant certificate to an applicant, with or with-
out examination of the applicant, when it finds such is-
suance to be in the public interest. Unless sooner sus-
pended or revoked, a temporary certificate shall be valid
initially for a period not exceeding one hundred twenty
days and it shall not be renewed thereafter unless it be
in the public interest: Provided, That the expiration
date of any such temporary certificate issued shall be
extended until the holder of such certificate is afforded
at least one opportunity to take an emergency medical
care attendant training course within the general area
where he serves as an emergency medical service atten-
dant, but the expiration date shall not be extended for
any longer period of time or for any other reason.

There shall be no fee or other payment required of an
applicant for original certification as an emergency medi-
cal service attendant, renewal of such certificate or of an
applicant for temporary certification as an emergency
medical service attendant.

§16-4C-5. Suspension or revocation of certificate or temporary
certificate.

(a) The director may at any time upon his own motion,
and shall, upon the verified written complaint of any
person, conduct an investigation to determine whether
there are any grounds for the suspension or revocation of
a certificate or temporary certificate issued under the
provisions of this article.

(b) The director shall suspend or revoke any certificate
or temporary certificate when he finds the holder thereof
has:

(1) Obtained a certificate or temporary certificate by
means of fraud or deceit; or
(2) Been incompetent, grossly negligent, or guilty of other malpractice as defined by the state board by rules and regulations; or

(3) Failed or refused to comply with the provisions of this article or any reasonable rule and regulation promulgated by the state board hereunder or any order or final decision of the director.

(c) The director shall also suspend or revoke any certificate or temporary certificate if he finds the existence of any grounds which would justify the denial of an application for such license or temporary permit if application were then being made for it.

§16-4C-6. Notice of refusal, suspension or revocation of certificate; appeals to director; judicial review.

An application for an original emergency medical service attendant certificate, for the renewal of an emergency medical service attendant certificate or for a temporary emergency medical service attendant certificate, shall be acted upon by the director and the director's certificate delivered or mailed, or a copy of any order of the director denying any such application delivered or mailed to the applicant, by the director within fifteen days after the date upon which such application was received from the applicant.

Whenever the director shall refuse to issue an emergency medical service attendant certificate or a temporary emergency medical service attendant certificate, or shall suspend or revoke an emergency medical service attendant certificate, or a temporary emergency medical service attendant certificate, he shall make and enter an order to that effect, which order shall specify the reasons for such denial, suspension or revocation, and shall cause a copy of such order to be served in person or by certified mail, return receipt requested, on the applicant or certificate holder, as the case may be.

Whenever a certificate is suspended or revoked, the director shall in the order of suspension or revocation direct the holder thereof to return his certificate to the director. It shall be the duty of such certificate holder to
comply with any such order following expiration of the period provided for an appeal to the director.

Any applicant or certificate holder, as the case may be, adversely affected by an order made and entered by the director may appeal to the director for an order vacating or modifying such order or for such order as the director should have entered. The person so appealing shall be known as the appellant. An appeal shall be perfected by filing a notice of appeal with the director within ten days after the date upon which the appellant received the copy of such order. Said notice of appeal shall be in such form and contain such information as may be prescribed by the director, but in all cases shall contain a description of any order appealed from and the grounds for said appeal. The filing of the notice of appeal shall operate to automatically stay or suspend execution of any order which is the subject matter of said appeal. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing on appeal and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso herein.

The director shall set a hearing date which shall be not less than ten days after he received the notice of appeal unless there is a postponement or continuance. The director may postpone or continue any hearing on his own motion, or for good cause shown upon the application of the appellant. The appellant shall be given notice of said hearing in person or by certified mail, return receipt requested. Any such hearing shall be held in Charleston, Kanawha county, West Virginia, unless another place is specified by the director.

After such hearing and consideration of all of the testimony, evidence and record in the case, the director shall make and enter an order affirming, modifying or vacating his initial order or shall make and enter any new order. Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions
shall be served upon the appellant, in person or by certified mail, return receipt requested. The order of the director shall be final unless vacated or modified upon judicial review thereof.

Any appellant adversely affected by a final order made and entered by the director is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso herein. The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§16-4C-9. Violations; criminal penalties.

Any person who operates an ambulance or who provides ambulance service not in compliance with the provisions of this article or the rules promulgated by the state board of health pursuant to this article, or who operates an ambulance with uncertified emergency medical service attendants aboard when not lawfully permitted to do so shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than three hundred dollars, or imprisoned in the county jail not more than one month, or both fined and imprisoned.

§16-4C-10. Actions to enjoin violations; injunctive relief.

Whenever it appears to the director that any person has been or is violating or is about to violate any provisions of this article or any final order of the director, the director may apply in the name of the state, to the circuit court of the county in which the violation or violations or any part thereof has occurred, is occurring or is about to occur, for an injunction against such person and any other persons who have been, are or are about to be, involved in, or in any way participating in, any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or viola-
tions. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section eight of this article.

Upon application by the director, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article and all final orders of the state board. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.

ARTICLE 4D. EMERGENCY MEDICAL SERVICES ACT.
§16-4D-3. Definitions.

For the purposes of this article:
(a) The term “director” shall mean the director of health;
(b) The term “council” shall mean the emergency medical services advisory council created pursuant to article four-c of this chapter;
(c) The term “emergency medical services” shall mean all services which are included in and made a part of the emergency medical services plan as herein provided for and shall include attending, caring for and giving life-saving or life-preserving treatment to a patient transported in an ambulance; and
(d) The term “patient” means any sick, injured, wounded, or otherwise incapacitated person or an expectant mother who needs medical, hospital or clinical services under existing or imminent emergency situations.
§16-4D-4. Office of emergency medical services created; staffing.

1 There is hereby created within state government under the director of the department of health an office to be known as the office of emergency medical services.
2 The director may employ such technical, clerical, stenographic and other personnel as may be necessary to carry out the purposes of this article. Such personnel may be paid from funds appropriated therefor or from such other funds as may be made available for carrying out the purposes of this article.

ARTICLE 5. VITAL STATISTICS.

§16-5-2. Vital statistics; statewide system; supervision by the director of health; offices, etc.

1 The director of the department of health shall have general supervision over the system of vital statistics, which shall be under the immediate supervision of the state registrar of vital statistics. The director shall provide for such clerical and other assistants as may be necessary for the purposes of this article. Suitable offices shall be provided at the seat of state government and such offices shall be properly equipped with a fire-proof vault and filing cases for the permanent and safe preservation of all official records made, maintained, or filed under the provisions of this article.

§16-5-3. Rules and regulations of state board of health.

1 The state board of health is authorized to adopt, amend and repeal rules and regulations for the purpose of carrying out the specific provisions of this article.

§16-5-4. Appointment of state registrar of vital statistics.

1 The state director of the department of health shall appoint and prescribe the qualifications of the state registrar of vital statistics.

§16-5-5. Duties of state registrar of vital statistics; enforcement of article.

1 a. The state registrar of vital statistics shall:
(1) Administer and enforce the provisions of this article and all other applicable laws of this state and all lawful rules and regulations adopted and promulgated thereunder;

(2) Direct and supervise the statewide system of vital statistics and the operation of the division of vital statistics, and act as custodian of its records;

(3) Direct, supervise and control the activities of local registrars and the activities of public officers in relation to the operation of the vital statistics system and provide them with the postage necessary for them to carry out their duties under this article;

(4) Prescribe, provide and distribute, subject to the rules and regulations promulgated by the board of health, all forms necessary to carry out the provisions of this article and of the rules and regulations adopted and promulgated thereunder; and

(5) Prepare and publish annual reports of vital statistics of this state, and such other reports as may be required by the director of the state health department.

b. The state registrar of vital statistics may delegate such functions and duties as are hereby vested in him to officers and employees of the division of vital statistics and to local registrars as the state registrar may deem necessary or expedient.

c. The state registrar, either personally or by a duly delegated representative, shall have authority to investigate cases of irregularity or violation of law arising under the provisions of this article, and all local registrars, deputy local registrars, and subregistrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this article to the prosecuting attorney of the county, with a statement of the facts and circumstances. When any such case is reported to him by the state registrar, the prosecuting attorney shall forthwith initiate and promptly prosecute the necessary court proceedings against the person or corporation responsible for the alleged violation of law. Upon
request of the state registrar, the attorney general shall assist in the enforcement of the provisions of this article.

§16-5-6. Registration districts.

For the purposes of this article, subject to the rules and regulations promulgated by the state board of health, the director of the state health department may establish registration districts throughout the state. The director may eliminate, or change the boundaries of, any district and may consolidate two or more districts or subdivide any district to facilitate registration.

§16-5-28. Fees for copies and searches.

a. The state director of the department of health shall prescribe the fees, if any, to be charged and collected by the state registrar of vital statistics for certified copies of certificates or records, not to exceed two dollars per copy, or for a search of the files or records when no copy is made: Provided, That the state registrar shall, upon request of any parent or guardian, supply without fee a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment: Provided, however, That the state registrar may furnish certified copies of birth and death records to the state welfare department, and to organized charities, free of charge, when such certificates are needed in presenting claims to the federal government, or to the state department of welfare, and an accurate record shall be made of all such certificates so furnished.

b. Fees collected under this section by the state registrar of vital statistics shall be deposited to the state general fund.

§16-5-32. Uniform system of registration of marriage, divorce and annulment of marriage.

To the end that an efficient and uniform system of registration of marriage, divorce and annulment of marriage shall be established in this state, the state registrar of vital statistics shall provide for the registration of each marriage, divorce, and annulment of marriage
which shall occur in this state. In so doing, the state director of health subject to rules and regulations promulgated by the board of health shall have the authority and duty to:

a. Install a statewide system of registering, indexing, and preserving records of marriage, divorce and annulment of marriage.

b. Make and amend necessary rules and regulations, give instructions, and prescribe and furnish forms, for collecting, transcribing, compiling and preserving records and statistics of marriage, divorce and annulment of marriage.

c. Make and publish a statistical report of marriage, divorce and annulment of marriage in this state.

ARTICLE 5A. CANCER CONTROL.


The director of the state department of health shall execute and administer the provisions of this article relating to the diagnosis, treatment and care of persons suffering from cancer. The director shall have authority to direct, control, govern and provide for the management of any state institution for the care and treatment of cancer patients which may hereafter be created by law.

§16-5A-2. Educational program.

The director shall formulate and put into effect throughout the state an educational program for the purpose of preventing cancer and of aiding in its early diagnosis, and for the purpose of giving information to hospitals and cancer patients concerning the proper treatment. In furtherance of this program, the director may assist and cooperate with any state or national organization conducting an educational program for the prevention of cancer.


The director shall have authority to prescribe standard minimum requirements for the organization, equipment and conduct of cancer units or clinics in general hospitals of the state. The director shall establish and
5 maintain, or aid in the establishment and maintenance
6 of, a sufficient number of cancer diagnostic and treat-
7 ment clinics meeting such requirements, so located that
8 they are within reasonable traveling distance of any
9 citizen of the state in need of treatment. In the establish-
10 ment and operation of such clinics and in the fixing of
11 such minimum requirements, the director shall consult
12 and cooperate with the West Virginia state medical
13 association.
14 In order to determine the progress of the disease and
15 the success of the treatment being used, the director
16 shall insofar as practicable provide a method for follow-
17 ing up each case and bringing the patient back to the
18 clinic at frequent intervals.

§16-SA-4. Tissue diagnostic service.

1 The director shall furnish, within the limits of available
2 funds, free tissue diagnostic service to all needy patients.
3 In providing this service the director may use either the
4 state-owned laboratory in the department of health, or
5 privately owned laboratories approved by the department.

§16-SA-5. Care of needy patients.

1 The board of health shall prescribe rules and regula-
2 tions specifying to what extent and on what terms and
3 conditions needy cancer patients may receive financial
4 aid for the diagnosis and treatment of cancer in any
5 approved hospital in this state. The director is authorized
6 to furnish aid, within the limits of available funds, to such
7 patients and shall have the power to administer such aid
8 in any manner which in his judgment will afford the
9 greatest benefit to cancer patients throughout the state.
10 In determining whether a particular patient is entitled
11 to such assistance the director may call upon the depart-
12 ment of welfare for such investigation as may be re-
13 quired. In order to receive such aid, however, the patient
14 need not qualify for public assistance as administered by
15 the department of welfare.
ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-1. Health facilities and certain other facilities operated in connection therewith to obtain license; exemptions; meaning of hospital, etc.

No person, partnership, association, corporation, or any local governmental unit or any division, department, board or agency thereof shall establish, conduct, or maintain in the state of West Virginia any ambulatory health care facility, ambulatory surgical facility, freestanding or operated in connection with a hospital, hospital or extended care facility operated in connection with a hospital, without first obtaining a license therefor in the manner hereinafter provided: Provided, That only one license shall be required for any person, partnership, association, corporation or any local governmental unit or any division, department, board or agency thereof who operates any combination of an ambulatory health care facility, ambulatory surgical facility, hospital, extended care facility operated in connection with a hospital, or more than one thereof, at the same location.

Ambulatory health care facilities, ambulatory surgical facilities, hospitals, or extended care facilities operated in connection with a hospital operated by the federal government or the state government shall be exempt from the provisions of this article.

A hospital or extended care facility operated in connection with a hospital, within the meaning of this article, shall mean any institution, place, building, or agency in which an accommodation of five or more beds is maintained, furnished, or offered for the hospitalization of the sick or injured: Provided, That nothing contained in this article shall apply to nursing homes, rest homes, personal care facilities, homes for the aged, extended care facilities not operated in connection with a hospital, boarding homes, homes for the infirm or chronically ill, convalescent homes, hotels or other similar places that furnish to their guests only board and room, or either of them: Provided, however, That the hospitalization, care or treatment in a household, whether for compensation or not, of any person related by blood or mar-
riage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, shall not be deemed to constitute the premises a hospital or extended care facility operated in connection with a hospital, within the meaning of this article.

An "ambulatory health care facility" shall include any facility which provides health care or mental health care to noninstitutionalized persons on an outpatient basis. This definition does not include the legally authorized practice of medicine by any one or more persons in the private office of any health care provider.

"Ambulatory surgical facility" means a facility which provides surgical treatment to patients not requiring hospitalization. This definition does not include the legally authorized practice of surgery by any one or more persons in the private office of any health care provider.

Nothing in this article or the rules and regulations adopted pursuant to the provisions of this article shall be construed to authorize the licensure, supervision, regulation or control in any manner of (1) private offices of physicians, dentists or other practitioners of the healing arts; (2) dispensaries and first aid stations located within business or industrial establishments maintained solely for the use of employees: Provided, That such facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four hours.

Nothing in this article shall authorize any person, partnership, association, corporation, or any local governmental unit or any division, department, board or agency thereof to engage in any manner in the practice of medicine, as defined by law. This article shall not be construed to restrict or modify any statute pertaining to the placement or adoption of children.

§16-5B-2. Hospitals and institutions to obtain license; qualifications of applicant.

1. No person, partnership, association, corporation, or any local governmental unit or any division, department, board or agency thereof may continue to operate an
existing ambulatory health care facility, ambulatory surgical facility, hospital or extended care facility operated in connection with a hospital, unless such operation shall have been approved and regularly licensed by the state as hereinafter provided. Licenses shall be issued for a particular number by type of beds and/or type of services. Any change in the number by type of bed and/or type of services shall require the issuance of a new license.

Before a license shall be issued under this article, the person applying, if an individual, shall submit evidence satisfactory to the state department of health that he is not less than eighteen years of age, of reputable and responsible character, and otherwise qualified. In the event the applicant is an association, corporation or governmental unit, like evidence shall be submitted as to the members thereof and the persons in charge.

Every applicant shall, in addition, submit satisfactory evidence of his ability to comply with the minimum standards and with all rules and regulations lawfully promulgated.

§16-5B-4. License fees.

The application of any person, partnership, association, corporation, or local governmental unit for a license to operate a hospital or extended care facility operated in connection with a hospital, shall be accompanied by a fee to be determined by the number of beds available for patients, according to the following schedule of fees: Those with five beds but less than fifty beds shall pay a fee of twenty dollars; those with fifty beds or more and less than one hundred beds shall pay a fee of thirty dollars; those with one hundred beds or more and less than two hundred beds shall pay a fee of forty dollars; and those with two hundred beds or more shall pay a fee of fifty dollars. The application of any person, partnership, association, corporation, or local governmental unit
for a license to operate an ambulatory health care facility or ambulatory surgical facility shall be accompanied by a reasonable fee to be determined by the director, based on the number of patients served by the facility. No such fee shall be refunded. All licenses issued under this article shall expire on the thirtieth day of June following their issuance, shall be on a form prescribed by the state department of health, shall not be transferable or assignable, shall be issued only for the premises named and described in the application, shall be posted in a conspicuous place on the licensed premises, and may be renewed from year to year upon application, investigation, and payment of the license fee, as in the case of the procurement of an original license: Provided, That any such license in effect on the thirtieth day of June of any year, for which timely application for renewal, together with payment of the proper fee, has been made to the state department of health in conformance with the provisions of this article and the rules and regulations issued thereunder, and prior to the expiration date of such license, shall continue in effect until (a) the thirtieth day of June next following the expiration date of such license, or (b) the date of the revocation or suspension of such license pursuant to the provisions of this article, or (c) the date of issuance of a new license, whichever date first occurs. All fees received by the state department of health under the provisions of this article shall be paid into the state treasury general revenue fund.

§16-5B.6. State director of health to issue licenses; suspension or revocation.

The state director of health is hereby authorized to issue licenses for the operation of ambulatory health care facilities, ambulatory surgical facilities, hospitals or extended care facilities operated in connection with hospitals, which are found to comply with the provisions of this article and with all regulations lawfully promulgated by the department.

The state director of health is hereby authorized to suspend or revoke a license issued hereunder, on any of the following grounds:
(1) Violation of any of the provisions of this article or the rules and regulations issued pursuant thereto;

(2) Knowingly permitting, aiding or abetting the commission of any illegal act in such institution;

(3) Conduct or practices detrimental to the health or safety of the patients and employees of such institution; or

(4) Operation of beds or services not specified in the license.

Before any such license is suspended or revoked, however, written notice shall be given the licensee, stating the grounds of the complaint, and the date, time and place set for the hearing on the complaint, which date shall not be less than thirty days from the time notice is given. Such notice shall be sent by registered mail to the licensee at the address where the institution concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

If a license is revoked as herein provided, a new application for a license shall be considered by the director of health if, when, and after the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all provisions of this article and rules and regulations promulgated hereunder have been satisfied.

All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection with and following any such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section.

§16-5B-8. State department of health to establish standards; director enforces.

The board of health shall have the power to promulgate rules and regulations and the director shall have the power to enforce such rules and regulations, as the board of health may establish, not in conflict with any
provision of this article, as it finds necessary, or in the public interest, in order to protect patients in institutions required to be licensed under this article from detrimental practices and conditions, or to insure adequate provision for their accommodations and care. No rule or regulation or standard of the board shall be adopted or enforced which would have the effect of denying a license to a hospital or other institution required to be licensed hereunder, solely by reason of the school or system of practice employed or permitted to be employed by physicians therein: Provided, That such school or system of practice is recognized by the laws of this state.

§16-5B-11. Violations; penalties.

Any person, partnership, association or corporation, and any local governmental unit or any division, department, board, or agency thereof establishing, conducting, managing or operating an ambulatory health care facility, ambulatory surgical facility, a hospital, or extended care facility operated in connection with a hospital, without first obtaining a license therefor as herein provided, or violating any provision of this article or any rule or regulation lawfully promulgated thereunder, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for the first offense by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period of not more than ninety days, or by both such fine and imprisonment, in the discretion of the court. For each subsequent offense the fine may be increased to not more than five hundred dollars, with imprisonment in the county jail for a period of not more than ninety days, or both such fine and imprisonment, in the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

§16-5B-12. Injunction; severability.

Notwithstanding the existence or pursuit of any other remedy, the director may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, corporation, or any local governmental unit, or any divi-
tion, department, board or agency thereof, to restrain
or prevent the establishment, conduct, management or
operation of any ambulatory health care facility, am-
bulatory surgical facility, hospital or extended care fa-
cility operated in connection with a hospital without
first obtaining a license therefor in the manner herein-
before provided.

If any part of this article shall be declared unconsti-
tutional, such declaration shall not affect any other part
thereof.

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES.

§16-5C-1. Purpose.

1 It is the policy of this state to encourage and promote
2 the development and utilization of resources to insure the
effective care and treatment of persons who are con-
valescing or whose physical or mental condition requires
3 them to receive a degree of nursing or related health care
4 greater than that necessary for well individuals, but not
5 so acute as to require hospitalization. Such care and
6 treatment requires a living environment for such persons
7 which, to the extent practicable, will approximate a nor-
8 mal home environment. To this end, the guiding principle
9 for administration of the laws of the state is that such
10 persons shall be encouraged and assisted in securing ne-
11 cessary care and treatment in noninstitutional surround-
12 ings. In recognition that for many such persons effective
13 care and treatment can only be secured from proprietary,
14 voluntary and governmental nursing homes or personal
15 care homes it is the policy of this state to encourage,
16 promote and require the maintenance of institutions other
17 than hospitals offering nursing or related health care or
18 personal care so as to insure protection of the rights and
19 dignity of those using the services of such facilities.
20
21 The provisions of this article are hereby declared to be
22 remedial and shall be liberally construed to effectuate its
23 purposes and intents.

§16-5C-2. Definitions.

1 As used in this article, unless a different meaning ap-
2 pears from the context:
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(a) The term "director" means the director of the West Virginia state department of health or his designee;

(b) The term "facility" means any nursing home or personal care home as defined in subdivisions (c) and (d) of this section: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home or personal care home within the meaning of this article. Nothing contained in this article shall apply to hospitals, as defined under section one, article five-b of this chapter, or state institutions as defined under section six, article one, chapter twenty-seven or section three, article one, chapter twenty-five, all of this code, or institutions operated for the treatment and care of alcoholic patients, or offices of physicians, or hotels, boarding homes or other similar places that furnish to their guests only board and room, or extended care facilities operated in conjunction with a hospital;

(c) The term "nursing home" means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four hours, for three or more persons who are ill or otherwise incapacitated and in need of nursing care due to physical or mental impairment, or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation;

(d) The term "personal care home" means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and personal assistance, for a period of more than twenty-four hours, to six or more persons who are dependent upon the
services of others by reason of physical or mental impairment but who do not require nursing care;

(e) The term "nursing care" means those procedures commonly employed in providing for the physical, emotional and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: irrigations, catheterizations, application of dressings; supervision of special diets; objective observation of changes in patient condition as a means of analyzing and determining nursing care required and the need for further medical diagnosis and treatment; special procedures contributing to rehabilitation; administration of medication by any method ordered by a physician such as hypodermically, rectally, or orally; and carrying out other treatments prescribed by a physician which involve a like level of complexity and skill in administration;

(f) The term "personal assistance" means personal services, including, but not limited to, the following: help in walking, bathing, dressing, feeding, or getting in or out of bed, or supervision required because of the age of mental impairment of the patient;

(g) The term "mental impairment" excludes mental illness and mental retardation as defined in sections two and three, article one, chapter twenty-seven of this code;

(h) The term "patient" means an individual under care in a nursing home or personal care home;

(i) The term "sponsor" means the person or agency legally responsible for the welfare and support of a patient;

(j) The term "person" means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association, or political subdivision of the state.

The director may define in regulations any term used herein which is not expressly defined.

In the administration of this article, the director shall have the following powers, duties and rights:

(a) To enforce regulations and standards for nursing homes adopted, promulgated, amended or modified by the board of health;

(b) To exercise as sole authority all powers relating to the issuance, suspension and revocation of licenses of nursing homes;

(c) To enforce rules adopted, promulgated, amended or modified by the board of health governing the qualification of applicants for nursing home licenses including, but not limited to, educational requirements, financial requirements, personal and ethical requirements;

(d) To receive and disburse federal funds and to take whatever action not contrary to law as may be proper and necessary to comply with the requirements and conditions for the receipt of such federal funds;

(e) To receive and disburse for authorized purposes any moneys appropriated to the department of health by the Legislature;

(f) To receive and disburse for purposes authorized by this article, any funds that may come to the department of health by gift, grant, donation, bequest or devise, according to the terms thereof, as well as funds derived from the department of health's operation, or otherwise;

(g) To make contracts, and to execute all instruments necessary or convenient in carrying out the director's functions and duties; and all such contracts, agreements and instruments shall be executed by the director;

(h) To appoint officers, agents, employees and other personnel and fix their compensation;

(i) To offer and sponsor educational and training programs for nursing home and personal care home administrative, management and operational personnel;

(j) To undertake survey, research and planning projects and programs relating to administration and operation of nursing homes and personal care homes, and to the
38 health, care, treatment and service in general of patients
39 of such homes;
40 (k) To assess civil penalties for violations of facility
41 standards, in accordance with section ten of this article;
42 (l) To classify nursing homes into care cate-
43 gories such as skilled nursing facilities, intermediate
44 care facilities, and other comparable categories un-
45 der the terms of this article if, in the opinion of
46 the director, the best interest of the public is served by
47 so doing;
48 (m) To inspect any facility and any records maintained
49 therein, subject to the provisions of section ten of this
50 article;
51 (n) To establish and implement procedures, including
52 informal conferences, investigations and hearings, subject
53 to applicable provisions of article three, chapter twenty-
54 nine-a of this code, and to enforce compliance with the
55 provisions of this article and with regulations issued here-
56 under, by the board of health;
57 (o) To subpoena witnesses and documents, administer
58 oaths and affirmations, and to examine witnesses under
59 oath for the conduct of any investigation or hearing. Upon
60 failure of a person without lawful excuse to obey a
61 subpoena or to give testimony and upon reasonable notice
62 to all persons affected thereby, the director may apply
63 to the circuit court of the county in which the hearing
64 is to be held for an order compelling compliance;
65 (p) To make complaint or cause proceedings to be
66 instituted against any person or persons for the violation
67 of the provisions of this article or of regulations issued
68 hereunder, by the board of health. Such action may be
69 taken by the director without the sanction of the prosecut-
70 ing attorney of the county in which proceedings are
71 instituted, if said officer fails or refuses to discharge his
72 duty. In no such case shall the director or any person act-
73 ing under the director's direction be required to give
74 security for costs;
75 (q) To delegate authority to the director's employees
76 and agents to perform all functions of the director except
77 the making of final decisions in adjudications; and
(r) To submit a report to the governor, the Legislature and the public, on or before the first day of December, one thousand nine hundred seventy-eight, and annually thereafter. The report shall describe the licensing and investigatory activities of the department during the year, and the nature and status of other activities of the department, and may include comment on the acts, policies, practices or procedures of any public or private agency that affect the rights, health or welfare of patients or residents of nursing homes and personal care homes. The annual report shall include a list of all nursing homes and personal care homes in the state; whether such homes are proprietary or nonproprietary; the classification of each such home; the name of the owner or owners; the total number of beds, the number of private and semi-private rooms; the costs per diem for private patients; the number of full-time employees and their professions; recreational programs; services and programs available as well as the costs thereof, the rating assigned to the home by the department pursuant to section five of this article, and whether or not those nursing homes listed accept medicare and medicaid patients. The report shall also contain the department's recommendations as to changes in law or policy which it deems necessary or appropriate for the protection of the rights, health or welfare of patients of nursing homes and personal care homes in the state.

§16-5C-4. Administrative and inspection staff.

The director may, at such time or times as he may deem necessary, employ such administrative employees, inspectors, or other persons as may be necessary to properly carry out the provisions of this article. All employees of the department shall be members of the state civil service system. Such inspectors and other employees as may be duly designated by the director shall act as the director's representatives and, under the direction of the director, shall enforce the provisions of this article and all duly promulgated regulations of the board of health and, in the discharge of official duties, shall have the right of entry into any place maintained as a nursing home or personal care home.
§16-5C-5. Rules and regulations; minimum standards for facilities; rating of facilities.

(a) All rules and regulations shall be approved by the board of health and promulgated in the manner provided by the provisions of article three, chapter twenty-nine-a of this code. The board of health shall adopt, amend, or repeal such rules and regulations as may be necessary or proper to carry out the purposes and intent of this article and to enable the director to exercise the powers and perform the duties conferred upon the director by this article.

(b) The board of health shall promulgate regulations establishing minimum standards for categories of operation of facilities including, but not limited to, the following:

(1) Administrative policies, including (i) an affirmative statement of the right of access to facilities by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to patients, consistent with the right of patients to privacy, and (ii) a statement of the rights and responsibilities of patients in facilities which prescribes, as a minimum, such a statement of patients’ rights as included in the United States department of health, education and welfare regulations, in force on the effective date of this article, governing participation of intermediate care facilities in the medicare and medicaid programs pursuant to titles eighteen and nineteen of the Social Security Act;

(2) Minimum numbers and qualifications of personnel, including management, medical and nursing, aides, orderlies and support personnel, according to the size and classification of the facility;

(3) Safety requirements;

(4) Sanitation requirements;

(5) Protective and personal services to be provided;

(6) Dietary services to be provided;

(7) Maintenance of health records;
(8) Social and recreational activities to be made available; and

(9) Such other categories as the board of health determines to be appropriate to ensure patient's health, safety and welfare.

(c) The board of health shall include in its regulations detailed standards for each of the categories established pursuant to subsection (b) of this section, and shall classify such standards as follows: Class I standards are standards the violation of which, the board of health determines, would present either an imminent danger to the health, safety or welfare of any patient or a substantial probability that death or serious physical harm would result; Class II standards are standards which the board of health determines have a direct or immediate relationship to the health, safety or welfare of any patient, but which do not create imminent danger; Class III standards are standards which the board of health determines have an indirect or a potential impact on the health, safety or welfare of any patient.

(d) The board of health shall assign a range of numerical values to each standard, based on its classification pursuant to subsection (c) of this section, representing compliance with the standard, lack of compliance, as well as performance significantly exceeding such standard. The board of health shall determine, for each category established pursuant to subsection (b) of this section, the minimum number of accumulated value points which constitutes an acceptable level of compliance with the overall standards of such category, and a facility must accumulate such established number for each and every category to be deemed in substantial compliance with this article.

(e) Not later than the first day of March, one thousand nine hundred seventy-eight, the board of health shall establish a system of rating facilities, as part of the licensing procedure, in accordance with the criteria established pursuant to this section. Such system shall include four rating categories entitled, from highest to lowest, "A", "B", "C" and "F". A rating of "F" shall be assigned to those facilities whose performance is not in substantial compliance with this article and regulations
promulgated hereunder, and shall be the basis for issuance of a provisional license pursuant to subsection (d), section six of this article, or the limitation, suspension, revocation or denial of a license. The rating assigned to each facility shall be on the basis of its immediately prior inspection, and shall be deemed a part of the results and findings of that inspection, and shall be included on the license issued to the facility pursuant to section six of this article.

§16-5C-6. License required; application; fees; duration; renewal.

1 Subject to the provisions of section seventeen of this article, no person may establish, operate, maintain, offer or advertise a nursing home or personal care home within this state unless and until he obtains a valid license therefor as hereinafter provided, which license remains un- suspended, unrevoked and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in any facility, as defined in section two of this article, which is being operated without a valid license from the director. The procedure for obtaining a license shall be as follows:

(a) The applicant shall submit an application to the director on a form to be prescribed by the director, containing such information as may be necessary to show that the applicant is in compliance with the standards for nursing homes or personal care homes as established by this article and the rules and regulations lawfully promulgated by the board of health hereunder. The application and any exhibits thereto shall provide the following information:

(1) The name and address of the applicant;

(2) The name, address and principal occupation (i) of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the applicant, (ii) of each officer and director of a corporate applicant, and (iii) of each trustee and beneficiary of an applicant which is a trust; and (iv) where a corporation
has a proprietary interest of fifty percent or more in an applicant, the name, address and principal occupation of each officer and director of such corporation;

(3) The name and address of the owner of the premises or the facility or proposed facility, if he is a different person from the applicant; and in such case, the name and address (i) of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in such owner, (ii) of each officer and director of a corporate applicant, and (iii) of each trustee and beneficiary of such owner if he is a trust; and (iv) where a corporation has a proprietary interest of fifty percent or more in such owner, the name and address of each officer and director of such corporation;

(4) Where the applicant is the lessee or the assignee of the facility or the premises of the proposed facility, a signed copy of the lease and any assignment thereof;

(5) The name and address of the facility or the premises of the proposed facility;

(6) The type of institution to be operated;

(7) The proposed bed quota of the facility and the proposed bed quota of each unit thereof;

(ii) An organizational plan for the facility indicating the number of persons employed or to be employed, the positions and duties of all employees; (ii) the name and address of the individual who is to serve as administrator; and (iii) such evidence of compliance with applicable laws and regulations governing zoning, buildings, safety, fire prevention, and sanitation as the director may require;

(9) Such additional information as the director may require; and

(10) Assurances that the nursing home was reviewed and found to be needed by the state health planning and development agency.

(b) Upon receipt and review of an application for license made pursuant to subsection (b) of this section,
and inspection of the applicant facility pursuant to section
ten of this article, the director shall issue a license if he
finds:

(1) That an individual applicant, and every partner,
trustee, officer, director and controlling person of an
applicant which is not an individual, be a person respon-
sible and suitable to operate or to direct or participate in
the operation of a facility by virtue of financial capacity,
appropriate business or professional experience, a record
of compliance with lawful orders of the department (if
any) and lack of revocation of a license during the previ-
ous five years;

(2) That the facility be under the supervision of an
administrator who is qualified by training and experience:
Provided, That every facility classified as a nursing home
shall have an administrator licensed pursuant to the pro-
visions of article twenty-five, chapter thirty of this code;
and

(3) That the facility is in substantial compliance with
standards established pursuant to section five of this
article, and such other requirements for a license as the
board of health may establish by regulation under this
article.

Any license granted by the director shall state the
maximum bed capacity for which it is granted, the date
the license was issued, the expiration date, and the rating
assigned to the facility pursuant to section five of this
article. Such licenses shall be issued for a period of one
year: Provided, That during the twelve-month period
following the effective date of this article, the director
may issue licenses or renewals for periods of less than
one year in order to distribute the expiration dates of
such licenses throughout the calendar year, and fees for
such licenses shall be prorated on the basis of the portion
of a year for which they are issued. Each license shall
be issued only for the premises and persons named in the
application and shall not be transferable or assignable:
Provided, however, That in the case of the transfer of
ownership of a facility with an unexpired license, the
application of the new owner for a license shall have the
107 effect of a license for a period of three months when
108 filed with the director. Every license shall be posted in
109 a conspicuous place in the facility for which it is issued
110 so as to be accessible to and in plain view of all patients
111 and visitors of the facility.
112 (c) An original license shall be renewable, conditioned
113 upon the licensee filing timely application for the exten-
114 sion of the term of the license accompanied by the fee,
115 and contingent upon evidence of compliance with the pro-
116 visions of this article and regulations promulgated by the
117 board of health hereunder. Any such application for re-
118 newal of a license shall include a report by the licensee in
119 such form and containing such information as shall be
120 prescribed by the director, including the following:
121 (1) A balance sheet of the facility as of the end of the
122 licensing term, setting forth assets and liabilities at such
123 date, including all capital, surplus, reserve, depreciation
124 and similar accounts;
125 (2) A statement of operations of the facility for such
126 licensing term, setting forth all revenues, expenses, taxes,
127 extraordinary items and other credits or charges; and
128 (3) A statement of any changes in the name, address,
129 management or ownership information on file with the
130 director.
131 All holders of facility licenses as of the effective date of
132 this article shall include, in the first application for renew-
133 al filed thereafter, such information as is required for ini-
134 tial applicants under the provisions of subsection (a) of
135 this section.
136 (d) In the case of an application for a renewal license, if
137 all requirements of section five of this article are not met,
138 the director may in his discretion issue a provisional li-
139 cense, provided that care given in the facility is adequate
140 to patient needs and the facility has demonstrated im-
141 provement and evidences potential for substantial com-
142 pliance within the term of said license: Provided, That a
143 provisional renewal may not be issued for a period greater
144 than one year, shall not be renewed, and that no such
145 license shall be issued to any facility with uncorrected
violations of any Class I standard, as defined in subsec-
tion (c), section five of this article.

(e) A nonrefundable application fee in the amount of
one hundred dollars for an original nursing home license
or fifty dollars for an original personal care facility license
shall be paid at the time application is made for such
license. The license fee for renewal of a license shall
be four dollars per bed for nursing homes and two dollars
per bed for personal care homes. The bed capacity for
the holder of each license shall be determined by the
director. All such license fees shall be due and payable
to the director, annually, and in such manner as set forth
in the rules and regulations promulgated by the board
of health. Such fee and application shall be submitted
to the director who shall retain both the application
and fee pending final action on the application. There-
after, upon order of the auditor of the state, all such
fees shall be transmitted to the state treasurer to be
deposited to the credit of the general revenue fund.

§16-5C-7. Cost disclosure; surety for patient funds.

(a) Each nursing home and personal care home shall
disclose in writing to all prospective patients a complete
and accurate list of all costs which may be incurred by
them; and such facility shall display or cause to be dis-
played copies of such list in conspicuous places therein.
Patients may not be liable for any cost not so disclosed.

(b) If the facility handles any money for patients within
the facility, the licensee or his authorized representative
shall give a bond in an amount consistent with this sub-
section and with such surety as the director shall approve.
Such bond shall be upon condition that the licensee shall
hold separately and in trust all patients' funds deposited
with the licensee, shall administer the funds on behalf of
the patient in the manner directed by the depositor, shall
render a true and complete account to the depositor and
the director when requested, and at least quarterly to the
patient, and upon termination of the deposit, shall ac-
count for all funds received, expended, and held on hand.
The licensee shall file a bond in a sum to be fixed by the
director based upon the magnitude of the operations of
Every person injured as a result of any improper or unlawful handling of the money of a patient of a facility may bring an action in a proper court on the bond required to be posted by the licensee pursuant to this subsection for the amount of damage suffered as a result thereof to the extent covered by the bond. Whenever the director determines that the amount of any bond which is filed pursuant to this subsection is insufficient to adequately protect the money of patients which is being handled, or whenever the amount of any such bond is impaired by any recovery against the bond, the director may require the licensee to file an additional bond in such amount as necessary to adequately protect the money of patients being handled.

The provisions of this subsection may not apply if the licensee handles less than twenty-five dollars per patient and less than five hundred dollars for all patients in any month.

§16-5C-8. Investigation of complaints.

1 The board of health shall establish by regulation procedures for prompt investigation of all complaints of alleged violations by nursing homes or personal care homes of applicable requirements of state law or regulations, except for such complaints that the director determines are willfully intended to harass a licensee or are without any reasonable basis. Such procedures shall include provisions for ensuring the confidentiality of the complainant and of any other person so named in the complaint, and for promptly informing the complainant and the facility involved of the results of the investigation.

If, after its investigation, the director determines that the complaint has merit, the director shall take appropriate disciplinary action and shall advise any injured party of the possibility of a civil remedy under this article.

No facility may discharge or in any manner discriminate against any patient or employee for the reason that such patient or employee has filed a complaint or participated
in any proceeding specified in this article. Violation of this prohibition by any facility constitutes ground for the suspension or revocation of the license of the facility as provided in section eleven of this article. Any type of discriminatory treatment of a patient by whom, or upon whose behalf, a complaint has been submitted to the director, or any proceeding instituted under this article, within one hundred twenty days of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the facility in retaliation for such complaint or action.

§16-5C-9. Inspections.

The director and any duly designated employee or agent thereof shall have the right to enter upon and into the premises of any facility for which a license has been issued, for which an application for license has been filed with the director, or which the director has reason to believe is being operated or maintained as a nursing home or personal care home without a license. If such entry is refused by the owner or person in charge of any such facility, the director shall apply to the circuit court of the county in which the facility is located for a warrant authorizing inspection, and such court shall issue an appropriate warrant if it finds good cause for inspection.

The director, by the director’s authorized employees or agents, shall conduct at least one inspection prior to issuance of a license pursuant to section six of this article, and shall conduct at least one unannounced inspection annually thereafter, to determine compliance by the facility with applicable statutes and regulations promulgated thereunder. The state fire marshal, by his employees or authorized agents, shall make all fire, safety and like inspections. The director may provide for such other inspections as the director may deem necessary to carry out the intent and purpose of this article.

§16-5C-10. Reports of inspections; plans of correction; assessment of penalties for failure to correct violations.

(a) Reports of all inspections made pursuant to section
nine of this article shall be in writing and filed with the director, and shall list all deficiencies in the facility's compliance with the provisions of this article and the regulations adopted by the board of health hereunder. The director shall send a copy of such report to the facility and shall specify a time within which the facility shall submit a plan for correction of such deficiencies, which plan shall be approved, rejected or modified by the director.

(b) Upon failure by a facility with deficiencies to submit a plan of correction which is approved by the director, or to correct any deficiency within the time specified in an approved plan of correction, the director may assess civil penalties as hereinafter provided or may initiate any other legal or disciplinary action as provided by this article.

Nothing in this section shall be construed to prohibit the director from enforcing a regulation, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the director, the violation of such regulation jeopardizes the health or safety of patients or where the violation of such regulation is the second or subsequent such violation occurring during a period of twelve full months.

Civil penalties assessed shall be classified according to the nature of the violation as defined in subsection (c), section five of this article and regulations promulgated thereunder by the board of health, as follows: For each violation of a Class I standard, a civil penalty of not less than one hundred nor more than one thousand dollars shall be imposed; for each violation of a Class II standard, a civil penalty of not less than fifty nor more than one hundred dollars shall be imposed; for each violation of a Class III standard, a civil penalty of not less than twenty-five nor more than fifty dollars shall be imposed. Each day a violation continues, after the date by which correction was required under an approved plan of correction or, if an approved plan of correction is not submitted, the date on which such plan was due, shall constitute a separate violation.

The director shall, in a civil judicial proceeding, recover any unpaid assessment which has not been contested
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under section twelve of this article, or which has been
affirmed under the provisions of that section and not ap-
pealed, or which has been affirmed on judicial review, as
provided in section thirteen of this article. All money col-
lected by assessments of civil penalties shall be paid into
the general revenue fund.

§16-5C-11. License limitation, suspension, revocation; continu-
ation of disciplinary proceedings.

(a) The director shall by order reclassify a facility, or
reduce the bed quota of the facility, or both, where he
finds upon inspection of the facility that the licensee is not
providing adequate care under the facility's existing
classification or quota, and that reclassification, reduction
in quota or both would place the licensee in a position to
render adequate care. Any notice to a licensee of reclassi-
fication, reduction in quota or both shall include the terms
of such order, the reasons therefor, and the date set for
compliance.

(b) The director may suspend or revoke a license is-
 sued under this article if he finds upon inspection that
there has been a substantial failure to comply with the
provisions of this article or the standards or regulations
promulgated pursuant hereto.

(c) Whenever a license is limited, suspended or re-
voked pursuant to this section, the director shall file a
complaint stating facts constituting a ground or grounds
for such limitation, suspension or revocation. Upon the
filing of the complaint, the director shall notify the li-
censee in writing of the filing of the complaint, enclosing
a copy of the complaint, and shall advise the licensee of
the availability of a hearing pursuant to section twelve
of this article. Such notice and copy of the complaint
shall be served on such licensee by certified mail, return
receipt requested.

(d) The suspension, expiration, forfeiture or cancella-
tion by operation of law or order of the director of a license
issued by the director, or the withdrawal of an applica-
tion for a license after it has been filed with the director,
may not deprive the director of the director's authority
to institute or continue a disciplinary proceeding, or a proceeding for the denial of a license application, against the licensee or applicant upon any ground provided by law or to enter an order denying the license application or suspending or revoking the license or otherwise taking disciplinary action on any such ground.

§16-5C-12. Administrative appeals for facility ratings, civil assessments, license limitation, suspension or revocation.

(a) Any licensee or applicant aggrieved by an order issued pursuant to sections five, six, ten or eleven of this article shall, upon timely written request, have the opportunity for a hearing by the director at which he may contest such order as contrary to law or unwarranted by the facts or both. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern such hearing and the administrative procedures in connection with such hearing.

Following such hearing the director shall make and enter a written order either dismissing the complaint or taking such action as is authorized in this article. The written order of the director shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the licensee and his attorney of record, if any, by certified mail, return receipt requested. If the director suspends a facility's license, it shall also specify the conditions giving rise to such suspension, to be corrected by the licensee during the period of suspension in order to entitle the licensee to reinstatement of his license. If the director revokes a license, the director may stay the effective date of revocation by not more than ninety days upon a showing that such delay is necessary to assure appropriate placement of patients. The order of the director shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section thirteen of this article.
(b) In addition to all other powers granted by this chapter, the director may hold the case under advisement and make a recommendation as to requirements to be met by said licensee in order to avoid either suspension or revocation. In such a case, the director shall enter an order accordingly and so notify the licensee and his attorney of record, if any, by certified mail, return receipt requested. If the licensee meets the requirements of such order, the director shall enter an order showing satisfactory compliance and dismissing the complaint and shall so notify the licensee and his attorney of record, if any, by certified mail, return receipt requested.


Any licensee adversely affected by an order of the director rendered after a hearing held in accordance with the provisions of section twelve of this article is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern with like effect as if the provisions of said section four were set forth in extenso in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§16-SC-14. Legal counsel and services for the director.

(a) Legal counsel and services for the director in all administrative hearings and all proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants, in proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

(b) The governor may appoint counsel for the director, who shall perform such legal services in representing the interests of patients in nursing homes and personal care homes in matters under the jurisdiction of the director as the governor shall direct. It shall be the duty of such counsel to appear for the patients in all cases.
where they are not represented by counsel. The compensation of such counsel shall be fixed by the governor.

§16-5C-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever advertises, announces, establishes or maintains, or is engaged in establishing or maintaining a nursing home or personal care home without a license granted under section six of this article, or who prevents, interferes with or impedes in any way the lawful enforcement of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for the first offense by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period of not more than ninety days, or by both such fine and imprisonment, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than two hundred fifty dollars, with imprisonment in the county jail for a period of not more than ninety days, or both such fine and imprisonment at the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The director may in his discretion bring an action to enforce compliance with this act or any rule, regulation, or order hereunder, whenever it shall appear to the director that any person has engaged in, or is engaging in, an act or practice in violation of this article or any rule, regulation or order hereunder, or whenever it shall appear to the director that any person has aided, abetted, or caused, or is aiding, abetting or causing such an act or practice. Upon application by the director, the circuit court of the county in which the conduct has occurred or is occurring shall have jurisdiction to grant without bond a permanent or temporary injunction, decree or restraining order.

Whenever the director shall have refused to grant or renew a license, or shall have revoked a license required by law to operate or conduct a nursing home or personal care home, or shall have ordered a person to refrain from conduct violating the rules and regulations of the board
of health, and the person deeming himself aggrieved by such refusal or revocation or order shall have appealed the action of the director, the court may, during pendency of such appeal, issue a restraining order or injunction upon proof that the operation of the facility or its failure to comply with the order of the director adversely affects the well-being or safety of the patients of the facility. Should a person who is refused a license or the renewal of a license to operate or conduct a nursing home or personal care home or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules and regulations of the board of health, fail to appeal or should such appeal be decided favorably to the director, then the court shall issue a permanent injunction upon proof that the person is operating or conducting a nursing home or personal care home without a license as required by law, or has continued to violate the rules and regulations of the board of health.

(c) Any facility that deprives a patient of any right or benefit created or established for the well-being of the patient by the terms of any contract, by any state statute or regulation, or by any applicable federal statute or regulation, shall be liable to said patient for injuries suffered as a result of such deprivation. Upon a finding that a patient has been deprived of such a right or benefit, and that the patient has been injured as a result of such deprivation, and unless there is a finding that the facility exercised all care reasonably necessary to prevent and limit the deprivation and injury to the patient, compensatory damages shall be assessed in an amount sufficient to compensate such patient for such injury. In addition, where the deprivation of any such right or benefit is found to have been willful or in reckless disregard of the lawful rights of the patient, punitive damages may be assessed. A patient may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available administrative remedies shall not be required prior to commencement of suit hereunder.
The amount of damages recovered by a patient, in an action brought pursuant to this section, shall be exempt for purposes of determining initial or continuing eligibility for medical assistance under article four, chapter nine of this code, and shall neither be taken into consideration nor required to be applied toward the payment or part payment of the cost of medical care or services available under said article.

Any waiver by a patient or his legal representative of the right to commence an action under this section, whether oral or in writing, shall be null and void as contrary to public policy.

(d) The penalties and remedies provided in this section are cumulative and shall be in addition to all other penalties and remedies provided by law.

§16-5C-16. Availability of reports and records.

The director shall make available for public inspection and at a nominal cost provide copies of all inspection and other reports of facilities filed with or issued by the director. Nothing contained in this section may be construed or deemed to allow the public disclosure of confidential medical, social, personal or financial records of any patient. The board of health shall adopt such regulations as may be necessary to give effect to the provisions of this section and to preserve the confidentiality of medical, social, personal or financial records of patients.

§16-5C-17. Licenses and regulations in force on effective date of article.

All licenses for nursing homes and personal care homes which are in force upon the effective date of this article shall continue in full force and effect during the period for which issued unless sooner revoked as provided in this article.

All regulations in effect on the effective date of this article, which were adopted by the board relating to licensing nursing homes or personal care homes, shall remain in full force and effect until altered, amended, or repealed by the board of health.
ARTICLE 6. HOTELS AND RESTAURANTS.

§16-6-2. Regulations by state board of health; enforcement of orders and laws respecting pure food.

1 The West Virginia board of health shall make such rules and regulations, not inconsistent with law, as in their judgment are necessary to carry out the provisions of this article. The director of the state department of health shall enforce any orders made by the board of health and any laws of the state respecting pure food, so far as they relate to hotels and restaurants.

§16-6-4. Application for inspection of hotel or restaurant; temporary permit; certificate of inspection; fee.

Every person, firm or corporation proposing to operate a hotel or restaurant shall apply to the director of health for an inspection and certificate thereof, and said inspector shall inspect the premises described in such application as soon thereafter as may be practicable but if it be impracticable to do so within ten days after receiving such application, said director may issue to such applicant a temporary permit which shall be valid until a regular inspection is made. Only one certificate or permit shall be issued where a hotel and restaurant are combined and operated in the same building and under the same management. Each certificate or permit shall expire on the thirtieth day of June next following its issuance, and no hotel or restaurant shall be maintained and operated in this state without the certificate of inspection thereof as herein prescribed, which certificate shall be posted in the main public room of such hotel or restaurant, and shall show the date of each inspection and the notations relating thereto by the director of health. No such certificate shall be transferable. The fee for such inspection and certificate or permit shall be, for a hotel, two dollars, and twenty-five cents additional for each bedroom in excess of seven; and for a restaurant, two dollars, and twenty-five cents additional for each five chairs or stools, or spaces where persons are fed, in excess of ten, but no fee shall exceed ten dollars. Such director shall, on the first of each month, pay into the state treasury all fees collected for inspections during the pre-
Every certificate of inspection or permit under this article shall be made and issued in duplicate.

§16-6-5. Form and content of application for inspection; payment of fee.

The applicant for inspection of a hotel or restaurant shall file with the department of health a written application, in form to be prescribed by the director of health, which shall set forth the name and address of the owner of the building or property to be occupied, and of the agent of any such owner; the name and address of the lessee and manager, if any, of the hotel or restaurant; the location of such hotel or restaurant and a full description of the building or property to be occupied and such other matters as may be required by the director of health. The fee for inspection shall be paid to the director of health when the application is filed by him.

§16-6-7. Certificate or permit prerequisite to license.

No license to keep a hotel or restaurant, or certificate for such license, shall hereafter be authorized or issued unless there be first filed, in the county commission to which application therefor is made, a certificate of inspection or permit, granted by the director of health, as provided in this article. Every such license shall bear on its face a reference to such certificate of inspection or permit.

§16-6-8. Annual inspection of hotels and restaurants; powers and duties of director of health.

The director of health shall inspect or cause to be inspected, at least once annually, every hotel and restaurant in the state. For that purpose he, or any person designated by him, shall have the right of entry and access at any reasonable time to inspect kitchens where food is prepared, pantry and storage rooms pertaining thereto, dining rooms, lunch counters, and every place where articles pertaining to the serving of the public are kept or prepared. The said director shall prohibit the use of any article not in keeping with cleanliness and good sanitary conditions. He shall also have the right to enter
any and all parts of a hotel at all reasonable hours to make such inspection, and every person in the management or control thereof shall afford free access to every part of the hotel and render all assistance necessary to enable the director to make full, thorough and complete examination thereof, but the privacy of any guest in any room occupied by him shall not be invaded without his consent.

§16-6-9. Alterations and changes by owner; penalty for refusal or failure to make.

Whenever, upon such inspection, it shall be found that any such hotel or restaurant is not equipped, or operated, in the manner and under the conditions required by the provisions of this article, the director of health shall notify the owner, manager or agent in charge of such hotel or restaurant of such changes or alterations as, in the judgment of the director, may be necessary to effect a complete compliance with said provisions. Such owner, manager or agent shall thereupon make such alterations or changes as may be necessary to put such buildings and premises in a condition, and operate it in a manner, that will fully comply with the requirements of this article: Provided, That due time after receiving such notice shall be allowed for conforming to the requirements thereof, which time shall be specified in the notice. Should the changes or alterations directed by such notice not be made in the time specified therein, the said director shall proceed against the person or persons in default in any court having jurisdiction to enforce the provisions of this article against him or them. Every person, firm or corporation which shall fail or refuse to comply with the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined five dollars for each and every day such failure or refusal may continue. If such failure or refusal shall continue for thirty days after the time specified in the notice from the director for conforming to the requirements thereof, the director may proceed in the circuit court of the county wherein such hotel or restaurant is located, for an order closing it. After such order is
issued, the building or property shall not again be used
as a hotel or restaurant until a certificate or permit
therefor shall have been issued by the director, and any
disobedience of such order may be punished as other
contempts of court. Reasonable notice shall be given of
the application for such order.

§16-6-10. Notices by director of health.

1 All notices given under this article shall be in writing
2 and shall either be delivered in person or sent by regis-
3 tered mail.

§16-6-24. Prosecution.

1 The prosecuting attorney of each county in this state
2 is hereby authorized and required, upon complaint under
3 oath of the director of health, or other person or persons,
4 to prosecute to termination before any court of competent
5 jurisdiction, in the name of the state, a proper action or
6 proceeding against any person or persons violating the
7 provisions of this article.

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-3. Inspection and analysis of foods and drugs; certificate
of result as prima facie evidence in prosecution.

1 Whenever the director of health, the West Virginia
2 board of pharmacy, or any county or municipal health
3 officer has reason to believe that any food or drug manu-
4 factured for sale, offered for sale, or sold within this
5 state, is adulterated, such director or board of pharmacy,
6 by its authorized agents, or such county or municipal
7 health officer shall have the power, and it shall be his
8 duty, to enter, during the usual hours of business, into
9 any creamery, factory, store, salesroom, drugstore, labora-
10 tory or other place where he has reason to believe such
11 food or drug is manufactured, prepared, sold or offered
12 for sale, within the county or municipality, as the same
13 may be, and to open any case, tub, jar, bottle or package
14 containing, or supposed to contain, any such food or
15 drug, and take a specimen thereof for examination and
16 analysis. If less than a whole package is taken, the
specimen shall be sealed and properly prepared for shipment to the person who shall make the analysis hereinafter provided for. No whole or less than a whole package taken and prepared for shipment shall be opened before it has been received by the analyst aforesaid.

It shall be the duty of a qualified chemist of the state health department to test and analyze any such specimen, to record the result of his analysis among the records of the department, and to certify such findings to the director of health, the West Virginia board of pharmacy, or to the county or municipal health officers, as the case may be. If the analysis indicates that the said food or drug is adulterated, a certificate of such result, sworn to by the person making the analysis, who shall also state in his certificate the reasonable cost and expense of such analysis, shall be prima facie evidence of such adulteration in any prosecution under this article.

ARTICLE 14. BARBERS AND BEAUTICIANS.

§16-14-1. Barbers and beauticians; licensure.

(a) There is hereby vested in the state department of health, jurisdiction over barbers and beauticians, except as otherwise specifically provided in this code.

(b) The director of health or a designee shall be responsible for the enforcement of all laws, rules and regulations pertaining to sanitary conditions of barbering and beauty shops.

(c) The director or a designee shall provide administrative support to the board of barbers and beauticians as may be appropriate and reasonable.

(d) The director of health shall appoint not more than six inspectors, who shall be licensed barbers and beauticians of this state, as herein provided, and it shall be their duty to make frequent inspections of all barber and beauty shops, and all schools of barbering and beauty culture in this state, and to report all violations to the director of health. The salaries and allowances for expenses of such inspectors shall be that fixed and allowed by the director of health.
§16-14-3. Powers and duties of board of health; director; inspectors.

1 The board of health shall promulgate rules and regulations pertaining to the sanitary conditions of barbering and beauty shops, licensure, and qualifications of barbers, beauticians and manicurists, and curricula and standards of instruction for schools of barbering and beauty culture.

2 The enforcement of all rules and regulations promulgated by board of health shall be under the supervision and direction of the director.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 1. DEFINITIONS; WORDS AND PHRASES DEFINED.


1 "State hospital" means any hospital, center or institution, or part thereof, established, maintained and operated by the department of health, or by the department of health in conjunction with a political subdivision of the state, to provide inpatient or outpatient care and treatment for the mentally ill, mentally retarded or addicted.


1 "Mental health facility" means any inpatient, residential or outpatient facility for the care and treatment of the mentally ill, mentally retarded or addicted, which is operated, or licensed to operate, by the department of health and shall include state hospitals as defined in section six of this article. The term shall also include veterans administration hospitals.

ARTICLE 2. MENTAL HEALTH FACILITIES.

§27-2-1. State hospitals and other facilities; transfer of control and property from department of mental health to department of health; civil service coverage.

1 The state hospitals heretofore established at Weston, Spencer, Huntington, Barboursville, Lakin, Guthrie, Roney's Point, St. Marys and Lewisburg shall be continued and known respectively as the Weston Hospital, Spencer Hospital, Huntington Hospital, Barboursville Hospital,
Lakin Hospital, Guthrie Center, Roney's Point Center, Colin Anderson Center and the Greenbrier School for Retarded Children. Said state hospitals and centers shall be managed, directed and controlled by the department of health. Any person employed by the department of mental health who on the effective date of this article is a classified civil service employee shall, within the limits contained in section two, article six of chapter twenty-nine of this code, remain in the civil service system as a covered employee. The director of the department of health is hereby authorized to bring said hospitals into structural compliance with appropriate fire and health standards. All references in this code or elsewhere in law to the "West Virginia training school" shall be taken and construed to mean and refer to the "Colin Anderson Center."

The control of the property, records, and financial and other affairs of state mental hospitals and other state mental health facilities is hereby transferred from the department of mental health to the department of health. As the chief executive officer, the director of health shall, in respect to the control and management of such state hospitals and other state mental health facilities, perform the same duties and functions as were heretofore exercised or performed by the department of mental health. The title to all property of such state hospitals and other state facilities is hereby transferred to and vested in the department of health.

Notwithstanding any other provisions of this code to the contrary, whenever in this code there is a reference to the department of mental health, it shall be construed to mean and shall be a reference to the director of the department of health.

§27-2-3. Rules as to patients.

The director of health shall implement rules and regulations as promulgated by the board of health in regard to the admission of patients to mental health facilities, the care, maintenance and treatment of inpatients, residents and outpatients of such facilities and the release, trial visit and discharge of patients therefrom.
§27-2-4. Forms for committing patients; other records.

The director of health shall have authority to prepare, prescribe and have printed forms to be used for commitment to and discharge from the state hospitals.

§27-2-5. Reports by superintendents; records of director of health.

The superintendent of each state hospital shall furnish to the director of health such information as he may require concerning admissions, discharges, deaths and other matters. From this and other information available to the director of health, he shall keep such records as are necessary to enable him to have current information concerning the extent of mental illness in the state. The names of individuals shall not be accessible to anyone except by permission of the director of health or by order of a judge of a court of record.

§27-2-6. Moneys received by state hospitals and facilities.

All moneys and funds belonging to the state which shall come into the possession or under the control of the superintendent or other officer of a state hospital or facility under the control of the department of health shall be paid to the director or his designee twice a month, on or before the first and fifteenth of every month, but not more than twenty days from the time such moneys or funds were received under such rules and regulations as the director shall prescribe. The director or his designee shall pay such moneys and funds into the state treasury immediately in the manner provided in article two, chapter twelve of this code.
ARTICLE 2A. MENTAL HEALTH—MENTAL RETARDATION CENTERS.

§27-2A-1. Comprehensive community mental health-mental retardation centers; establishment, operation and location; access to treatment.

(a) The director of health is authorized and directed to establish, maintain and operate comprehensive community mental health centers and comprehensive mental retardation facilities, at such locations within the state as may be determined by the director in accordance with the state's comprehensive mental health plan and the state's comprehensive mental retardation plan.

Such facilities may be integrated with a general health care or other facility or remain separate as the board of health may by rules and regulations prescribe: Provided, That nothing contained herein shall be construed to allow the department of health to assume the operation of comprehensive regional mental health centers or comprehensive mental retardation facilities which have been heretofore established according to law and which, as of the effective date of this article, are being operated by local nonprofit organizations.

(b) Any new mental health centers and comprehensive mental retardation facilities herein provided for may be operated and controlled by the department of health or operated, maintained and controlled by local nonprofit organizations and licensed according to rules and regulations promulgated by the board of health. All comprehensive regional mental health and mental retardation facilities licensed in the state shall:

(1) Have a written plan for the provision of diagnostic, treatment, supportive and aftercare services, and written policies and procedures for implementing these services;

(2) Have sufficient employees appropriately qualified to provide these services;

(3) Maintain accurate medical and other records for all patients receiving services;
(4) Render outpatient services in the aftercare of any patient discharged from an inpatient hospital, consistent with the needs of the individual. No person who can be treated as an outpatient at a community mental health center shall be admitted involuntarily into a state hospital.

(5) Have a chief administrative officer directly responsible to a legally constituted board of directors of a comprehensive mental health or mental retardation facility operated by a local nonprofit organization, or to the director of the department of health if the comprehensive mental health or mental retardation center or facility is operated by the department of health; and

(6) Have a written plan for the referral of patients for evaluation and treatment for services not provided.

The state's share of costs of operating such facilities may be provided from funds appropriated for this purpose within the budget of the department of health. The director shall administer these funds among all comprehensive mental health and mental retardation facilities as may be required to best provide comprehensive community mental health care and services to the citizens of the state.

After the first day of July, but not later than the first day of August of each year, the chief administrative officer of each comprehensive regional mental health center and mental retardation facility shall submit a report to the director of the department of health and to the legislative auditor containing a listing of:

(1) All funds received by the center or facility;

(2) All funds expended by the center or facility;

(3) All funds obligated by the center or facility;

(4) All services provided by the center or facility;

(5) The number of persons served by the center or facility; and

(6) Other information as the board of health shall by regulation prescribe.
ARTICLE 3. CONFIDENTIAL PATIENT INFORMATION.

§27-3-1. Definition of confidential information; disclosure.

(a) Communications and information obtained in the course of treatment or evaluation of any client or patient shall be deemed to be "confidential information" and shall include the fact that a person is or has been a client or patient, information transmitted by a patient or client or family thereof for purposes relating to diagnosis or treatment, information transmitted by persons participating in the accomplishment of the objectives of diagnosis or treatment, all diagnoses or opinions formed regarding a client's or patient's physical, mental or emotional condition; any advice, instructions, or prescriptions issued in the course of diagnosis or treatment, and any record or characterization of the matters hereinbefore described. It does not include information which does not identify a client or patient, information from which a person acquainted with a client or patient would not recognize such client or patient, and uncoded information from which there is no possible means to identify a client or patient.

(b) Confidential information may be disclosed:

(1) In a proceeding under section four, article five of this chapter to disclose the results of an involuntary examination made pursuant to sections two, three, or four, article five of this chapter;

(2) In a proceeding under article six-a of this chapter to disclose the results of an involuntary examination made pursuant thereto;

(3) Pursuant to an order of any court based upon a finding that said information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

(4) To protect against a clear and substantial danger of imminent injury by a patient or client to himself or another; and

(5) For treatment or internal review purposes, to staff of the mental health facility where the patient is being
 ARTICLE 4. VOLUNTARY HOSPITALIZATION.

§27-4-1. Authority to receive voluntary patients.

1 The chief medical officer of a mental health facility, subject to the availability of suitable accommodations and to the rules and regulations promulgated by the board of health, shall admit for diagnosis, care and treatment any individual:

(a) Over eighteen years of age who is mentally ill, mentally retarded or addicted or who has manifested symptoms of mental illness, mental retardation or addiction and who makes application for hospitalization; or

(b) Under eighteen years of age who is mentally ill, mentally retarded or addicted or who has manifested symptoms of mental illness, mental retardation or addiction and there is application for hospitalization therefor in his behalf (1) by the parents of such person, or (2) if only one parent is living, then by such parent, or (3) if the parents are living separate and apart, by the parent who has the custody of such person, or (4) if there is a guardian who has custody of such person, then by such guardian. Such admission shall be conditioned upon the consent of the prospective patient if he is twelve years of age or over.

(c) No person under eighteen years of age shall be admitted under this section to any state hospital unless said person has first been reviewed and evaluated by a local mental health facility and recommended for admission.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.


1 When any person, health officer, caseworker or law-enforcement officer has reason to believe that an individual is mentally ill, mentally retarded or addicted and because of his mental illness, mental retardation or addiction is likely to cause serious harm to himself or
others if allowed to remain at liberty while awaiting an
examination and certification by a physician, or physicians,
as the case may be, pursuant to section two of this article,
such person, health officer, caseworker or law-enforce-
ment officer may make application under oath to the
 circuit court or mental hygiene commissioner of the county
of which the individual is a resident or to the circuit
court or mental hygiene commissioner of the county
where he may be found, giving such information and
stating such facts therein as may be required, upon the
form provided by the department of health and the
circuit court or mental hygiene commissioner shall there-
upon enter an order for the individual named in such ap-
plication to be taken into custody and detained, but not
incarcerated in a jail or penal institution, for the purpose
of an examination by at least one physician to take place
within fourteen hours after the individual is taken into
custody. Not later than fourteen hours after the indi-
vidual is taken into custody, the individual shall be re-
leased from custody, unless proceedings have been insti-
tuted pursuant to section two of this article.


If an individual ordered to be hospitalized pursuant to
section four of this article is eligible for hospital care
or treatment by any agency of the United States, then,
upon receipt of a certificate from such agency showing
that facilities are available and that the individual is
eligible for care or treatment therein, the circuit court
or mental hygiene commissioner may order him to be
placed in the custody of such agency for hospitalization.
When any such individual is admitted pursuant to the
order of such circuit court or mental hygiene commissioner
to any hospital or institution established, maintained or
operated by any agency of the United States within or
without the state, he shall be subject to the rules and
regulations of such agency. The chief officer of any
hospital or institution operated by such agency and in
which the individual is so hospitalized shall, with respect
to such individual, be vested with the same powers as
the chief medical officers of mental health facilities or
the director of health within this state with respect to
detention, custody, transfer, conditional release or dis-
charge of patients. Jurisdiction is retained in the ap-
propriate circuit court or mental hygiene commissioner
of this state at any time to inquire into the mental
condition of an individual so hospitalized, and to deter-
mine the necessity for continuance of his hospitalization,
and every order of hospitalization issued pursuant to this
section is so conditioned.

(a) No person shall be deprived of any civil right
solely by reason of his receipt of services for mental ill-
ness, mental retardation or addiction, nor shall the receipt
of such services modify or vary any civil right of such
person, including, but not limited to, civil service status
and appointment, the right to register for and to vote at
elections, the right to acquire and to dispose of property,
the right to execute instruments or rights relating to the
granting, forfeiture or denial of a license, permit, privilege
or benefit pursuant to any law, but a person who has
been adjudged incompetent pursuant to article eleven of
this chapter and who has not been restored to legal com-
petency may be deprived of such rights. Involuntary
commitment pursuant to this article shall not of itself
relieve the patient of legal capacity.
(b) Each patient of a mental health facility receiving
services therefrom shall receive care and treatment that
is suited to his needs and administered in a skillful, safe
and humane manner with full respect for his dignity and
personal integrity.
(c) Every patient shall have the following rights re-
gardless of adjudication of incompetency:
(1) Treatment by trained personnel;
(2) Careful and periodic psychiatric reevaluation no
less frequently than once every three months;
(3) Periodic physical examination by a physician no
less frequently than once every six months; and
(4) Treatment based on appropriate examination and
diagnosis by a staff member operating within the scope of
his professional license.
(d) The chief medical officer shall cause to be developed within the clinical record of each patient a written treatment plan based on initial medical and psychiatric examination not later than seven days after he is admitted for treatment. The treatment plan shall be updated periodically, consistent with reevaluation of the patient. Failure to accord the patient the requisite periodic examinations or treatment plan and reevaluations shall entitle the patient to release.

(e) A clinical record shall be maintained at a mental health facility for each patient treated by the facility. The record shall contain information on all matters relating to the admission, legal status, care and treatment of the patient and shall include all pertinent documents relating to the patient. Specifically, the record shall contain results of periodic examinations, individualized treatment programs, evaluations and reevaluations, orders for treatment, orders for application for mechanical restraint and accident reports, all signed by the personnel involved.

A patient’s clinical record shall be confidential and shall not be released by the department of health or its facilities or employees to any person or agency outside of the department except as follows:

(1) Pursuant to an order of a court of record.

(2) To the attorney of the patient, whether or not in connection with pending judicial proceedings.

(3) With the written consent of the patient or of someone authorized to act on the patient’s behalf and of the director to:

(i) Physicians and providers of health, social or welfare services involved in caring for or rehabilitating the patient, such information to be kept confidential and used solely for the benefit of the patient.

(ii) Agencies requiring information necessary to make payments to or on behalf of the patient pursuant to contract or in accordance with law. Only such information
shall be released to third-party payers as is required to certify that covered services have been provided.

(iii) Other persons who have obtained such consent.

No patient record, or part thereof, obtained by any agency or individual shall be released in whole or in part to any other individual or agency, unless authorized by the written consent of the patient or his legal representative.

(f) Every patient, upon his admission to a hospital and at any other reasonable time, shall be given a copy of the rights afforded by this section.

(g) The board of health shall promulgate rules and regulations to protect the personal rights of patients not inconsistent with this section.

ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-1. Determination of competency of defendant to stand trial and of criminal responsibility; examination; commitment.

(a) Whenever a court of record believes that a defendant in a felony case or a defendant in a misdemeanor case in which an indictment has been returned may be incompetent to stand trial or is not criminally responsible by reason of mental illness, mental retardation or addiction, it may at any stage of the proceedings after the return of an indictment or the issuance of a warrant against the defendant, order an examination of such defendant to be conducted by one or more psychiatrists, or a psychiatrist and a psychologist.

(b) After the examination described in subsection (a) of this section, the court of record may order that the person be admitted to a mental health facility designated by the director of health for a period not to exceed twenty days for observation and further examination if the court has reason to believe that such further observation and examination are necessary in order to determine whether mental illness, mental retardation or addiction have so affected a person that he is not
competent to stand trial or not criminally responsible
for the crime or crimes with which he has been charged.

If, before the expiration of such twenty-day period, the
examining physician believes that observation for more
than twenty days is necessary, he shall make a written
request to the court of record for an extension of the
twenty-day period specifying the reason or reasons for
which such further observation is necessary. Upon the
receipt of such request, the court of record may by
order extend said observation period, but in no event
shall the period exceed forty days from the date of
the initial court order of observation.

(c) At the conclusion of each examination or observa-
tion period provided for herein, the examining psychia-
trists, or psychiatrist and psychologist, shall forthwith
give to the court of record a written signed report of
their findings on the issue of competence to stand trial
or criminal responsibility. Such report shall contain
an opinion, supported by clinical findings, as to whether
the defendant is in need of care and treatment.

(d) Within five days after the receipt of the report on
the issue of competency to stand trial, or if no observa-
tion pursuant to subsection (b) of this section has been
ordered, within five days after the report on said issue
following an examination under subsection (a) of this
section, the court of record shall make a finding on the
issue of whether the defendant is competent for trial.
A finding of incompetence for trial shall require proof
by a preponderance of the evidence. Notice of such
findings shall be sent to the prosecuting attorney, the
defendant and his counsel. If the court of record orders
or if the defendant or his counsel on his behalf within
a reasonable time requests a hearing on such findings, a
hearing in accordance with section two of this article
shall be held by the court of record within ten days
of the date such finding or such request has been made.

(e) After a conviction and prior to sentencing, the
court of record may order a psychiatric or other
clinical examination and, after such examination, may
further order a period of observation in a mental health
facility designated by the director of health. Such a period of observation or examination shall not exceed forty days.

If after hearing conducted pursuant to the procedures prescribed in subsection (c), section four, article five of this chapter, the court of record makes the findings specified in section four, article five of this chapter or finds that the convicted individual would benefit from treatment in a mental health facility, the court may enter an order of commitment in accord with section four, article five for treatment in a mental health facility designated by the director of health.

(f) In like manner, in accordance with procedures set forth in subsections (a), (b) and (c) of this section, a juvenile court may order a psychiatric examination or a period of observation for an alleged delinquent or neglected juvenile in a mental health facility to aid the court in its disposition. The period of observation shall not exceed forty days.

ARTICLE 7. RELEASE, DISCHARGE AND READMISSION OF PATIENTS; ESCAPEES.

§27-7-5. Return of escapees; veterans.

If any person confined in a mental health facility, pursuant to article five or six-a of this chapter, escapes therefrom, the chief medical officer thereof may issue a notice, giving the name and description of the person escaping and requesting the patient's apprehension and return to the mental health facility. The chief medical officer may issue an order directed to the sheriff of the county in which the patient is a resident, commanding him to take into custody and transport such escaped person back to the mental health facility, which order the sheriff may execute in any part of the state. If such person goes to another state, the chief medical officer may notify the director of health and the director may take such action as he may deem proper for the return of such person to the mental health facility.

If any veteran duly committed to a veterans' hospital or other veterans' institution, either within or without the state, escapes therefrom and any person makes com-
plaint, under oath, to the clerk of the circuit court of the county from which such veteran was so committed upon the order of the circuit court, giving such information and stating such facts therein as may be required, or if any veteran duly committed to a veterans' hospital or other veterans' institution, either within or without the state, escapes therefrom and the chief medical officer of such hospital or institution issues a notice to the clerk of the circuit court of the county from which such veteran was so committed upon the order of the circuit court, giving the name and description of such veteran and requesting his apprehension and return to such hospital or institution, the circuit court upon receipt of such complaint or of such notice, may issue an order directed to the sheriff of the county from which the veteran was so committed commanding him to take into custody and transport such veteran back to such hospital or institution, which order the sheriff may execute in any part of the state.

The sheriff or other person taking any person into custody under this section shall be paid such compensation as is provided for like services in other cases.

A person who is taken into custody under this section may be detained, but not incarcerated in a jail or penal institution, for a period not in excess of fourteen hours, pending return to the appropriate mental health facility.

ARTICLE 8. MAINTENANCE OF MENTALLY ILL OR MENTALLY RETARDED PATIENTS.

§27-8-1. Maintenance of patients; patient assets; reimbursement procedures.

The cost of the maintenance of patients admitted to the state hospitals shall be paid out of funds appropriated for the department, but the state hospitals, through the director of health, shall have a right of reimbursement, for all or any part of such maintenance from each patient or from the committee or guardian of the estate of the patient, or the estate of the patient if deceased, or if that be insufficient, then from the patient's husband or wife, or if the patient be an emancipated child, the father and mother, or any of them. If such a relative so
liable does not reside in this state and has no estate or debts due him within the state by means of which the liability can be enforced against him, the other relatives shall be liable as provided by this section. In exercising this right of reimbursement, the director of health may, whenever it is deemed just and expedient to do so, exonerate any person chargeable with such maintenance from the payment thereof in whole or in part, if the director finds that such person is unable to pay or that payment would work an undue hardship on him or on those dependent upon him.

There shall be no discrimination on the part of the state hospitals as to food, care, protection, treatment or rehabilitation, between patients who pay for their maintenance and those who are unable to do so.

It shall be the responsibility of the director of health as provided by rules promulgated by the board of health to determine the ability of the patient or of his relative to pay for his maintenance: Provided, That any such determination shall be in writing and shall be considered an "order" under the provisions of chapter twenty-nine-a of this code: Provided, however, That any such determination shall be subject to review upon application of any such patient, relative or personal representative in the manner provided in chapter twenty-nine-a of this code.

§27-8-2a. Local mental health programs—Approval; credits to amount due to state under section two, article eight, chapter twenty-seven.

Any county commission which elects to establish a local mental health program and has a completed comprehensive program ready for implementation, which is approved in advance by the state director of health, shall be allowed to deduct from its annual debt for the maintenance of resident patients in state mental institutions, as set forth in section two of this article, an amount equal to the sum annually budgeted by said county commission for the establishment and maintenance of said approved local mental health program.
Any county commission which desires to establish a local mental health program may make application for approval of such program to the director of health on forms to be provided by the director and in accordance with procedures and standards which have been established by the director.

On or before the fifteenth day of January of each year the director of the department of health shall certify to the auditor a statement of the amount budgeted by each county commission for the establishment, operation and maintenance of a local mental health program. The auditor shall deduct such certified sums from the amount determined to be due the state of West Virginia, as provided in section two: Provided, That on or before the fifth day of July of each year, each county commission which has established an approved local mental health program shall certify to the director a detailed statement of its expenditures made for such local programs on a form to be provided by the director and the director shall have authority to delete or refuse to approve any expenditures made by any county commission which were not made in accordance with the approved comprehensive plan for that county: Provided, however, That any sums budgeted by a county commission and credited by the auditor as hereinabove provided which are not actually expended by the county commission for the establishment of a local mental health program by the end of the fiscal year for which it was budgeted shall be charged as a debt against the county due the state for the maintenance of its patients. The director, after determining the amount of such debt, if any, shall immediately certify the same to the auditor, who shall add said sum to the amount determined to be due the state, as provided in section two of this article, for the current year.

§27-8-3. Care of patients in boarding homes.

The director of health may, upon the recommendation of the superintendent of the state hospital, provide care in a suitable boarding home for any patient in a state hospital, if the condition of the patient is such that his and the public welfare will not be prejudiced thereby. A
A patient in a boarding home shall be deemed to be a patient of the state hospital from which he was removed and shall, on the approval of the superintendent, be placed under the supervision of a psychiatric social worker employed by the state hospital. All patients in such homes shall be visited at least once every three months and if upon the visitation they are found to be abused, neglected or improperly cared for, they shall be returned to the state hospital or placed in a better boarding home. The cost of the boarding home care shall be paid by the state hospital from which he was removed.

ARTICLE 9. LICENSING OF HOSPITALS.

§27-9-1. License from director of health; regulations.

No hospital, center or institution, or part thereof, to provide inpatient, outpatient or other service designed to contribute to the care and treatment of the mentally ill or mentally retarded, or prevention of such disorders, shall be established, maintained or operated by any political subdivision or by any person, persons, association or corporation unless a license therefor shall be first obtained from the director of health. The application for such license shall be accompanied by a plan of the premises to be occupied, and such other data and facts as the director may require. He may make such terms and regulations in regard to the conduct of such hospital, center or institution, or part thereof, as he may think proper and necessary. He, or any person authorized by him, shall have authority to investigate and inspect such hospital, center or institution, or part thereof; and the director of health may revoke the license of any such hospital, center or institution, or part thereof, for good cause after reasonable notice to the superintendent or other person in charge thereof.

ARTICLE 14. INTERSTATE COMPACT ON MENTAL HEALTH.

§27-14-2. Compact administrator.

The director of health shall be the compact administrator and, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the
The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

ARTICLE 15. INTERSTATE COMPACT ON THE MENTALLY DISORDERED OFFENDER.

§27-15-2. Who may enter into contracts under compact.

The governor, the state commissioner of public institutions, the state board of education, the state board of vocational education, the division of vocational rehabilitation, the state commission on higher education, the West Virginia board of regents, the state department of welfare, the department of public safety, the state department of health and the West Virginia board of probation and parole may negotiate and enter into contracts on behalf of this state pursuant to Article III of the compact and may perform such contracts: Provided, that no funds, personnel, facilities, equipment, supplies or materials shall be pledged for, committed or used on account of any such contract, unless legally available therefor.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-4a. Lay members of health profession boards.

Notwithstanding any provisions of this code to the contrary, the governor shall appoint at least one lay person to represent the interests of the public on every health professional licensing board, enumerated in section fifteen of this article. If the total number of members on any of such boards after the appointment of one such lay person is an even number, one additional lay person shall be appointed. Said lay members shall serve in addition to any other members otherwise provided for by law or regulation. Such
lay members shall be of the age of eighteen years or over, of good moral character, and competent to represent and safeguard the interests of the public. The lay member is empowered to participate in and vote on all transactions and business of the board, committee or group to which he is appointed.

Any person whose addition to a board as a lay member under the provisions of this section results in the addition of an odd number of lay additions to the board, shall serve for a term ending in an odd-numbered year on the date in that year on which terms of the professional members expire; of such members first appointed, each shall serve for a term ending on such date in the year one thousand nine hundred seventy-nine, and the successor to each such person shall serve for a term equal in length to the terms of the other professional members of the board. Any person whose addition to a board as a lay member under the provisions of this section results in the addition of an even number of lay additions to the board, shall serve for a term ending in an even-numbered year on the date in that year on which terms of the professional members expire; of such members first appointed, each shall serve for a term ending on such date in the year one thousand nine hundred seventy-eight, and the successor to each such person shall serve for a term equal in length to the terms of the other professional members of the board.

§30-1-15. Office of executive secretary of the health profession licensing boards; appointment of executive secretary; duties.

The office of the executive secretary of the health profession licensing boards is hereby created. The health profession licensing boards shall include those boards provided for in articles two-a, four, five, six, seven, seven-a, eight, ten, fourteen, sixteen, seventeen, twenty, twenty-one, twenty-five and twenty-six of chapter thirty of this code. Notwithstanding any other provision of this code to the contrary, the office space, personnel, records and like business affairs of the health profession licensing boards shall be within the office of the execu-
The secretaries of each of the health profession licensing boards shall coordinate purchasing, record keeping, personnel, use of reporters and like matters under the executive secretary in order to achieve the most efficient and economical fulfillment of their functions. The executive secretary shall be appointed by the director of health and shall report to the director. The executive secretary shall keep the fiscal records and accounts of each of the boards. The executive secretary shall keep the director informed as to the needs of each of the boards. The executive secretary shall coordinate the activities and efforts of the boards with the activities of the health resources advisory council and shall see that the needs for health manpower perceived by the boards are communicated to the health resources advisory council. The executive secretary shall keep any statistics and information on health professions, collected by or for the boards and shall make such statistics and information available to the health resources advisory council to aid it in carrying out its responsibilities.

ARTICLE 3B. MOBILE INTENSIVE CARE PARAMEDICS.

§30-3B-2. Definition of mobile intensive care paramedics.

1 As used in this article, “mobile intensive care paramedics” means personnel who have been specially trained in emergency care in a training program certified and supervised by the West Virginia state department of health and who are certified by the West Virginia medical licensing board as qualified to render the services enumerated in this article.

ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.

§30-6-1. Board of embalmers and funeral directors created; membership.

1 There is hereby created a state board to be known and designated as the “West Virginia board of embalmers and funeral directors,” which shall consist of seven members, who shall be appointed by the governor, by and with the advice and consent of the Senate, six of whom
§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.

Members of said board, before entering upon their duties, shall take and subscribe to the oath of office prescribed by the secretary of state.

Said board shall select from its own members a president, a secretary and a treasurer. Each member shall be reimbursed for his traveling expenses, incident to this attendance upon the business of the board, and in addition thereto, the sum of fifty dollars per day for each day actually spent by such member upon the business of the board. The secretary shall receive an annual salary of not to exceed one thousand dollars, the amount and payment of which shall be fixed by said board, and in addition thereto shall receive traveling and other incidental expenses incurred in the performance of his duties.

The board may employ an executive secretary and such clerks, inspectors and assistants as it shall deem necessary to discharge the duties imposed by the provisions of this article and duly promulgated rules and regulations of the board and to effect its purposes, and the board shall determine the duties and fix the compensation of such executive secretary, clerks, inspectors and assistants, subject to the general laws of the state.

Any inspector employed by the board shall have either a West Virginia embalmer's license or a West Virginia funeral director's license. Any inspection shall be conducted in such a manner so as not to interfere with the conduct of business within the funeral establishment, and the inspector shall be absolutely prohibited from examining any books and records of the funeral establishment.
All such expenses, per diem and compensation shall be paid out of the receipts of the board, but such allowances shall at no time exceed the receipts of the board.

The treasurer of the board shall give bond to the state of West Virginia in such sum as the board shall direct with two or more sureties or a reliable surety company approved by the board, and such bond shall be conditioned for the faithful discharge of the duties of such officer. Such bond, with approval of the board endorsed thereon, shall be deposited with the treasurer of the state of West Virginia.

The board shall hold not less than two meetings during each calendar year, one during the month of April and one during the month of November for the purpose of examining applicants for licenses, such meetings to be held at such time and place as the board shall determine. The time and place of such meeting shall be announced by publication in three daily newspapers of general circulation in different locations in the state, and publication to be once a week for two consecutive weeks immediately preceding each such meeting.

The board may hold such other meetings as it may deem necessary and may transact any business at such meetings. Three or more members shall comprise a quorum authorizing the board to transact such business as is prescribed under this article.

The board shall have the power and it shall be its duty to make and enforce all necessary rules and regulations, not inconsistent with this article, for the examination and licensing of funeral directors, and the general practice of funeral directing; the examination and licensing of embalmers and the general practice of embalming and the registration and regulation of apprentices; the licensing and general operation of funeral establishments, except that no rules and regulations issued by the board shall require that an applicant for a license to operate a funeral establishment shall be required to have either an embalmer’s or funeral director’s license.

The board shall publish in its rules and regulations
the subjects to be covered in the said examinations and
the standards to be attained thereon. Changes in the
rules and regulations shall be published and shall be
given due publicity at least ninety days before becoming
effective.

The board shall conduct annually a school of instruc-
tions to apprise funeral directors and embalmers of the
most recent scientific knowledge and developments affect-
ing their profession. Qualified lecturers and demonstra-
tors may be employed by the board for this purpose. The
board shall give notice of the time and place at which
such school will be held for all licensed funeral directors
and embalmers, and it shall be the duty of every licensed
funeral director and embalmer to attend at least one such
school in every three years.

The board, any of its members or any duly authorized
employee of the board shall have the authority to enter
at all reasonable hours for the purpose of inspecting the
premises in which the business or profession of funeral
directing is conducted or practiced or where embalming
is practiced.

ARTICLE 17. SANITARIANS.

§30-17-2. Board of sanitarians.
1 There is hereby established a state board for the ex-
amination and registration of professional sanitarians, to
be known as the "West Virginia board of sanitarians."
2 The board shall consist of four professional sanitarians,
to be appointed by the governor, by and with the advice
and consent of the Senate, at least one of whom shall be
employed in the field of industrial sanitation. Each pro-
fessional member shall have been engaged in active
practice as a professional sanitarian in this state for at
least five years prior to his appointment, and, except in
the case of the original members of the board, shall have
been registered in this state as a professional sanitarian
as provided in this article. On or before the first day
of July, one thousand nine hundred fifty-seven, the
governor shall name the four original appointive members
for terms of one, two, three and four years, respectively,
beginning on that date. Thereafter, each appointment shall be for a term of four years, except that an appointment to fill a vacancy shall be for the unexpired term.

All expenses of the board shall be paid solely from registration fees and renewal fees collected as provided in this article.

ARTICLE 25. NURSING HOME ADMINISTRATOR.

§30-25-1. Definitions.

As used in this article, unless a different meaning appears from the context:

1. The term “nursing home” means a nursing home as that term is defined in subdivision (a), section two, article five-c of chapter sixteen.

2. The term “nursing home administrator” means an individual responsible for planning, organizing, directing and controlling a nursing home, or who in fact performs such functions, whether or not such individual has an ownership interest in the nursing home and whether or not such functions are shared with one or more other persons.

3. The term “board” shall mean the West Virginia nursing home administrators licensing board created by this article.

4. The term “person” or “applicant” shall mean an individual.

§30-25-2. West Virginia nursing home administrators licensing board; creation; appointment, qualification, term, etc., of members; vacancies; meetings, quorum; chairman; salaries and expenses.

There is hereby created a state board to be known and designated as the “West Virginia nursing home administrators licensing board” which shall consist of seven members, all of whom except a lay member, as provided for in section four-a, article one, chapter sixteen of this code, shall be appointed by the governor, by and with the advice and consent of the Senate. One of the members shall be a member of the medical profession whose prac-
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...
(1) Be of good moral character;

(2) Possess such qualifications and meet such reasonable standards as the board may prescribe pursuant to subsection (a), section seven of this article;

(3) Pass the examination prescribed by the board in the subject of nursing home administration; and

(4) Have sufficient knowledge and soundness of judgment to be able to adequately discharge the functions of a nursing home administrator.

(b) Any person who holds a license or certificate as a nursing home administrator issued by any other state, the requirements for which license or certificate are found by the board to be at least as great as those provided in this article may be granted a license without examination if he meets all of the other requirements for licensing in this state.

(c) Any applicant for any such license shall submit an application therefor at such time, in such manner, on such forms and containing such information as the board may, from time to time, by reasonable rules and regulations prescribe and pay to the board a license fee of one hundred dollars, which fee shall be returned to the applicant if he is denied a license.

§30-25-5. Issuance of license; renewal of license; renewal fee; display of license.

Whenever the board finds that an applicant meets all of the requirements of this article for a license as a nursing home administrator, it shall forthwith issue to him such license; otherwise the board shall deny the same. The license shall be valid for a period ending on June thirty next ensuing and may be renewed without examination upon application for renewal on a form prescribed by the board and payment to the board of a renewal fee of fifty dollars: Provided, That the board may deny an application for renewal for any reason which would justify the denial of the original application for a license. The board shall prescribe the form of licenses and each such license shall be conspicuously dis-

If a licensed nursing home administrator dies or is unable to continue as such for an unexpected cause, the owner, governing body or other appropriate authority in charge of the nursing home involved may designate an acting administrator to whom the board may immediately issue an emergency permit if it finds such appointment will not endanger the safety of the occupants of such nursing home. Such emergency permit shall be valid for a period determined by the board not to exceed six months and shall not be renewed. The fee for an emergency permit shall be fifty dollars.


(a) The board shall:

(1) Examine applicants and determine their eligibility for a license or emergency permit as a nursing home administrator;

(2) Prepare, conduct and grade an apt and proper examination of applicants for a license and determine the satisfactory passing score thereon;

(3) Promulgate reasonable rules and regulations implementing the provisions of this article and the powers and duties conferred upon the board hereby, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(4) Issue, renew, deny, suspend or revoke licenses and emergency permits in accordance with the provisions of this article and, in accordance with the administrative procedures hereinafter provided, may review, affirm, reverse, vacate or modify its order with respect to any such denial, suspension or revocation;

(5) Develop, impose and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators
will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(6) Employ, direct, discharge and define the duties of personnel necessary to effectuate the provisions of this article;

(7) Keep accurate and complete records of its proceedings, certify the same as may be appropriate, and prepare, from time to time, a list showing the names and addresses of all licensees;

(8) Approve courses of study or training in the field of nursing home administration which sufficiently meet education and training requirements for nursing home administrators established by this article;

(9) Conduct a course of study or training of the type referred to in subdivision (8) of this subsection if such courses are not otherwise reasonably available to residents of this state; and

(10) Take such other action as may be reasonably necessary or appropriate to effectuate the provisions of this article.

(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him with the treasurer of the state and credited to an account to be known as the “West Virginia nursing home administrators licensing board fund.” Reimbursement of all reasonable and necessary costs and expenses actually incurred by members, and by the board in the administration of this article shall be paid from such fund.

§30-25-8. Suspension or revocation of license or emergency permit.

(a) The board may at any time upon its own motion and shall upon the verified written complaint of any person, conduct an investigation to determine whether there are any grounds for the suspension or revocation of a license or emergency permit issued under the provisions of this article.
The board shall suspend or revoke any license or emergency permit when it finds the holder thereof has:

1. Obtained a license or emergency permit by means of fraud or deceit; or
2. Failed or refused to comply with the provisions of this article, article five-c, chapter sixteen, or any reasonable rule and regulation promulgated by the board or any order or final decision of the board.

The board shall also suspend or revoke any license or emergency permit if it finds the existence of any ground which would justify the denial of an application for such license or permit if application were then being made for it.


(a) Whenever the board shall deny an application for any original or renewal license or deny an application for an emergency permit or shall suspend or revoke any license or emergency permit, it shall make and enter an order to that effect and serve a copy thereof on the applicant or licensee, as the case may be, by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license or emergency permit suspended or revoked thereby shall be returned to the board by the holder within twenty days after receipt of said order.

(b) Any person adversely affected by any such order shall be entitled to a hearing thereon (as to all issues not excluded from the definition of a “contested case” set forth in article one, chapter twenty-nine-a of this code) if, within twenty days after receipt of a copy thereof, he files with the board a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license or emergency permit or denying an application for a renewal license. The board may require the person demanding such hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall
be assessed against him and may be collected by an action at law or other proper remedy.

(c) Upon receipt of a written demand for such hearing, the board shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the board upon its own motion or for good cause shown by the person demanding the hearing.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

(e) Any such hearing shall be conducted by a quorum of the board. For the purpose of conducting any such hearing any member of the board shall have the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a.

(f) At any such hearing the person who demanded the same may represent himself or be represented by an attorney-at-law admitted to practice before any circuit court of this state. Upon request by the board, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation.

(g) After any such hearing and consideration of all of the testimony, evidence and record in the case, the board shall render its decision in writing. The written decision of the board shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing and his attorney of record, if any.

(h) The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof.
in accordance with the provisions of section ten of this article.

§30-25-10. Judicial review; appeal to supreme court of appeals; legal representation for board.

Any person adversely affected by a decision of the board rendered after a hearing held in accordance with the provisions of section nine of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.


If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

ARTICLE 26. HEARING-AID DEALERS AND FITTERS.

§30-26-1. Definitions.

Unless the context clearly requires otherwise, as used in this article:

(1) "Advertise," and any of its variants, means and includes the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, tag, window display, store sign, radio, television announcement or any other means or methods now or hereinafter employed
to bring to the attention of the public the practice of fitting or dealing in hearing aids.

(2) "Board" means the West Virginia board of hearing-aid dealers.

(3) "Department" means the state department of health and when appropriate shall include the state director of health.

(4) "Hearing aid" means any wearable device or instrument or any combination thereof, designed for, represented as or offered for sale for the purpose of aiding, improving or compensating for defective or impaired human hearing and shall include earmolds, parts, attachments or other accessories thereto, but excluding batteries and cords.

(5) "Hearing-aid dealer" and "hearing-aid fitter" means any person engaged in the practice of dealing in or fitting of hearing aids.

(6) "License" means any license issued under the provisions of this article and shall include a temporary license. "Licensee" means any person holding any such license.

(7) "Person" means and includes any individual, partnership, trust, association, corporation or other like organization, or any combination thereof.

(8) "Practice of dealing in or fitting of hearing aids" means and includes:

(a) The measurement or other testing of human hearing by means of an audiometer, or by any other means;

(b) The selection, adaptation, fitting or sale of hearing aids by a person for the use of another person; or

(c) The making of impressions for earmolds.

(9) "Sell" or "sale" or any variant thereof, means any transfer of title or of the right of use by lease, bailment or any other contract, but shall not include transactions between distributors, dealers or licensees where the item transferred is intended for sale.

(10) "Trainee" means any person training to become a licensed hearing-aid dealer or fitter.
§30-26-2. Engaging in practice of hearing-aid dealer or trainee without license prohibited; exceptions.

(a) Except as provided in subsections (b), (c) and (d) hereof no person shall, on or after the effective date of this article, engage in the practice of dealing in or fitting of hearing aids, either as a hearing-aid dealer, fitter or as a trainee, nor shall any person advertise or assume any such practice, without first being licensed or otherwise qualified under the provisions of this article.

(b) If the applicant is a partnership, trust, association, corporation or other like organization, the application, in addition to such other information as the board may require, shall be accompanied by an application for a license for each person, whether owner or employee, of such applicant who serves in the capacity of a hearing-aid dealer or fitter, or shall contain a statement that such applications for all such persons are submitted separately. No partnership, trust, association, corporation or other like organization shall permit any unlicensed person to sell hearing aids or to engage in the practice of dealing in or fitting of hearing aids.

(c) This article is not intended to prevent any person who is not licensed under this article from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids, provided such person or organization employing such person does not sell hearing aids or accessories thereto, except in the case of earmolds to be used only for the purpose of audiologic evaluation.

(d) Any person who is licensed to practice medicine in this state or any person holding a degree in audiology may sell hearing aids or accessories thereto without obtaining a license under this article.

§30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.

There is hereby created the West Virginia board of hearing-aid dealers, which shall be composed of five
members to be appointed by the governor, by and with
the advice and consent of the Senate. The members of
the board shall be residents of this state. One member
shall be a person licensed to practice medicine in this
state and one member shall hold a degree in audiology
from an accredited college or university. The remaining
three members shall be persons having no less than
five years’ experience as hearing-aid dealers or fitters and
shall hold a valid license under the provisions of this
article, except that the hearing-aid dealers or fitters to
be first appointed to the board shall obtain a license under
the provisions of this article within six months following
their appointment to the board.

The term of office of each member of the board shall
be four years, excepting that as to the members first ap-
pointed to the board, one shall be appointed for two
years; two shall be appointed for three years; and two
shall be appointed for four years. A board member shall
serve until his successor has been duly appointed and
qualified and any vacancy in the office of a member shall
be filled by appointment for the unexpired term of such
member. Any member of the board shall be eligible for
reappointment.

The board shall, annually at its meeting first succeeding
July one, elect from its own members a chairman and
vice-chairman.

Each member of the board shall receive for each day
actually engaged in the duties of his office, a per diem
salary of fifty dollars and shall be reimbursed for all
reasonable and necessary expenses actually incurred in
the performance of his duties as a member of such board.
All fees and other moneys collected by the board, pur-
suant to the provisions of this article, shall be kept in a
separate fund and shall be expended solely for the
purposes of this article. The compensation for the mem-
ers of the board and all expenses incurred under this
article shall be paid from this special fund and no such
compensation or expenses shall be paid from the general
revenue fund of this state. All disbursements of funds
necessary to carry out the provisions of this article shall be so disbursed only upon the authority of the board.

The board is hereby empowered, with the assistance of the department to generally supervise, regulate and control the practice of dealing in or fitting of hearing aids in this state, and in so doing, shall administer qualifying examinations in accordance with the provisions of this article to test the knowledge and proficiency of all prospective licensees or trainees.

The board may purchase and maintain or rent audiometric equipment and other facilities necessary to carry out the examination of applicants as provided in this article and may purchase such other equipment and supplies and employ such persons as it deems appropriate to carry out the provisions of this article.

The board shall promulgate reasonable rules and regulations in accordance with and subject to the provisions of chapter twenty-nine-a of this code:

(a) For the proper performance of its duties;

(b) To define and prescribe the ethical practice of dealing in or fitting of hearing aids for the safety, protection and welfare of the public;

(c) To govern the time, place and manner of conducting the examinations required by this article and the standard, scope and subject of such examinations, which examinations shall, as a minimum, conform with the standards, scope and subjects set forth in section six of this article and manner and form in which applications for such examinations shall be filed;

(d) To establish procedures for determining whether persons holding similar valid licenses from other states or jurisdictions shall be required to take and successfully pass the appropriate qualifying examination as a condition for such licensing in this state.

§30-26-4. Powers and duties of the state department of health.

The administrative work of the board shall be performed by and in the state department of health. The
department shall keep full and complete records of all
of the proceedings of the board and of its accounts,
which said records and accounts shall be open to public
inspection at all reasonable times. The department is
hereby authorized to assist in the supervision and ad-
ministration of the qualifying examinations authorized
and required by this article, to maintain for the board
a register or record of persons who apply for a license
or a temporary trainee permit as well as a register or
record of the name and last-known business address of
all persons to whom a license or trainee permit is issued
pursuant to this article.

At the direction and request of the board the depart-
ment shall conduct periodic inspections of the establish-
ment and facilities of persons who are licensed to engage
in the practice of dealing in or fitting of hearing aids and
shall report its findings and the results of such inspec-
tions to the board.

When requested by the board, the department may
assist the board generally in carrying out any of the
cost incidental to such assistance, powers, functions and
duties given to the department pursuant to this article
shall be borne from any of the appropriations made to
the department, but shall be borne by the board and to
this extent the department shall be entitled to reimburse-
ment from the funds of the board.

§30-26-5. Application for licenses; qualifications of applicants;
fees; duties of the board with respect thereto.

Each person desiring to obtain a license from the board
to engage in the practice of dealing in or fitting of hearing
aids shall make application to the board. The application
shall be made in such manner and form as prescribed
by the board and shall be accompanied by a fee of fifty
dollars. The application shall state under oath that the
applicant:

(1) Intends to maintain a permanent office or place
of business in this state or that the applicant has at the
time of application a permanent office or place of busi-
ness in another state within a reasonable commuting

distance from this state. The board shall determine and
prescribe by regulation the term "reasonable distance"
as used herein;

(2) Is a person of good moral character and that he
has never been convicted of nor is presently under in-
dictment for a crime involving moral turpitude;

(3) Is eighteen years of age or older;

(4) Has an education equivalent to a four-year course
in an accredited high school; and

(5) Is free of chronic infectious or contagious dis-

eases.

Any person who fails to meet any of the standards
set forth in the next preceding paragraph shall not be
eligible or qualified to take the examination nor shall
any such person be eligible or qualified to engage in the
practice of dealing in or fitting of hearing aids.

The board, after first determining that the applicant
is qualified and eligible in every respect to take the
examination, shall notify the applicant that he has ful-
filled all of the qualifications and eligibility require-
ments as required by this section and shall advise him
of the date, time and place for him to appear to be ex-
amined as required by the provisions of this article and
the regulations promulgated by the board pursuant to this
article.

The board, with the aid and assistance of the depart-
ment, shall give at least one annual examination of the
type required by this article and may give such addi-
tional examinations, at such times and places, as the board
and the department may deem proper, giving consider-
ation to the number of applications.

§30-26-6. Standards, scope and subject of examination.

The board by rules and regulations shall determine and
set minimum standards to be met in the qualifying ex-
amination provided for in this article, which examina-
tion shall be designed to demonstrate the applicant's
technical competency and other qualifications by:
(1) A test of knowledge in the following areas as they pertain to the fitting and sale of hearing aids:
   (a) Basic physics of sound;
   (b) The anatomy and physiology of the ear; and
   (c) The function of hearing aids.

(2) Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:
   (a) Pure tone audiometry, including air conduction testing;
   (b) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing; and
   (c) Masking when indicated and effective masking.

(3) Evidence of:
   (a) Ability to counsel the person or family who will receive the hearing aid relative to the care and use of the instrument;
   (b) Knowledge regarding the medical and rehabilitative facilities for hearing-handicapped children and adults in the area being served;
   (c) Knowledge and understanding of the grounds for revocation, suspension, or probation of a license as outlined in this article; and
   (d) Knowledge and understanding of criminal offenses as outlined in this article.

§30-26-7. Results of examination disclosed to applicant; issuance of license; fees.

(a) Any person who has taken the examination shall be notified by the board within thirty days following such examination as to whether he has satisfactorily passed the examination. If such person has failed to pass the examination, he shall be notified of the reasons for such failure and the particular portions of the examination which he failed to pass. Such person shall also be advised of his right to take the examination in the future.
If such applicant has satisfactorily passed the examination, he shall be advised of that fact by the board and, upon payment of twenty dollars, the board shall register the applicant as a licensee and shall issue a license to such applicant. Such license shall remain in effect for a period of one year from the date of its issuance.

(b) Within six months following the effective date of this article, any applicant for a license who has been engaged in the practice of dealing in or fitting of hearing aids in this state for a period of three years immediately prior to such effective date, shall be so registered and issued a license without being required to undergo or take the examination required by this article: Provided, That such person meets all other requirements of this article and the rules and regulations promulgated pursuant thereto. All of the fees which such prospective licensee would be otherwise required to pay shall be paid by such prospective licensee in the same manner and to the same extent as if such prospective licensee had not so engaged in such practice in this state for such three-year period.

(c) The issuance of a license by the board must have the concurrence of a majority of its members.

§30-26-8. Posting of license required; duplicate copies.

Each person who holds a hearing-aid dealer's or fitter's license and engages in the practice of dealing in the fitting of hearing aids shall display such license in a conspicuous place in his office or place of business at all times. Each person who maintains more than one office or place of business shall post a duplicate copy of the license at each location. The board shall issue duplicate copies of a license upon receipt of a properly completed application and payment of one dollar for each copy requested.

§30-26-9. Renewal of license.

A person who is engaged in the practice of dealing in or fitting of hearing aids shall annually pay to the board a fee of forty dollars for a renewal of his license. A thirty-day period shall be allowed after expiration of a
license during which any such license may be renewed on payment of a fee of forty-five dollars to the board. After the expiration of such thirty-day period, the board may renew such license upon the payment of fifty dollars to the board. No person who applies for renewal, whose license was suspended for failure to renew, shall be required to submit to any examination as a condition of renewal if application is made within two years following the date such license was so suspended.

§30-26-10. Notification of change of address of licensee required.

Every licensee under the provisions of this article shall notify the board in writing of the address of each place where he is, or intends to be, engaged in the practice of dealing in or fitting of hearing aids. The board shall cause to be kept a record of each place of business of every such licensee. Any notice required to be given by the board or the department to any such licensee shall be given by mailing the same to him at the address shown upon such records.

§30-26-11. Reciprocity.

Whenever the board determines that another state or jurisdiction has requirements for the licensing of persons to engage in the practice of dealing in or fitting of hearing aids, which requirements meet the minimum requirements and standards set forth in this article and the rules and regulations promulgated pursuant to this article, the board may, in the manner prescribed by its rules and regulations, issue a license without the examination required by this article, to any person holding a license in such other state or jurisdiction, upon application, providing such prospective licensee meets all of the requirements set forth in this article and the rules and regulations of the board with respect thereto. All of the fees which such prospective licensee would be otherwise required to pay, shall be paid by such prospective licensee in the same manner and to the same extent as if such prospective licensee were not qualified to engage in such other state or jurisdiction.
§30-26-12. Temporary trainee permits.

A person who meets all of the qualifications and requirements set forth in subdivision (2), section five of this article may obtain a temporary trainee permit upon application to the board. All such applications for a temporary trainee permit shall be made in the manner and form prescribed in the rules and regulations of the board.

Upon receiving an application for a temporary trainee permit as prescribed in this section, accompanied by a fee of twenty-five dollars, the board shall issue such permit which shall entitle the applicant trainee to engage in the practice of dealing in or fitting of hearing aids for a period of one year under the supervision and control of a licensee, such licensee to be responsible for the supervision, training and control of such trainee.

If a person holding a temporary trainee permit under this section has not successfully passed the licensing examination within one year from the date of issuance of such permit, the permit may be renewed or reissued under such conditions as the board may require in its rules and regulations for an additional one-year period upon the payment of a fee of fifty dollars. No such temporary trainee permit shall be reissued, renewed or extended more than once.

§30-26-13. Refusal to issue, suspension or revocation of license or trainee permit; false and deceptive advertising.

(a) The board may refuse to issue or renew, or may suspend or revoke any license or trainee permit for any one, or any combination of the following causes: Violation of a rule or regulation governing the ethical practice of dealing in or fitting of hearing aids promulgated by the board under the authority granted by this article; conviction of a felony, as shown by a certified copy of the record of the court wherein such conviction was had after such conviction has become final; the obtaining of or the attempt to obtain a license, money or any other thing of value, by fraudulent misrepresentation; malpractice; continued practice of dealing in or fitting of
hearing aids by a person knowingly having a chronic infectious or contagious disease; habitual drunkenness or addiction to the use of a controlled substance as defined in chapter sixty-a of this code; advertising, practicing or attempting to practice under a name other than one's own; advertising by means of or selling by the use of knowingly false or deceptive statements.

(b) False and deceptive advertisement shall constitute unethical practice and the board, by rules and regulations may regulate and prescribe acts considered by it to be false and deceptive advertisement.

The rules and regulations promulgated pursuant to this subsection shall include prohibitions against (1) advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised, (2) representing that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using the words "doctor," "clinic" or similar words, abbreviations or symbols which tend to connote the medical profession when such use is not accurate, and (3) advertising a manufacturer's product or using a manufacturer's name or trademark which implies a relationship with the manufacturer that does not exist or using the words "audiologist," "state licensed clinic," "state registered," "state certified," or "state approved" or any other term, abbreviation or symbol when it would falsely give the impression that service is being provided by persons holding a degree in audiology or trained in clinical audiology, or that licensee's service has been recommended by the state when such is not the case.

(c) The refusal to issue or renew a license or trainee permit or the suspension or revocation of a license or trainee permit by the board must have the concurrence of a majority of the members of the board.
§30-26-14. Matters to be ascertained by licensee prior to the sale or fitting of hearing aids.

(a) Every licensee engaged in the practice of dealing in or fitting of hearing aids shall, prior to the sale or the fitting of a hearing aid intended to be worn or used by any person, first ascertain whether such person has within the next preceding six months been examined for the defective or impaired hearing condition sought to be relieved by an otolaryngologist or other duly licensed physician. If such person has been so examined, the licensee shall, prior to the sale or fitting of such hearing aid, determine the recommendations and consult with such otolaryngologist or physician. If such person has not been so examined, the licensee shall not proceed to the sale or fitting of a hearing aid until after such person has been so examined.

(b) Prior to the sale of a hearing aid, every licensee shall be required to advise in writing, in the manner and form prescribed by the board, the person to whom he intends to sell or fit with such hearing aid that such person's best interest would be served by consulting an otolaryngologist or other physician specializing in diseases of the ear, or any other physician duly licensed to practice medicine in this state, if any of the following conditions are found upon examination of such person:

(1) Visible congenital or traumatic deformity of the ear;
(2) History of active ear discharge within the previous ninety days;
(3) History of a sudden or rapidly progressive hearing loss within the previous ninety days;
(4) Acute or chronic dizziness;
(5) Unilateral hearing loss of sudden or recent onset within the previous ninety days; or
(6) Significant air-bone gap.

(c) A copy of any writing or form required to be given to a prospective purchaser or other person by the terms of this section shall be retained in the records of
§30-26-15. Receipt required to be furnished to a person supplied with hearing aid; information required.

Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain his signature and show his business address and the number of his license, together with specifications as to the make and model of the hearing aid furnished, and shall contain the full terms of the sale. If a hearing aid which has been previously sold at retail is sold, the receipt shall be clearly marked as "used" or "reconditioned" whichever is applicable, with terms of guarantee, if any.

Such receipt shall be in the manner and form as prescribed by the board in its rules and regulations. Such rules and regulations shall prescribe the type and size of print to be used in such receipt and the receipt shall set forth such additional information as the board may prescribe. A copy of such receipt shall be retained in the records of the licensee for a period of seven years following the issuance of each writing.

§30-26-16. Hearing procedures; judicial review.

Any person, including a person who brings a complaint against a licensee or trainee before the board, adversely affected by any decision, ruling or order of the board shall be entitled to a hearing before the board. The hearing may be held by the board or a majority thereof either in the county wherein the licensee, trainee, prospective licensee or prospective trainee resides or may be held in the county wherein the person adversely affected resides or may be so held in some other county as the board may direct. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to any hearing held by the board and the administrative procedures in connection with and following such hearing shall apply with like effect as if the provisions of said article five were set forth in extenso in this section.

For the purpose of conducting such hearing the board...
shall have the power and authority to issue subpoenas
and subpoenas duces tecum in accordance with the pro-
visions of section one, article five, chapter twenty-nine-a.
Any such hearing shall be held within thirty days after
the date upon which a request therefor was made. All
requests for hearings shall be made in writing to the
board by certified or registered mail, return receipt re-
quested. The board may postpone or continue any hear-
ing on its own motion or upon application for good cause
shown.

Any person, including a person who brings a complaint
against a licensee or trainee before the board, who may
be adversely affected by any ruling or order made or
entered by the board following a hearing, shall be entitled
to judicial review of such order, in accordance with the
provisions of section four, article five, chapter twenty-
nine-a of this code and the provisions of said section four
shall apply to and govern such appeal with like effect
as if the provisions of said section four were set forth in
extenso in this section and the provisions of article six
of said chapter twenty-nine-a shall apply with respect
to appeals to the supreme court of appeals in the same
manner.

§30-26-17. Prohibited acts and practices.

Any of the following acts are hereby prohibited and
shall be punishable under section eighteen of this article
and shall also constitute unethical practice and no person
shall:

(1) Sell, barter or offer to sell or barter a license
issued pursuant to this article.

(2) Purchase or procure by barter any such license
with intent to use it as evidence of the holder's qualifica-
tions to engage in the practice of dealing in or fitting of
hearing aids.

(3) Alter materially a license issued pursuant to this
article.

(4) Use or attempt to use as a valid license any license
which has been purchased, fraudulently obtained, counterfeited or materially altered.

(5) Willfully make any false statement in an application for license or for renewal thereof.

(6) Advertise for the mail-order sale of hearing aids in any advertising medium or sell hearing aids by mail to any person other than distributors, dealers or those excluded from the provisions of this article.

§30-26-18. Offenses and penalties.

Any person who shall engage in the practice of dealing in or fitting of hearing aids without qualifying to do so under the provisions of this article or any person who commits any of the acts prohibited under the provisions of section seventeen of this article shall be guilty of a misdemeanor, and, upon conviction for the first offense, shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail for not more than six months, or be subject to both such fine and imprisonment, and for the second or any subsequent offense, shall be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned in the county jail for not less than thirty days nor more than one year or be subject to both such fine and imprisonment. Each sale made in violation of this article shall constitute a separate offense. Magistrates shall have concurrent jurisdiction with circuit courts for the enforcement of this article.


Notwithstanding the existence of any other remedy, the board may, in the manner provided by law, maintain an action for an injunction against any person to restrain or prevent the practice of dealing in or fitting of hearing aids when such person repeatedly refuses to obtain a license therefor and continues such practice without first obtaining a license therefor in the manner hereinbefore provided, and an action for an injunction may be maintained for any continued and repeated violation of any of the provisions of this article and the rules and regulations promulgated pursuant thereto.
§30-26-20. Construction and severability.

1. The provisions of this article and the regulations promulgated thereunder shall be liberally construed so as to carry into effect its purposes and to protect the health, safety and welfare of the public.

2. If any provision of this article or the application thereof to any person or circumstance shall be held invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

ARTICLE 27. BOARD OF BARBERS AND BEAUTICIANS.

§30-27-1. Board of barbers and beauticians; appointment, qualifications and terms of board members; compensation and expenses of members; powers and duties of board.

1. (a) The state committee of barbers and beauticians, heretofore established, is continued as the board of barbers and beauticians, and all members of the committee, serving for a term which has not expired on the effective date of this article, shall continue to serve the terms for which they were appointed. The board shall consist of four professional members to be appointed by the governor, by and with the advice and consent of the Senate, and one lay member to be appointed in accordance with the provisions of section four-a, article one of this chapter. Of the four professional members, one shall be an employing barber, one an employee barber, one an employing beautician and one an employee beautician. Each professional member of the board shall have been engaged within this state in the practice of barbering or beauty culture, as the case may be, for a period of eight years immediately prior to his appointment, and no more than two of the four professional members may belong to the same political party.

2. (b) On or before the thirtieth day of June of each year the governor shall appoint one member of the board to serve for a term of four years, to begin on the first day of July. No professional member of the board may serve for more than two complete terms.
(c) The board shall designate one of its members as chairperson.

(d) Each member of the board shall receive as compensation a per diem of twenty-five dollars for each day of attendance at board sessions, but such compensation for each member shall not exceed the sum of five hundred dollars in any calendar year. Each member shall be reimbursed for actual and necessary expenses incurred in the performance of duty, upon presentation of an itemized sworn statement thereof.

(e) The board shall examine all applicants for licensure and shall issue licenses to those entitled thereto and collect examination and licensure fees, in accordance with regulations promulgated by the board of health pursuant to article fourteen, chapter sixteen of this code.

(f) It shall be unlawful for any person to practice or offer to practice barbering, beauty culture or manicuring in this state without first obtaining a license for such purposes from the board of barbers and beauticians.

§30-27-2. Revocation of license for violation.

For violation of any regulation promulgated by the board of health, the board of barbers and beauticians may cancel and revoke the license issued such violator, and may refuse to renew or reissue the same.

§30-27-3. Qualifications of applicants; fees; examinations; licensure.

An applicant for licensure as a barber, beautician or manicurist shall present satisfactory evidence that he or she is at least eighteen years of age, of good moral character and temperate habits, has completed at least the eighth grade of school, or the equivalent thereof, and has been graduated from a school of barbering or beauty culture approved by the state board of barbers and beauticians, or in the case of a manicurist has successfully completed an approved course in manicuring in such a school, and shall transmit with his application an examination fee of twenty dollars. The examination shall be of such character as to determine the qualifications and
fitness of the applicant to practice barbering, beauty
culture or manicuring as defined by this article, and shall
cover such subjects germane to the inquiry as the board
may deem proper. If an applicant for licensure as a
barber or beautician successfully passes such examina-
tion and is otherwise duly qualified, as required by this
section, the board shall license the applicant as a duly
qualified junior barber or beautician, for which license,
or renewal thereof, the fee shall be five dollars. Upon
proof that the holder of such a license has served as a
junior barber or beautician for a period of not less than
twelve months from the original date of such license,
accompanied by a certificate of health from a duly licensed
physician, the board shall issue to the applicant a license
authorizing the applicant to practice barbering or beauty
culture in this state. Any person who is able to furnish
satisfactory proof that he has practiced barbering or
beauty culture for at least twelve months prior to exam-
ination and any applicant for license as a manicurist,
may be licensed as a duly qualified barber, beautician or
manicurist immediately after he has passed the exam-
ination. The board shall charge ten dollars for the issu-
ance or renewal of a license.

Any person who meets the requirements of this sec-
tion as to age, character and health, who is a graduate
of a recognized school of barbering or beauty culture in
another state, or has successfully completed an approved
course in manicuring in such a school, and who holds a
current license as a registered barber, beautician or mani-
curist in another state, may file with the board an appli-
cation for licensure without examination, together with
a fee of twenty dollars. If in the opinion of the board
such applicant has had a prescribed course of instruction
in barbering, beauty culture or manicuring equivalent
to that required in this state at the time such course was
completed, or is otherwise properly qualified, the board
may without examination issue to such applicant a license
as a duly qualified barber, beautician or manicurist.
§30-27-4. **Renewal of license; fee; penalty for late renewal; withdrawal from active practice.**

1 Every licensed barber, beautician or manicurist who desires to continue in active practice or service shall, annually upon or before the first day of January, renew his license and pay an annual renewal fee of ten dollars. For any renewal which is more than thirty days late, a penalty of two dollars shall be added to the regular renewal fee. Every licensed barber, beautician or manicurist who does not desire to continue in active practice, shall notify the board in writing, and shall during such period, be listed by the board as being inactive, and shall not be required to renew his license until such time as he shall again become active, and during such inactive period he or she shall not be liable for any renewal fees.

§30-27-5. **Student's permit; qualifications; fee.**

1 All students, before entering upon their studies in approved schools of barbering or beauty culture in this state, shall apply for and receive a student's permit from the board. The application shall be upon forms provided by the board and shall include a health certificate from a duly licensed physician. An applicant for licensure as a student shall present satisfactory evidence that he or she is at least seventeen years of age, of good moral character and temperate habits, and has completed at least the eighth grade of school or the equivalent thereof. Upon receipt of a fee of five dollars, the board shall license each qualified applicant as a student barber, beautician or manicurist and shall issue the appropriate student's permit, which shall be good during the prescribed period of study for such student. A student may perform any or all acts constituting barbering, beauty culture or manicuring in a school of barbering or beauty culture under the immediate supervision of a registered instructor, but not otherwise.

§30-27-6. **Display of license.**

1 Every person practicing barbering, beauty culture or manicuring and every student and junior barber and beautician shall display his license or renewal thereof in
Every barber or beauty shop in this state shall be operated under the supervision and management of a barber or beautician who is licensed as such in this state. Each barbershop in this state may employ at least one junior barber therein. However, in shops regularly employing more than three licensed barbers only one such junior barber may be employed for every three such licensed barbers, but in no event can more than three such junior barbers be employed in any one barbershop, and each beauty shop shall have the right to employ one junior beautician for each licensed beautician therein. No business or trade other than that of barbering shall be conducted in a barbershop and no business or trade other than beauty culture shall be conducted in a beauty shop, except the display or sale, or both, commodities or other articles used in connection with barbering or beauty culture, and no such barber or beauty shop shall be operated in a store, dwelling house, or other building or space used for any purpose other than barbering or beauty culture unless such barber or beauty shop is separated by stationary partitions extended from floor to ceiling: Provided, That nothing in this article shall be construed as prohibiting a barbershop from carrying on the business of shoe shining or manicuring or both shoe shining and manicuring. A suitable sign shall be displayed at the main entrance of all barber and beauty shops, plainly indicating the business conducted therein: Provided, however, That no sign shall be displayed outside any barber or beauty shop or inside the same, so as to be clearly visible from the outside and for the ostensible purpose of attracting trade, which in any way advertises the prices to be charged in such barber or beauty shop for services to be therein performed.
§30-27-8. License to own or operate schools of barbering or beauty culture; application for license; qualifications; inspection; license fee; rates and regulations; suspension, etc., of license; qualifications and registration of instructors; registration fees; administrative procedures.

No person, firm or corporation, whether public or private, and whether organized for profit or not, shall own or operate a school of barbering or beauty culture in this state without first obtaining a license so to do from the board. The application for such license shall be made in writing on forms prescribed and furnished by the board and shall be signed and verified by the applicant. The applicant shall, in addition to such other information as may be reasonably required by the board, furnish evidence that (a) the applicant is professionally competent and financially responsible, (b) adequate physical facilities will be available for the school, and (c) persons teaching or instructing therein are registered by the board as duly qualified instructors. If an applicant desires to own or operate more than one school of barbering or beauty culture, a separate application shall be made and a separate license shall be issued for each.

All applicants for a license to own or operate a school of barbering or beauty culture shall permit an inspection of such proposed school by the inspectors appointed pursuant to subsection (d) of section one of article fourteen of chapter sixteen of this code to determine whether it is properly fitted and equipped for instruction in barbering or beauty culture. The board of health shall promulgate reasonable rules and regulations to implement and make effective the powers, duties and responsibilities vested in such board in connection with the licensing of schools of barbering and beauty culture. If the applicant has met all of the standards and qualifications prescribed herein by the board of health and has complied with the rules and regulations pertaining to the issuance of the license applied for, the board shall issue such license to the applicant. Thereafter, the board may suspend, revoke or refuse to renew the license of a school whenever it fails to meet
the minimum standards and qualifications required for
the issuance of an original license. The director of health
or his designees shall administer and enforce such actions
of the board.

The license fee for each school of barbering and for
each school of beauty culture shall be twenty-five dollars
annually, to be paid in such manner as the board may
prescribe, on or before January first of each year. The
license shall be permanently displayed in the school, and
a suitable sign shall be kept on the front of the school
which shall plainly indicate that a school of barbering or
beauty culture is operated therein.

The board of health shall make reasonable rules and
regulations prescribing the standards and requirements
to be met by applicants for registration as duly qualified
instructors in schools of barbering or beauty culture.
Such rules and regulations may provide for the issuance
of certificates for instructors, including temporary certifi-
cates, and shall prescribe minimum qualifications as
to age, education and training for applicants for such
certificates. Each registered instructor in barbering and
beauty culture shall pay an initial registration fee of five
dollars, and shall renew his certificate annually and pay
a renewal fee of five dollars on or before the first day of
January of each year. An expired certificate may be
reinstated only upon the payment of all lapsed renewal
fees, unless such instructor shall have notified the board
that he or she desires to be placed on an inactive status
during which time he or she shall not be liable for any
renewal fees. The applicant for reinstatement shall also
be required to meet the qualifications for registration in
effect at the time application for reinstatement is made.

Recognizing that all of the provisions of chapter
twenty-nine-a of this code are fully applicable to any and
all administrative procedures, and the right of judicial
review, in connection with the provisions of this article,
but also recognizing that the question has been raised as
to whether rules and regulations adopted under the pro-
visions of this section must be promulgated in accordance
with the provisions of said chapter twenty-nine-a, it is hereby expressly provided that all such rules and regulations shall be promulgated in compliance with the provisions of said chapter twenty-nine-a.


1 No person shall practice barbering, beauty culture or manicuring, or serve as a student or junior barber or beautician in this state while having an infectious, contagious or communicable disease. No person shall be licensed as a barber, beautician, manicurist or student until he or she shall have obtained a certificate of health from a licensed physician under article three of this chapter certifying such person to be free of all infectious, contagious and communicable diseases. Such certificate shall be filed with the state board of barbers and beauticians within ten days after the examination of the person is made by the physician and a photograph of the applicant must accompany the application with such certificate. The certificate shall be in such form as the board may prescribe. The board shall be empowered to compel any registered barber, beautician, manicurist, student, or junior barber or beautician, to submit to a physical examination and file a certificate of health at any reasonable time.

§30-27-10. Requirements to operate shops and schools; sanitary rules and regulations.

1 It shall be unlawful for any person, firm or corporation to own or operate a beauty shop or barbershop, or a school of beauty culture or barbering, or to act as a barber, beautician or manicurist, unless:

5 (a) Such beauty shop, barbershop, or school of beauty culture or barbering shall before opening its place of business to the public, have been approved by the board as having met all the requirements and qualifications for such places of business as are required by this article and for this purpose. It shall be the duty of the owner or operator of each such beauty shop, barbershop, or school of beauty culture or barbering to notify the board, in writing, at least ten days before the proposed opening
date of such shop or school, whereupon it shall become
the duty of the board, through the inspectors herein
provided for, to inspect such shop or school. Upon given
notice of the opening of any such shop or school, the
owner or operator thereof shall pay to the board an
inspection fee of twenty-five dollars. In the event the
shop or school fails to meet the requirements of this
article, and is not approved, the inspection fee shall be
returned to the person paying same. Any shop or school
meeting the prescribed requirements shall be granted
a license permitting it to do business as such. If, how-
ever, after the lapse of ten days after the giving of such
notice of opening to the board, an inspection is not made
or such certificate of opening has not been granted or
refused, the owner or operator of such shop or school
may open provisionally subject to later inspection to all
other provisions, rules and regulations provided for in
this article;

(b) All such shops and schools, and bathrooms, toilets
and adjoining rooms used in connection therewith, are
kept clean, sanitary, well-lighted and ventilated at all
times. The use of chunk alum, powder puffs and styptic
pencils in any such shop is prohibited;

(c) Each barber, beautician, manicurist, instructor,
junior barber and beautician, and student, shall thor-
oughly cleanse his or her hands with soap and water im-
mediately before serving any patron;

(d) Each patron is served with clean, freshly laun-
dered linen which is kept in a closed cabinet used for
that purpose alone. All linens, immediately after being
used, shall be placed in a receptacle used for that purpose
alone.

The board of health shall prescribe such other rules
and regulations in regard to sanitation and cleanliness
in such shops and schools as it may deem proper and
necessary. The director of health or inspectors design-
nated pursuant to subsection (d) of section one of article
fourteen of chapter sixteen of the code shall have the
power to enforce compliance therewith. Such rules and
§30-27-11. Grounds for cancellation of, or refusal to issue or renew, license.

1 The board may refuse to issue a license of resignation to any applicant, or may refuse to renew, or may suspend or revoke the same for any holder thereof, for any of the following causes: (1) Conviction of the commission of a felony, as shown by a certified copy of the record of the court of conviction; (2) obtaining or attempting to obtain a license to practice barbering or beauty culture in this state by false pretenses, fraudulent misrepresentation, or bribery by the use of money or other consideration; (3) gross incompetency; (4) the continued practice of barbering or beauty culture by a person knowing himself or herself to be afflicted with a contagious or infectious disease; (5) the use knowingly of any false or deceptive statements in advertising; (6) habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs; (7) conviction for the illegal sale of any intoxicating beverage, as shown by a certified copy of the record of the court of conviction; (8) violation of any of the sanitary rules and regulations prescribed by the board of health.

§30-27-12. Violation to constitute misdemeanor; penalty; concurrent jurisdiction; injunction.

1 Any violation of the provisions of this article or of the rules and regulations of the board of health when promulgated by it as set out in section three, article fourteen, chapter sixteen of this code, shall constitute a misdemeanor, punishable, upon conviction, by a fine of not less than ten dollars, nor more than one hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment. Magistrates shall have concurrent jurisdiction with circuit courts for the enforcement of the provisions of this article and the rules and regulations of the board of health.

12 Notwithstanding the existence or pursuit of any other remedy, the director of health or board of barbers and
beauticians may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association or corporation to restrain or prevent the establishment, conduct, management, or operation of any barbershop, beauty shop, school of barbering or beauty culture, or related agency, when such person, partnership, association, or corporation, repeatedly refuses to obtain registration or license therefor and continues the practice or teaching of barbering or beauty culture without first obtaining registration or a license therefor in the manner hereinbefore provided.

§30-27-13. Chapter thirty, article one, applicable to board. Unless otherwise specifically provided herein, the provisions of article one, chapter thirty of the code of West Virginia shall apply to the state board of barbers and beauticians.

§30-27-14. Collections and expenditures; disposition of funds. All money collected under the provisions of this article shall be deposited in the state treasury as provided by law, and shall be credited to the board of barbers and beauticians in a special fund to be known as the "barbers and beauticians special fund." All money in such fund shall be expended only for the administration and enforcement of the provisions of this article, except that at the end of each fiscal year there shall be transferred from this fund to the general revenue fund of the state ten percent of all money collected by the board during the year.

§30-27-15. Validity of certificates of registration and rules issued by board of barbers and beauticians. Any certificate of registration issued prior to the effective date of this article by the committee of barbers and beauticians shall be valid as a license under the provisions of this article, except as modified by the board of barbers and beauticians; and all rules and regulations issued by the committee of barbers and beauticians prior to the effective date of this article shall remain in effect unless modified in accordance with the provisions of article fourteen, chapter sixteen of this code.
§30-27-16. Separability; conflicting acts repealed.
1 The various provisions of this article shall be considered
2 as separable and several, and should any of the provisions
3 or parts thereof be construed or held to be unconstitutional, or for any other reason invalid the remaining
4 provisions of this article shall not be thereby affected. All
5 acts and parts of acts in conflict with the provisions of
6 this article, or any part thereof, are hereby repealed. Any
7 ordinances of any municipalities in this state now in effect
8 and having for their purposes the regulation of the prac-
9 tice of barbering or beauty culture, which are in conflict
10 with the provisions of this article, or any part thereof,
11 shall be null and void and of no effect on and after the
do date this article goes into effect.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12. POST-MORTEM EXAMINATIONS.

§61-12-3. Office of medical examinations established; appointment, duties, etc., of chief medical examiner; assistants and employees.
1 The office of medical examinations is hereby estab-
2 lished, to be operated under the control and supervision
3 of the director of the department of health. Such office
4 shall be directed by a chief medical examiner, who shall
5 be appointed by the director. The chief medical exam-
6 iner may employ assistants, pathologists, toxicologists,
7 laboratory technicians, regional medical examiners and
8 other staff members as the director may specify.
9 All persons employed by the chief medical examiner
10 shall be responsible to him and may be discharged by
11 him for any reasonable cause. The chief medical ex-
12 aminer shall specify the qualifications required for each
13 position in the office of medical examinations, and each
14 position shall be subject to such rules and regulations
15 as the chief medical examiner may prescribe.
16 The chief medical examiner shall be a physician li-
17 censed to practice medicine in West Virginia, who is a
18 diplomate or eligible for certification by the American
19 board of pathology or the American osteopathic board
20 of pathology. The salary of the chief medical examiner
and the salaries of all assistants and employees of the
office of medical examinations shall be fixed by the Legis-
lature from funds appropriated for that purpose. The
chief medical examiner shall take such oath and provide
such bond as may be required by law. Within the dis-
cretion of the department, the chief medical examiner
and his assistants shall lecture or instruct in the
field of legal medicine and other related subjects to the
West Virginia University or Marshall University School
of Medicine, the department of public safety, other law-
enforcement agencies, and other interested groups.

§61-12-4. Central office and laboratory.
1 The office of medical examinations shall establish and
2 maintain a central office and a laboratory having ade-
3 quate professional and technical personnel and medical
4 and scientific facilities for the performance of the duties
5 imposed by this article. The central laboratory and office
6 shall be maintained in connection with the facilities of
7 the West Virginia University school of medicine, and
8 the director is hereby empowered to contract for the use
9 of such facilities.

§61-12-5. Certain salaries and expenses paid by state.
1 The salaries of the chief medical examiner, and the
technical and clerical personnel in the central office and
laboratory, the expenses of maintaining the central office
and laboratory, the cost of pathological, bacteriological
and toxicological services rendered by others than the
chief medical examiner and his assistants, and of the
personnel of the central office and laboratory, shall be
paid by the state out of funds appropriated for that pur-
pose.

§61-12-6. Chief medical examiner may obtain additional ser-
ices and facilities.
1 Subject to the approval of the director, the chief med-
ical examiner may, in order to provide facilities for in-
vestigating the cause of death as authorized in this article,
employ and pay qualified pathologists and toxicologists
to make autopsies and such pathological and chemical
studies and investigations as he may deem necessary,
and he may arrange for the use of existing laboratory facilities for such purposes whenever these are available. The director may prepare a list of approved pathologists available for this work in the several counties or sections of the state, and in such case the chief medical examiner may call upon such pathologists where they are available for services in case of need.

§61-12-7. Medical examiners.

The chief medical examiner shall appoint for each county in the state a medical examiner to serve for a term of three years. A medical examiner shall turn over and deliver to his successor in office all of the papers, reports and records of his said office. Medical examiners shall be qualified physicians, licensed to practice medicine in West Virginia.

Any vacancy in the office of medical examiner shall be filled by the chief medical examiner. One person may be appointed to serve as medical examiner for more than one county, and the medical examiner need not be a resident of the county which he serves. When it becomes necessary, because of illness, absence, need, or personal interest, the chief medical examiner shall have the power to appoint any other qualified physician in the county in which a death is to be investigated, to act as assistant medical examiner for such county.

§61-12-14. County coroners; appointment, oath, etc.; duties; fees.

It shall be the duty of the county commission of every county, from time to time, to appoint a coroner for such county, who shall hold his office during the pleasure of such commission and shall take the oath of office prescribed for other county officers. The county coroners shall thereafter perform such duties as may be assigned to them under the rules and regulations promulgated by the board of health, and shall be paid such fees or amounts for such services as may be fixed by the chief medical examiner.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1977.

J. B. Millar, Jr.
Clerk of the Senate

W. J. Blankenship
Clerk of the House of Delegates

W. L. Buttram, Jr.
President of the Senate

Donald L. Wopp
Speaker House of Delegates

The within is approved this the 25

day of April, 1977.

Governor