

APPROVED AND SIGNED BY THE GOVERNOR

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980

ENROLLED

Committee Substitute for
SENATE BILL NO. 470

(By Mr. Huffman)

PASSED March 8, 1980

In Effect July 1, 1980 Passage

No. 470

ENROLLED

COMMITTEE SUBSTITUTE FOR

Senate Bill No. 470

(MR. HUFFMAN, *original sponsor*)

[Passed March 8, 1980; in effect July 1, 1980.]

AN ACT to repeal articles two-a, three-a and eleven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article three of said chapter, all relating to completely revising the law of this state on physicians and surgeons, podiatrists and assistants to physicians; establishing the West Virginia board of medicine in lieu of the medical licensing board of West Virginia and giving it certain broad powers and duties with respect to the licensing of the practices of medicine and surgery and podiatry and certifying of physician assistants in the state and to the disciplining of said practices and related matters; giving legislative findings, a certain purpose, short title and certain definitions; providing for the creation of the West Virginia board of medicine, transfer of powers and duties from the medical licensing board, appointment and terms of members, filling vacancies and removal of members; providing for the conduct of business of the board of medicine; relating to meetings, officers, compensation and expenses of the board; providing for the powers and duties of the board; providing for the state director of health to act as secretary of the board; requiring the maintenance of records; relating to the expungement, examination, confidentiality and release of records; prescribing criminal penalties for unauthorized disclosure of records; relating to the physician-patient privilege; prescribing qualifications for licenses to practice medicine and surgery and podiatry; providing for examinations, fees, educational training permits, temporary permits and for

the continuance of former licenses and permits; relating to endorsement of licenses to practice medicine and surgery and podiatry, fees and temporary licenses; providing for biennial renewal of licenses to practice medicine and surgery and podiatry, fees and inactive licenses; regulating the unauthorized practice of medicine and surgery and podiatry and prescribing criminal penalties and limitations; giving broad powers to the board of medicine to discipline physicians and podiatrists; providing for the disclosure of medical peer review committee information and reporting of professional malpractice and professional incompetence; requiring reporting to the board by hospital officer, professional societies, professional liability insurers and clerks of courts of record; relating to the independence of board action; prescribing the grounds for license denial and discipline of physicians and podiatrists; relating to investigations by the board and physical and mental examinations; providing for hearings and reporting by the board; relating to the suspension, revocation, termination and restriction of licenses to practice medicine and surgery and podiatry and the denial of applicants seeking to be so licensed, both after and before a hearing; relating to reapplication for license, civil and criminal immunity and the voluntary limitation of licenses; providing for medical corporations, podiatry corporations, applications for registration thereof, fees, notice to the secretary of state of issuance of certificate, action by secretary of state and rights and limitations generally; providing for the biennial registration of medical and podiatry corporations, when practice must cease, admissibility and effect of certificate signed by secretary of board, criminal penalties and severability; regulating the practice of physician assistants; providing certain definitions, rules and regulations by the board and annual reports regarding physician assistants; relating to certification, temporary certification, recertification, reciprocity, job descriptions and revocation or suspension of certification for physician assistants; prescribing responsibilities of supervising physicians, legal responsibilities for physician assistants, identification, limitations on employment and duties and fees; and prohibiting the unlawful use of title of physician assistant,

unlawful representation of physician assistant as a physician and criminal penalties therefor; and limiting application of the article for persons with the degree of doctor of osteopathy.

Be it enacted by the Legislature of West Virginia:

That articles two-a, three-a and eleven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article three of said chapter be amended and reenacted, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-1. Legislative findings.

1 The Legislature hereby finds and declares that the
2 practice of medicine and surgery and the practice of
3 podiatry is a privilege and not a natural right of indi-
4 viduals. As a matter of public policy, it is necessary to
5 protect the public interest through enactment of this
6 article and to regulate the granting of such privileges
7 and their use.

§30-3-2. Purpose.

1 The purpose of this article is to provide for the licensure
2 and professional discipline of physicians and podiatrists
3 and for the certification and discipline of physician as-
4 sistants.

§30-3-3. Short title.

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

§30-3-4. Definitions.

1 As used in this article:
2 (1) "Board" means the West Virginia board of medi-
3 cine established in section five of this article. When-
4 ever any other provision of this code refers to the "medical
5 licensing board of West Virginia", such reference shall
6 be construed to mean and refer to the "West Virginia
7 board of medicine" as created and established in this
8 article.

9 (2) "Medical peer review committee" means a com-
10 mittee of or appointed by a state or local professional
11 medical society, or a committee of or appointed by a
12 medical staff of a licensed hospital, long-term care facil-
13 ity or other health care facility, or any health care peer
14 review organization as defined in section one, article
15 three-c of this chapter, or any other organization of pro-
16 fessionals in this state formed pursuant to state or federal
17 law and authorized to evaluate medical and health care
18 services.

19 (3) "Practice of medicine and surgery" means the
20 diagnosis or treatment of or operation or prescription
21 for any human disease, pain, injury, deformity or other
22 physical or mental condition.

23 (4) "Practice of podiatry" means the examination,
24 diagnosis, treatment, prevention and care of conditions
25 and functions of the human foot by medical, surgical and
26 other scientific knowledge and methods; and medical
27 and surgical treatment of warts and other dermatological
28 lesions of the hand which similarly occur in the foot.
29 When a podiatrist uses other than local anesthesia, in
30 surgical treatment of the foot, such anesthesia must be
31 administered by or under the direction of an anesthesi-
32 ologist or certified nurse anesthetist authorized under
33 the state of West Virginia to administer anesthesia. A
34 medical evaluation shall be made by a physician of
35 every patient prior to the administration of other than
36 local anesthesia.

**§30-3-5. West Virginia board of medicine created; transfer
of powers and duties from medical licensing board;
appointment and terms of members; vacancies; re-
moval.**

1 There is hereby created a medical licensing board to
2 be known as the "West Virginia board of medicine."
3 The West Virginia board of medicine shall assume, carry
4 on and succeed to all the duties, rights, powers, obliga-
5 tions and liabilities heretofore belonging to or
6 exercised by the medical licensing board of West
7 Virginia. All the rules and regulations, orders, rulings,
8 licenses, certificates, permits and other acts and under-

9 takings of the medical licensing board of West Virginia
10 as heretofore constituted shall continue as those of the
11 West Virginia board of medicine until they expire or are
12 amended, altered or revoked. The board shall be the
13 sole authority for the issuance of licenses to practice
14 medicine and surgery and to practice podiatry and certifi-
15 cates for physician assistants in this state and shall be a
16 regulatory and disciplinary body for the practice of medi-
17 cine and surgery and the practice of podiatry and for
18 physician assistants in this state.

19 The board shall consist of thirteen members. One mem-
20 ber shall be the state director of health ex officio, with
21 the right to vote as a member of the board. The other
22 twelve members shall be appointed by the governor,
23 with the advice and consent of the Senate. Eight of
24 the members shall be appointed from among individuals
25 holding the degree of doctor of medicine and two shall
26 hold the degree of doctor of podiatric medicine. Each
27 of these members must be duly licensed to practice his
28 profession in this state on the date of his appointment
29 and must have been licensed and actively practicing his
30 profession for at least five years immediately preceding
31 the date of his appointment. Two lay members shall
32 be appointed to further represent health care consumers.
33 Neither the lay members nor any person within the lay
34 member's immediate family shall be a provider of or
35 be employed by a provider of health care services. The
36 state director of health's term shall continue for the
37 period that he holds office as state director of health.
38 Each other member of the board shall be appointed to
39 serve a term of five years: *Provided*, That the members
40 of the medical licensing board holding appointments on
41 the effective date of this section shall continue to serve
42 as members of the board of medicine until the expiration
43 of their term unless sooner removed. Each term shall
44 begin on the first day of October of the applicable year,
45 and a member shall not be appointed to more than two
46 consecutive full terms on the board.

47 Not more than four physicians, one podiatrist and one
48 lay member appointed by the governor as members of
49 the board shall belong to the same political party. A

50 person is not eligible for membership on the board who
51 is a member of any political party executive committee
52 or, with the exception of the state director of health,
53 who holds any public office or public employment under
54 the federal government or under the government of this
55 state or any political subdivision thereof or who is an
56 appointee or employee of the state board of health.

57 In making appointments to the board, the governor
58 shall, so far as practicable, select the members from
59 different geographical sections of the state. When a
60 vacancy on the board occurs and less than one year
61 remains in the unexpired term, the appointee shall be
62 eligible to serve the remainder of the unexpired term and
63 two consecutive full terms on the board.

64 No member may be removed from office except for
65 official misconduct, incompetence, neglect of duty or gross
66 immorality: *Provided*, That the expiration or revocation
67 of the professional license of a member of the board shall
68 be cause for his removal.

**§30-3-6. Conduct of business of West Virginia board of medi-
cine; meetings; officers; compensation; expenses;
quorum.**

1 Every two years the board shall elect from among
2 its members a president and vice-president. Regular
3 meetings shall be held as scheduled by the rules and
4 regulations of the board. Special meetings of the board
5 may be called by the joint action of the president and
6 vice-president or by any three members of the board
7 on seven days' prior written notice by mail or, in
8 case of emergency, on two days' notice by telephone.
9 With the exception of the state director of health, mem-
10 bers of the board shall receive one hundred dollars for
11 each day actually spent in attending the sessions of the
12 board or its committees. A board member shall be re-
13 imbursed for all reasonable and necessary expenses
14 actually incurred when a meeting is held in a location
15 that is removed from the member's place of resi-
16 dence.

17 A majority of the membership of the board consti-

18 tutes a quorum for the transaction of business, and busi-
19 ness is transacted by a majority vote of a quorum, except
20 for disciplinary actions which shall require the affir-
21 mative vote of not less than five members or a majority
22 vote of those present, whichever is greater.

23 Meetings of the board shall be held in public session,
24 except that the board may hold closed sessions to prepare,
25 approve, grade or administer examinations and dis-
26 ciplinary proceedings shall be held in closed sessions,
27 unless the party subject to discipline requests that the
28 hearing be held in public session.

§30-3-7. Power and duties of West Virginia board of medicine.

1 (a) The board, in accordance with the provisions of
2 this article, shall administer and supervise examinations
3 and determine qualifications of applicants for licenses
4 to practice medicine and surgery and to practice podiatry,
5 shall issue licenses to qualified applicants and shall regu-
6 late the professional conduct and discipline of such indi-
7 viduals. In carrying out its functions, the board may:

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

10 (2) Hold hearings and conduct investigations, sub-
11 poena witnesses and documents and administer oaths;

12 (3) Institute proceedings in the courts of this state
13 to enforce its subpoenas for the production of witnesses
14 and documents and its orders and to restrain and enjoin
15 violations of this article and of any regulations promul-
16 gated under it;

17 (4) Employ investigators, attorneys, hearing exam-
18 iners, consultants and such other employees as may be
19 necessary;

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

22 (6) Establish and certify standards for the supervision
23 and certification of physician assistants;

24 (7) Authorize medical and podiatry corporations in
25 accordance with the provisions and subject to the limita-
26 tions of section fifteen of this article to practice medicine

27 and surgery or podiatry through duly licensed physicians
28 or podiatrists;

29 (8) Establish a fee, not to exceed fifty dollars, for
30 a reciprocal endorsement; and

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

34 (b) The board shall submit an annual report of its
35 activities to the Legislature. The report shall include a
36 statistical analysis of complaints received, charges
37 investigated, charges dismissed after investigation, the
38 grounds for each such dismissal and disciplinary proceed-
39 ings and disposition.

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

1 The state director of health, in addition to being a
2 member of the board, shall act as its secretary and shall
3 be in charge of its offices and responsible to the board
4 for the maintenance of the offices and the preparation
5 of application forms, licenses, reports and all other papers
6 or documents that may be required by the board in the
7 performance of its duties. He shall, together with the
8 president of the board, sign all licenses, reports and other
9 documents.

§30-3-9. Records of board; expungement; examination; confidentiality; release of records; criminal penalties for unauthorized disclosure; physician-patient privilege.

1 (a) The board shall maintain a permanent record of
2 the names of all physicians and podiatrists licensed or
3 otherwise lawfully practicing in this state and of all
4 persons applying to be so licensed to practice, along with
5 an individual historical record for each such individual
6 containing reports and all other information furnished
7 the board under this article or otherwise. Such record
8 may include, in accordance with rules established by
9 the board, additional items relating to the individual's

10 record of professional practice that will facilitate proper
11 review of such individual's professional competence.

12 (b) Upon a determination by the board that any report
13 submitted to it is without merit, the report shall be
14 expunged from the individual's historical record.

15 (c) A physician, podiatrist or applicant, or authorized
16 representative thereof, has the right, upon request, to
17 examine his own individual historical record maintained
18 by the board pursuant to this article and to place into
19 such record a statement of reasonable length of his own
20 view of the correctness or relevance of any information
21 existing in such record. Such statement shall at all times
22 accompany that part of the record in contention.

23 (d) A physician, podiatrist or applicant has the right
24 to seek through court action the amendment or ex-
25 pungement of any part of his historical record.

26 (e) A physician, podiatrist or applicant shall be pro-
27 vided written notice within thirty days of the placement
28 and substance of any information in his individual his-
29 torical record that pertains to him and that was not
30 submitted to the board by him.

31 (f) Except for information relating to biographical
32 background, education, professional training and prac-
33 tice, prior disciplinary action by any entity and informa-
34 tion contained on the licensure application, the board
35 shall expunge information in an individual's historical
36 record unless it has initiated a proceeding for a hearing
37 upon such information within two years of the placing
38 of the information into the historical record.

39 (g) Any reports, information or records received and
40 maintained by the board pursuant to this article, including
41 any such material received or developed by the board
42 during any investigation or hearing, shall be strictly
43 confidential. The board may only disclose any such con-
44 fidential information in the following circumstances:

45 (1) In an examination or disciplinary hearing sanc-
46 tioned by the board or in any subsequent trial or appeal
47 of a board action or order;

48 (2) To physician or podiatrist licensing or disciplinary
49 authorities of other jurisdictions, medical peer review

50 committees, hospital governing bodies or other hospital
51 or medical staff committees located within or outside this
52 state which are concerned with granting, limiting or
53 denying a physician or podiatrist hospital privileges:
54 *Provided*, That the board shall include along with any
55 such disclosure an indication as to whether or not such
56 information has been substantiated;

57 (3) Pursuant to an order of a court of competent
58 jurisdiction; and

59 (4) To qualified personnel for bona fide research or
60 educational purposes, if personally identifiable informa-
61 tion relating to any patient or physician is first deleted.

62 (h) Orders of the board, except for private reprimands,
63 relating to disciplinary action against a physician
64 or podiatrist are public information.

65 (i) Confidential information received, maintained or
66 developed by the board or disclosed by the board to
67 others as provided for in this article shall not under any
68 circumstances be available for discovery or court subpoena
69 or be introduced into evidence in any medical
70 malpractice suit or other action for damages arising out
71 of the provision of or failure to provide health care services.
72

73 (j) Any person who discloses confidential information
74 possessed by the board in violation of the provisions of
75 this article is guilty of a misdemeanor, and, upon conviction
76 thereof, shall be fined not more than one thousand
77 dollars, or imprisoned in the county jail not more than
78 one year, or both fined and imprisoned.

79 (k) Any physician-patient privilege does not apply in
80 any investigation or proceeding by the board or by a
81 medical peer review committee or by a hospital governing
82 board with respect to relevant hospital medical
83 records, while any of the aforesaid are acting within the
84 scope of their authority: *Provided*, That the disclosure
85 of any information pursuant to this provision shall not be
86 considered a waiver of any such privilege in any other
87 proceeding.

§30-3-10. Qualifications for license to practice medicine and surgery and to practice podiatry; examinations; fees; educational training permit; temporary permits; continuance of former licenses and permits.

1 (a) The board shall issue a license to practice medicine
2 and surgery or to practice podiatry to any individual who
3 is qualified to do so in accordance with the provisions of
4 this article.

5 (b) For an individual to be licensed to practice medi-
6 cine and surgery in this state, he must meet the following
7 requirements:

8 (1) He shall submit an application to the board on a
9 form provided by the board and remit to the board an
10 examination fee not to exceed two hundred fifty dollars,
11 the amount of such fee to be set by the board. The
12 application must, as a minimum, require a sworn and
13 notarized statement that the applicant is of good moral
14 character and that he is physically and mentally cap-
15 able of engaging in the practice of medicine and surgery;

16 (2) He must provide evidence of graduation and
17 receipt of the degree of doctor of medicine or its equiva-
18 lent from a school of medicine which is approved by the
19 liaison committee on medical education or by the board;

20 (3) He must submit evidence to the board of having
21 completed a minimum of one year of graduate clinical
22 training in a program approved by the board; and

23 (4) He must pass an examination approved by the
24 board, which examination can be related to a national
25 standard. The examination shall be in the English lang-
26 uage and be designed to ascertain an applicant's fitness to
27 practice medicine and surgery. The board shall before the
28 date of examination determine what will constitute a pass-
29 ing score: *Provided*, That the said board, or a majority of
30 them, may accept in lieu of an examination of applicants,
31 the certificate of the national board of medical examiners
32 issued within the previous eight years, or diplomate cer-
33 tificate from an American specialty board: *Provided, how-*
34 *ever*, That any certificate or license to practice which is
35 granted by the board by virtue of such diplomate certifi-
36 cate shall only be valid so long as the holder thereof main-

37 tains such diplomate certificate in good standing with the
38 applicable American specialty board and no longer and
39 such certification shall be limited to that specific specialty
40 in the practice of medicine and surgery in this state. If
41 an applicant fails to pass the examination on two occa-
42 sions, he shall successfully complete a course of study or
43 training, as approved by the board, designed to improve
44 his ability to engage in the practice of medicine and sur-
45 gery, before being eligible for reexamination.

46 (c) In addition to the requirements of subsection (b)
47 hereof, any individual who has received the degree of doc-
48 tor of medicine or its equivalent from a school of medicine
49 located outside of the United States, the Commonwealth
50 of Puerto Rico and Canada, to be licensed to practice
51 medicine in this state, must also meet the following addi-
52 tional requirements and limitations:

53 (1) He must be able to demonstrate to the satisfaction
54 of the board his ability to communicate in the English
55 language; and

56 (2) He must have fulfilled the requirements of the
57 educational council for foreign medical graduates for
58 certification before taking a licensure examination, in-
59 cluding the receipt of a passing score on the educational
60 council for foreign medical graduates examination; and

61 (3) An individual subject to the provisions of this
62 subsection shall not be awarded a temporary permit un-
63 less such individual was a bona fide resident of this
64 state for the six-month period preceding the filing of
65 his application for such temporary permit: *Provided*
66 *further*, That an individual subject to the provisions of
67 this subsection who did not hold a temporary permit
68 before June eight, one thousand nine hundred seventy-
69 nine, shall be ineligible for a temporary permit if he has
70 failed to pass the medical examination prescribed by
71 the board on two or more occasions.

72 (d) For an individual to be licensed to practice podiatry
73 in this state, he must meet the following requirements:

74 (1) He shall submit an application to the board on a
75 form provided by the board and remit to the board an
76 examination fee not to exceed two hundred fifty dollars,

77 the amount of such fee to be set by the board. The appli-
78 cation must, as a minimum, require a sworn and notarized
79 statement that the applicant is of good moral character
80 and that he is physically and mentally capable of en-
81 gaging in the practice of podiatric medicine;

82 (2) He must provide evidence of graduation and receipt
83 of the degree of doctor of podiatric medicine or its equiva-
84 lent from a school of podiatric medicine which is approved
85 by the council of podiatry education or by the board;

86 (3) He must pass an examination approved by the
87 board, which examination can be related to a national
88 standard. The examination shall be in the English lan-
89 guage and be designed to ascertain an applicant's fitness to
90 practice podiatric medicine. The board shall before the
91 date of examination determine what will constitute a
92 passing score. If an applicant fails to pass the examina-
93 tion on two occasions, he shall successfully complete a
94 course of study or training, as approved by the board,
95 designed to improve his ability to engage in the practice
96 of podiatric medicine, before being eligible for reexamina-
97 tion.

98 (e) An individual meeting the requirements set forth
99 in subdivisions (1) and (2), subsection (b) and subdivi-
100 sions (1) and (2), subsection (c), if applicable, of this
101 section, may be granted an educational training permit to
102 practice medicine and surgery. Such permits shall autho-
103 rize the permit holder to practice medicine and surgery
104 only under the supervision of a licensed physician in a
105 training program approved by the liaison committee on
106 graduate medical education or the board. The board may
107 fix and collect a fee not to exceed fifty dollars for this
108 class of permit.

109 (f) If the board determines that the public health in a
110 specified geographical area of the state requires such
111 action, the board may grant a temporary permit to an
112 individual who meets the requirements set forth in sub-
113 divisions (1) and (2), subsection (b) and subdivisions (1)
114 and (2), subsection (c), if applicable, of this section. Such
115 license shall be limited to the specified geographical area
116 and is limited for a period of not more than one year. The

117 board may fix and collect a fee not to exceed fifty dollars
118 for this class of temporary permit.

119 (g) All licenses or temporary permits granted prior to
120 the effective date of this article and valid on the effec-
121 tive date of this article shall continue in full effect for
122 such term and under such conditions as provided by law
123 at the time of the granting of the license or temporary
124 permit: *Provided*, That any physician who has been
125 certified by the educational council for foreign medi-
126 cal graduates or who, as of the effective date of this
127 section, holds a temporary permit to practice in a pre-
128 scribed area, shall not when under the supervision of a
129 licensed physician be ineligible for a temporary license
130 permit to practice in any mental health or state-owned
131 facility and, in any hospital, clinic, physician's office and
132 any other approved health care facility until July one, one
133 thousand nine hundred eighty-two, by virtue of his failure
134 to pass the medical examination prescribed by the board,
135 so long as such physician shall take said examination at
136 least once each year: *Provided, however*, That any such
137 physician granted a temporary permit who fails to pass
138 the medical examination prescribed by the board before
139 July one, one thousand nine hundred eighty-two, shall
140 be thereafter disqualified from obtaining any further
141 temporary permits in this state: *Provided further*, That
142 the provisions of subsection (d) of this section shall not
143 apply to any person legally entitled to practice chiropractic
144 or podiatry in this state prior to June eleventh, one
145 thousand nine hundred sixty-five: *And provided further*,
146 That all persons licensed to practice chiropractic prior to
147 June eleventh, one thousand nine hundred sixty-five,
148 shall be permitted to use the term "chiropractic-podiatry"
149 and shall have the rights, privileges and responsibilities of
150 a podiatrist set out in this article.

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

1 (a) Any person seeking to be licensed to practice
2 medicine and surgery in this state who holds a valid
3 license to practice medicine and surgery attained under
4 requirements substantially similar to the requirements

5 of section ten of this article from another state, the
6 District of Columbia, the Commonwealth of Puerto Rico
7 or Canada and any person seeking to be licensed to
8 practice podiatry in this state who holds a valid license to
9 practice podiatry attained under requirements substan-
10 tially similar to the requirements in section ten of this
11 article from another state, territory or foreign country
12 or the District of Columbia shall be issued a license to
13 practice medicine and surgery or podiatry, as appropriate,
14 in this state if he meets the following requirements:

15 (1) He must submit an application to the board on
16 forms provided by the board and remit a licensure
17 fee, not to exceed one hundred fifty dollars, the
18 amount of such fee to be set by the board. The
19 application must, as a minimum, require a statement that
20 the applicant is a licensed physician or podiatrist in
21 good standing and indicate whether any medical disci-
22 plinary action has been taken against him in the past;
23 and

24 (2) He must demonstrate to the satisfaction of the
25 board that he has the requisite qualifications to provide
26 the same standard of care as a physician or podiatrist
27 initially licensed in this state.

28 (b) The board may investigate the applicant and may
29 request a personal interview to review the applicant's
30 qualifications and professional credentials.

31 (c) The board may, at its discretion, grant a temporary
32 permit to an individual applying for licensure under this
33 section if the individual meets the requirements of sub-
34 division (1), subsection (a) of this section. Such tem-
35 porary permit shall only be valid until the board is able
36 to meet and consider the endorsement request. The board
37 may fix and collect a fee not to exceed fifty dollars for
38 a temporary permit.

**§30-3-12. Biennial renewal of license to practice medicine and
surgery and podiatry; fee; inactive license.**

1 (a) A license to practice medicine and surgery or
2 podiatry in this state is valid for a term of two years
3 and shall be renewed upon a receipt of a fee, not to ex-

4 ceed fifty dollars, as set by the board, and submission of
5 an application on forms provided by the board.

6 (b) The board may renew, on an inactive basis, the
7 license of a physician or podiatrist who is currently
8 licensed to practice medicine and surgery or podiatry
9 in, but is not actually practicing, medicine and surgery
10 or podiatry in this state. A physician or podiatrist hold-
11 ing an inactive license shall not practice medicine and
12 surgery or podiatry in this state, but he may convert
13 his inactive license to an active one upon a request to
14 the board that accounts for his period of inactivity to
15 the satisfaction of the board. An inactive license may
16 be obtained upon receipt of a fee, not to exceed fifty
17 dollars, as set by the board, and submission of an ap-
18 plication on forms provided by the board on an annual
19 basis.

**§30-3-13. Unauthorized practice of medicine and surgery and
podiatry; criminal penalties; limitations.**

1 (a) A person shall not engage in the practice of medi-
2 cine and surgery or podiatry, hold himself out as quali-
3 fied to practice medicine and surgery or podiatry or use
4 any title, word or abbreviation to indicate to or induce
5 others to believe that he is licensed to practice medicine
6 and surgery or podiatry in this state unless he is actually
7 licensed under the provisions of this article. Any person
8 who violates the provisions of this subsection is guilty
9 of a misdemeanor, and, upon conviction thereof, shall
10 be fined not more than ten thousand dollars, or im-
11 prisoned in the county jail not more than twelve months,
12 or both fined and imprisoned.

13 (b) The provisions of this section do not apply to:

14 (1) Persons who are duly licensed health care pro-
15 viders under other pertinent provisions of this code and
16 are acting within the scope of their license;

17 (2) Physicians or podiatrists licensed in other states
18 or foreign countries who are acting in a consulting capa-
19 city with physicians or podiatrists duly licensed in this
20 state, for a period of not more than three months;

21 (3) Persons holding licenses granted by another state
 22 or foreign country who are commissioned medical offi-
 23 cers of, a member of or employed by the armed forces of
 24 the United States, the United States public health ser-
 25 vice, the veterans' administration of the United States,
 26 any federal institution or any other federal agency
 27 while engaged in the performance of their official duties;

28 (4) Any person providing first aid care in emergency
 29 situations;

30 (5) The practice of the religious tenets of any recog-
 31 nized church in the administration of assistance to the
 32 sick or suffering by mental or spiritual means;

33 (6) Visiting medical faculty engaged in teaching or
 34 research duties at a medical school or institution recog-
 35 nized by the board and who are in this state for periods
 36 of not more than six months: *Provided*, That such indi-
 37 viduals do not otherwise engage in the practice of medi-
 38 cine or podiatry outside of the auspices of their sponsor-
 39 ing institutions;

40 (7) Persons enrolled in a school of medicine approved
 41 by the liaison committee on medical education or by the
 42 board, or persons enrolled in a school of podiatric medi-
 43 cine approved by the council of podiatry education or by
 44 the board, or engaged in graduate medical training in a
 45 program approved by the liaison committee on graduate
 46 medical education or the board who are performing func-
 47 tions in the course of training; and

48 (8) The fitting, recommending or sale of corrective
 49 shoes, arch supports or similar mechanical appliances
 50 in commercial establishments.

51 (c) This section shall not be construed as being in any
 52 way a limitation upon the services of a physician as-
 53 sistant performed in accordance with the provisions of
 54 this article.

§30-3-14. Professional discipline of physicians and podiatrists; disclosure of medical peer review committee information; reporting of professional malpractice and professional incompetence to board; reporting to board by hospital officer, professional societies, professional liability insurers, and clerks of courts of record; independence of board action; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; re-application; civil and criminal immunity; voluntary limitation of license.

1 (a) The board may independently initiate disciplinary
2 proceedings as well as initiate disciplinary proceedings
3 based on information received from medical peer review
4 committees, physicians, podiatrists, hospital administra-
5 tors, professional societies and others.

6 (b) Any medical peer review committee in this state
7 shall, upon request of the board, disclose to the board
8 information that may relate to the practice or perfor-
9 mance of any physician or podiatrist known to that
10 medical peer review committee.

11 Any medical peer review committee, any physician
12 or podiatrist licensed to practice or otherwise lawfully
13 practicing his profession within this state, any physician
14 assistant and any other person may report to the board
15 relevant facts about the conduct of any physician or
16 podiatrist in this state which in the opinion of the medi-
17 cal peer review committee, physician, podiatrist, physi-
18 cian assistant amounts to professional malpractice
19 or professional incompetence: *Provided*, That copies
20 of requests for information from a medical peer
21 review committee under the first paragraph of this sub-
22 section may be provided to the subject physician or
23 podiatrist, and in such case the physician or podiatrist
24 has fifteen days to comment on the requested informa-
25 tion and his comments must be considered by the board,
26 however, such notification shall not be given if the

27 board determines notification may jeopardize its in-
28 vestigation.

29 The chief executive officer of every hospital shall
30 within sixty days after the completion of the hospital's
31 formal disciplinary procedure and also after any result-
32 ing legal action, report in writing to the board the name
33 of any member of the medical staff or any other physi-
34 cian or podiatrist practicing in the hospital whose hospi-
35 tal privileges have been revoked, restricted, reduced or
36 terminated for any cause, including resignation, to-
37 gether with all pertinent information relating to such
38 action. The chief executive officer shall also report any
39 other formal disciplinary action taken against any phy-
40 sician or podiatrist by the hospital upon the recom-
41 mendation of its medical staff relating to professional
42 ethics, medical incompetence, medical malpractice, moral
43 turpitude or drug or alcohol abuse. This paragraph does
44 not apply to any temporary suspension for failure to
45 maintain records on a timely basis or for failure to attend
46 staff or section meetings.

47 Any professional society in this state comprised pri-
48 marily of physicians or podiatrists which takes formal
49 disciplinary action against a member relating to profes-
50 sional ethics, professional incompetence, professional
51 malpractice, moral turpitude or drug or alcohol abuse,
52 shall within sixty days of a final decision report in writ-
53 ing to the board the name of such member, together with
54 all pertinent information relating to such action.

55 The filing of a report with the board pursuant to any
56 provision of this article, any investigation by the board
57 or any disposition of a case by the board does not pre-
58 clude any action by a hospital, other health care facility
59 or professional society comprised primarily of physicians
60 or podiatrists to suspend, restrict or revoke the privileges
61 or membership of such physician or podiatrist.

62 Every insurer providing professional liability in-
63 surance to a physician or podiatrist in this state shall
64 submit to the board the following information within
65 thirty days from any judgment, dismissal or settlement
66 of a civil action involving the insured; the date of any

67 judgment, dismissal or settlement; whether any appeal
68 has been taken on the judgment, and, if so, by which
69 party; the amount of any settlement or judgment against
70 the insured; and such other information within the
71 knowledge of the insurer as the board requires.

72 Within thirty days after the conviction of a person
73 known to be a physician or podiatrist licensed or other-
74 wise lawfully practicing medicine and surgery or podiatry
75 in this state or applying to be so licensed of a felony
76 under the laws of this state, the clerk of the court of
77 record in which the conviction was entered shall forward
78 to the board a certified true and correct abstract of
79 record of the convicting court. The abstract shall in-
80 clude the name and address of such physician or podi-
81 atrist or applicant, the nature of the offense committed
82 and the final judgment and sentence of the court.

83 The board shall provide forms for filing reports pur-
84 suant to this section. Reports submitted in other forms
85 shall be accepted by the board.

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

93 (1) Attempting to obtain, obtaining, renewing or at-
94 tempting to renew a license to practice medicine and
95 surgery or podiatry by bribery, fraudulent misrepresenta-
96 tion or through known error of the board.

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

102 (3) False or deceptive advertising.

103 (4) Aiding, assisting, procuring or advising any un-
104 authorized person to practice medicine and surgery or
105 podiatry contrary to law.

106 (5) Making or filing a report that the person knows

107 to be false; intentionally or negligently failing to file a
108 report or record required by state or federal law; will-
109 fully impeding or obstructing the filing of a report or
110 record required by state or federal law; or inducing
111 another person to do any of the foregoing. Such reports
112 and records as are herein covered mean only those that
113 are signed in the capacity as a licensed physician or
114 podiatrist.

115 (6) Requesting, receiving or paying directly or in-
116 directly a payment, rebate, refund, commission, credit or
117 other form of profit or valuable consideration for the refer-
118 ral of patients to any person or entity in connection with
119 providing medical or other health care services or clinical
120 laboratory services, supplies of any kind, drugs, medica-
121 tion or any other medical goods, services or devices used in
122 connection with medical or other health care services.

123 (7) It is unprofessional conduct for any physician or
124 podiatrist to refer a patient to any clinical laboratory in
125 which the physician or podiatrist has a proprietary in-
126 terest unless such physician or podiatrist discloses in
127 writing such interest to the patient. Such written dis-
128 closure shall indicate that the patient may choose any
129 clinical laboratory for purposes of having any laboratory
130 work or assignment performed.

131 As used herein "proprietary interest" does not include
132 an ownership interest in a building in which space is
133 leased to a clinical laboratory at the prevailing rate
134 under a lease arrangement that is not conditional upon
135 the income or gross receipts of the clinical laboratory.

136 (8) Exercising influence within a patient-physician
137 relationship for the purpose of engaging a patient in
138 sexual activity.

139 (9) Making a deceptive, untrue or fraudulent repre-
140 sentation in the practice of medicine and surgery or
141 podiatry.

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

145 (11) Failing to keep written records justifying the
146 course of treatment of a patient, such records to include,

147 but not be limited to, patient histories, examination and
148 test results and treatment rendered, if any.

149 (12) Exercising influence on a patient in such a way
150 as to exploit the patient for financial gain of the phy-
151 sician or podiatrist or a third party. Any such influence
152 includes, but is not limited to, the promotion or sale of
153 services, goods, appliances or drugs.

154 (13) Prescribing, dispensing, administering, mixing
155 or otherwise preparing a prescription drug, including any
156 controlled substance under state or federal law, other
157 than in good faith and in a therapeutic manner in ac-
158 cordance with accepted medical standards and in the
159 course of the physician's or podiatrist's professional prac-
160 tice.

161 (14) Performing any procedure or prescribing any
162 therapy that, by the accepted standards of medical prac-
163 tice in the community, would constitute experimentation
164 on human subjects without first obtaining full, informed
165 and written consent.

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

170 (16) Delegating professional responsibilities to a per-
171 son when the physician or podiatrist delegating such
172 responsibilities knows or has reason to know that such
173 person is not qualified by training, experience or licen-
174 sure to perform them.

175 (17) Violating any provision of this article or a rule
176 or order of the board, or failing to comply with a sub-
177 poena or subpoena duces tecum issued by the board.

178 (18) Conspiring with any other person to commit an
179 act or committing an act that would tend to coerce, in-
180 timidate or preclude another physician or podiatrist from
181 lawfully advertising his services.

182 (19) Gross negligence in the use and control of pre-
183 scription forms.

184 (20) Professional incompetence.

185 (21) The inability to practice medicine and surgery or

186 podiatry with reasonable skill and safety due to physical
187 or mental disability, including deterioration through the
188 aging process or loss of motor skill or abuse of drugs
189 or alcohol. A physician or podiatrist adversely affected
190 under this subdivision shall be afforded an opportunity
191 at reasonable intervals to demonstrate that he can re-
192 sume the competent practice of medicine and surgery or
193 podiatry with reasonable skill and safety to patients.
194 In any proceeding under this subdivision, neither the
195 record of proceedings nor any orders entered by the
196 board shall be used against the physician or podiatrist
197 in any other proceeding.

198 (d) The board shall deny any application for a license
199 or other authorization to practice medicine and surgery
200 or podiatry in this state to any applicant who, and shall
201 revoke the license of any physician or podiatrist licensed
202 or otherwise lawfully practicing within this state who, is
203 found guilty by any court of competent jurisdiction of
204 any felony involving prescribing, selling, administering,
205 dispensing, mixing or otherwise preparing any prescrip-
206 tion drug, including any controlled substance under state
207 or federal law, for other than generally accepted thera-
208 peutic purposes. Presentation to the board of a certified
209 copy of the guilty verdict or plea rendered in the court
210 is sufficient proof thereof for the purposes of this article.
211 A plea of nolo contendere has the same effect as a verdict
212 or plea of guilt.

213 (e) The board may refer any cases coming to its at-
214 tention to an appropriate state committee of an ap-
215 propriate professional organization for investigation and
216 report. Any such report shall contain recommendations
217 for any necessary disciplinary measures and shall be
218 filed with the board within ninety days of any such
219 referral. The recommendations shall be considered by
220 the board and the case may be further investigated by
221 the board. The board after full investigation shall take
222 whatever action it deems appropriate, as provided here-
223 in.

224 (f) The investigating body, as provided for in sub-
225 section (e) of this section, may request and the board

226 under any circumstances may require a physician or
227 podiatrist or person applying for licensure or other
228 authorization to practice medicine and surgery or podi-
229 atry in this state to submit to a physical or mental ex-
230 amination by a physician or physicians approved by the
231 board. A physician or podiatrist submitting to any such
232 examination has the right, at his expense, to designate
233 another physician to be present at the examination and
234 make an independent report to the investigating body
235 or the board. The expense of the examination shall be
236 paid by the board. Any individual who applies for or
237 accepts the privilege of practicing medicine and surgery
238 or podiatry in this state is deemed to have given his
239 consent to submit to all such examinations when re-
240 quested to do so in writing by the board and to have
241 waived all objections to the admissibility of the testi-
242 mony or examination report of any examining phy-
243 sician on the ground that the testimony or report is
244 privileged communication. If a person fails or refuses
245 to submit to any such examination under circumstances
246 which the board finds are not beyond his control, such
247 failure or refusal is prima facie evidence of his inability
248 to practice medicine and surgery or podiatry competently
249 and in compliance with the standards of acceptable and
250 prevailing medical practice.

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

255 (h) In every disciplinary or licensure denial action
256 the board shall furnish the physician or podiatrist or
257 applicant with written notice setting out with particu-
258 larity the reasons for its action. Disciplinary and licen-
259 sure denial hearings shall be conducted in accordance
260 with the provisions of article five, chapter twenty-nine-a
261 of this code. However, hearings shall be heard upon sworn
262 testimony and the rules of evidence for trial courts of
263 record in this state shall apply to all such hearings. A
264 transcript of all hearings under this section shall be
265 made, and the respondent may obtain a copy of the
266 transcript at his expense. The physician or podiatrist

267 has the right to defend against any such charge by the
268 introduction of evidence, the right to be represented
269 by counsel, the right to present and cross-examine wit-
270 nesses and the right to have subpoenas and subpoenas
271 duces tecum issued on his behalf for the attendance of
272 witnesses and the production of documents. Except for
273 private reprimands, the board shall make all its final
274 actions public. The order shall contain the terms of all
275 action taken by the board.

276 (i) Whenever it finds any person unqualified because
277 of any of the grounds set forth in subsection (c) of this
278 section, the board may enter an order imposing one or
279 more of the following:

280 (1) Deny his application for a license or other author-
281 ization to practice medicine and surgery or podiatry;

282 (2) Administer a public or private reprimand;

283 (3) Suspend, limit or restrict his license or other
284 authorization to practice medicine and surgery or
285 podiatry for not more than five years, including limit-
286 ing the practice of such person to, or by the exclusion
287 of, one or more areas of practice, including limitations
288 on practice privileges;

289 (4) Revoke his license or other authorization to
290 practice medicine and surgery or podiatry or to prescribe
291 or dispense controlled substances;

292 (5) Require him to submit to care, counseling or treat-
293 ment designated by the board as a condition for initial
294 or continued licensure or renewal of licensure or other
295 authorization to practice medicine and surgery or podi-
296 atry;

297 (6) Require him to participate in a program of edu-
298 cation prescribed by the board; and

299 (7) Require him to practice under the direction of a
300 physician or podiatrist designated by the board for a
301 specified period of time.

302 (j) Notwithstanding the provisions of section eight,
303 article one, chapter thirty of this code, if the board deter-
304 mines the evidence in its possession indicates that a phy-
305 sician's or podiatrist's continuation in practice or unre-
306 stricted practice constitutes an immediate danger to the

307 public, the board may take any of the actions provided for
308 in subsection (i) of this section on a temporary basis and
309 without a hearing, if institution of proceedings for a hear-
310 ing before the board are initiated simultaneously with the
311 temporary action and begin within fifteen days of such ac-
312 tion. The board shall render its decision within five days of
313 the conclusion of a hearing under this subsection.

314 (k) Any person against whom disciplinary action is
315 taken pursuant to the provisions of this article has the
316 right of judicial review as provided in articles five and
317 six, chapter twenty-nine-a of this code. Except with
318 regard to an order of temporary suspension of a license
319 for six months or less, a person shall not practice
320 medicine and surgery or podiatry or deliver health care
321 services in violation of any disciplinary order revoking
322 or limiting his license while any such review is pend-
323 ing. Within sixty days the board shall report its final
324 action regarding restriction, limitation, suspension or
325 revocation of the license of a physician or podiatrist,
326 limitation on practice privileges or other disciplinary
327 action against any physician or podiatrist to all appro-
328 priate state agencies, appropriate licensed health facili-
329 ties and hospitals, insurance companies or associations
330 writing medical malpractice insurance in this state, the
331 American Medical Association, the American Podiatry
332 Association, professional societies of physicians or podi-
333 atrists in the state and any entity responsible for the
334 fiscal administration of medicare and medicaid.

335 (l) Any person against whom disciplinary action has
336 been taken under the provisions of this article shall at
337 reasonable intervals be afforded an opportunity to
338 demonstrate that he can resume the practice of medicine
339 and surgery or podiatry on a general or limited basis.
340 At the conclusion of a suspension, limitation or restric-
341 tion period, the physician or podiatrist has the right to
342 resume practice pursuant to the orders of the board: *Pro-*
343 *vided*, That for a revocation pursuant to subsection (d)
344 of this section a reapplication shall not be accepted for
345 a period of at least five years.

346 (m) Any entity, organization or person, including the
347 board, any member of the board, its agents or employees

348 and any entity or organization or its members referred
 349 to in this article, any insurer, its agents or employees, a
 350 medical peer review committee and a hospital govern-
 351 ing board, its members or any committee appointed by
 352 it acting without malice and without gross negligence
 353 in making any report or other information available
 354 to the board or a medical peer review committee pursu-
 355 ant to law and any person, acting without malice and
 356 without gross negligence who assists in the organization,
 357 investigation or preparation of any such report or in-
 358 formation or assists the board or a hospital governing
 359 body or any such committee in carrying out any of its
 360 duties or functions provided by law is immune from civil
 361 or criminal liability, except that the unlawful disclosure
 362 of confidential information possessed by the board is a
 363 misdemeanor as provided for in this article.

364 (n) A physician or podiatrist may request in writing
 365 to the board a limitation on or the surrendering of his
 366 license to practice medicine and surgery or podiatry
 367 or other appropriate sanction as provided herein. The
 368 board may grant such request and if it considers it ap-
 369 propriate, may waive the commencement or continua-
 370 tion of other proceedings under this section. A physician
 371 or podiatrist whose license is limited or surrendered or
 372 against whom other action is taken under this subsection
 373 has a right at reasonable intervals to petition for removal
 374 of any restriction or limitation on or for reinstatement
 375 of his license to practice medicine and surgery or
 376 podiatry.

**§30-3-15. Medical corporations; podiatry corporations; applica-
 tion for registration; fees; notice to secretary of
 state of issuance of certificate; action by secretary
 of state; rights and limitations generally; biennial
 registration; when practice to cease; admissibility
 and effect of certificate signed by secretary of
 board; criminal penalty; severability.**

- 1 (a) When one or more physicians duly licensed to
- 2 practice medicine and surgery in this state or one or
- 3 more podiatrists duly licensed to practice podiatry in
- 4 this state wish to form a medical or podiatry corpora-
- 5 tion, respectively, such physician or physicians or podi-

6 atrist or podiatrists shall file a written application
7 therefor with the board on a form prescribed by it and
8 shall furnish proof satisfactory to the board that each
9 applicant is a duly licensed physician or podiatrist. A
10 fee, not to exceed five hundred dollars, the amount of
11 such fee to be set by the board, shall accompany each
12 application. Upon its determination that each applicant
13 is duly licensed, the board shall notify the secretary of
14 state that a certificate of authorization has been issued
15 to the person or persons making the application. When
16 the secretary of state receives such notification from
17 the board, he shall attach such authorization to the
18 corporation application and, upon compliance by the
19 corporation with the pertinent provisions of chapter
20 thirty-one of this code, shall notify the incorporators that
21 such corporation, through duly licensed physicians or
22 through duly licensed podiatrists, may engage in the prac-
23 tice of medicine and surgery or the practice of podiatry.

24 (b) A medical corporation may practice medicine and
25 surgery only through individual physicians duly licensed
26 to practice medicine and surgery in this state and a
27 podiatrist may practice podiatry only through indivi-
28 dual podiatrists duly licensed to practice podiatry in this
29 state, but such physicians or podiatrists may be em-
30 ployees rather than shareholders of such corporation,
31 and nothing herein contained shall be construed to re-
32 quire a license for or other legal authorization of any
33 individual employed by such corporation to perform
34 services for which no license or other legal authoriza-
35 tion is otherwise required. Nothing contained in this
36 article is meant or intended to change in any way the
37 rights, duties, privileges, responsibilities and liabilities
38 incident to the physician-patient or podiatrist-patient
39 relationship nor is it meant or intended to change in
40 any way the personal character of the physician-patient
41 or podiatrist-patient relationship. A corporation holding
42 such certificate of authorization shall register biennially,
43 on or before the thirtieth day of June, on a form pre-
44 scribed by the board, and shall pay an annual registration
45 fee not to exceed three hundred dollars, the amount of
46 such fee to be set by the board.

47 (c) A medical or podiatry corporation holding a
48 certificate of authorization shall cease to engage in the
49 practice of medicine and surgery or the practice of
50 podiatry upon being notified by the board that any of
51 its shareholders is no longer a duly licensed physician
52 or podiatrist, or when any shares of such corporation
53 have been sold or disposed of to a person who is not a duly
54 licensed physician or podiatrist: *Provided*, That the per-
55 sonal representative of a deceased shareholder shall have
56 a period, not to exceed twelve months from the date of
57 such shareholder's death, to dispose of such shares; but
58 nothing contained herein shall be construed as affecting
59 the existence of such corporation or its right to continue
60 to operate for all lawful purposes other than the prac-
61 tice of medicine and surgery or the practice of podiatry.

62 (d) No corporation shall practice medicine and surgery
63 or any of its branches, or hold itself out as being capable of
64 practicing medicine and surgery, or practice podiatry or
65 hold itself out as being capable of practicing podiatry,
66 without a certificate from the board; nor shall any corpor-
67 ation practice medicine and surgery or any of its branches
68 or hold itself out as being capable of practicing medicine
69 and surgery, or practice podiatry or hold itself out as being
70 capable of practicing podiatry, after its certificate has been
71 revoked, or if suspended, during the term of such suspen-
72 sion. A certificate signed by the secretary of the board to
73 which is affixed the official seal of the board to the effect
74 that it appears from the records of the board that no such
75 certificate to practice medicine and surgery or any of its
76 branches, or to practice podiatry, in the state has been is-
77 sued to any such corporation specified therein or that such
78 certificate has been revoked or suspended shall be admis-
79 sible in evidence in all courts of this state and shall be
80 prima facie evidence of the facts stated therein.

81 (e) Any officer, shareholder or employee of such
82 corporation who participates in a violation of any provi-
83 sion of this section shall be guilty of a misdemeanor,
84 and, upon conviction thereof, shall be fined not exceeding
85 one thousand dollars.

86 (f) If any provision of this section is held to be in-
87 valid, such invalidity shall not affect the other provi-

88 sions of this section which can be given effect without
89 such invalid provision, and to this end the provisions of
90 this section are severable.

§30-3-16. Physician assistants; definitions; board of medicine rules and regulations; annual report; certification; temporary certification; recertification; reciprocity; job description required; revocation or suspension of certification; responsibilities of supervising physician; legal responsibility for physician assistants; identification; limitations on employment and duties; fees; unlawful use of title of "physician assistant"; unlawful representation of physician assistants as a physician; criminal penalties.

1 (a) As used in this section:

2 (1) "Type A physician assistant" means an assistant
3 to a primary care physician who is a graduate of an
4 approved program of instruction in primary health care,
5 has passed the national certification examination and is
6 qualified to perform direct patient care services under
7 the supervision of the primary care physician;

8 (2) "Type B physician assistant" means an assistant
9 to a physician who is a graduate of an approved program
10 for instruction in a recognized clinical specialty or has
11 received training from a physician adequate to qualify
12 him to perform patient services in that specialty as de-
13 fined by the supervising physician;

14 (3) "Supervising physician" means a doctor of medi-
15 cine or podiatry permanently licensed in this state who
16 assumes legal and supervisory responsibility for the work
17 or training of any physician assistant under his super-
18 vision;

19 (4) "Approved program" means an educational pro-
20 gram for physician assistants approved and accredited
21 by the American Medical Association or American Podi-
22 atry Association; and

23 (5) "Health care facility" means any licensed hospital,
24 nursing home, extended care facility, state health or
25 mental institution, clinic or physician's office.

26 (b) The board shall promulgate rules and regulations
27 governing the extent to which physician assistants may
28 function in this state. Such regulations shall provide
29 that the physician assistant is limited to the performance
30 of those services for which he is trained and that he
31 performs only under the supervision and control of a
32 physician permanently licensed in this state, but such
33 supervision and control does not require the personal
34 presence of the supervising physician at the place or
35 places where services are rendered if the physician as-
36 sistant's normal place of employment is on the premises
37 of the supervising physician. The supervising physician
38 may send the physician assistant off the premises to
39 perform duties under his direction, but a separate place
40 of work for the physician assistant shall not be estab-
41 lished. In promulgating such rules and regulations, the
42 board shall allow the physician assistant to perform those
43 procedures and examinations submitted to it in the job
44 description required by subsection (g) of this section.
45 The board shall compile and publish an annual report
46 that includes a list of currently certified physician as-
47 sistants and their employers and location in the state; a
48 list of approved programs; the number of graduates
49 of such approved programs each year and the number
50 of physician assistants from other states practicing in
51 this state.

52 (c) The board shall certify as a Type A physician
53 assistant any person who files an application and fur-
54 nishes satisfactory evidence to it that he has met the
55 following standards:

56 (1) He is a graduate of an approved program of in-
57 struction in primary health care;

58 (2) He has passed the examination for a primary care
59 physician assistant and is certified by the national board
60 of medical examiners; and

61 (3) He is of good moral character.

62 The board may certify as a Type B physician assistant
63 any person who files an application and furnishes satis-
64 factory evidence to it that he has met the following
65 standards:

66 (1) He is a graduate of an approved program in a
67 recognized clinical specialty;

68 (2) He has received specialized training and experi-
69 ence from a physician adequate for him to perform
70 patient services in that specialty; and

71 (3) He is of good moral character.

72 Certification of an assistant to a physician practicing
73 the specialty of ophthalmology is not permitted or re-
74 quired under this section.

75 (d) When any graduate of an approved program sub-
76 mits an application to the board, accompanied by a
77 job description in conformity with subsection (g) of
78 this section, for a Type A physician assistant certi-
79 ficate, the board shall issue to such applicant a temporary
80 certificate allowing such applicant to function as a Type
81 A physician assistant for the period of one year. Said
82 temporary certificate may be renewed for one additional
83 year upon the request of the supervising physician. A
84 Type A physician assistant who has not been certified
85 as such by the National Board of Medical Examiners
86 will be restricted to work under the direct supervision
87 of the supervising physician.

88 When any person who meets the qualifications for a
89 Type B physician assistant as defined in this section and
90 who submits an application accompanied by a job des-
91 cription for a Type B physician assistant certificate, the
92 board may certify such applicant as a Type B physician
93 assistant for a period of four months. Upon expiration
94 of the four-month temporary certification, the board
95 may certify the applicant as a Type B physician assis-
96 tant. During the period of temporary certification, the
97 Type B physician assistant shall be restricted to work
98 under the direct supervision of the supervising physician.

99 (e) Certification of a Type B physician assistant is
100 subject to review and recertification annually for the
101 five years following the first certification. Recertification
102 requires a report from the supervising physician of a
103 Type B physician assistant which must include a per-
104 formance evaluation, a summary of experience or con-

105 tinuing medical education and any proposed change in
106 job description.

107 (f) The board may certify as a physician assistant in
108 this state without examination any person who has been
109 certified or licensed by examination in another state of
110 the United States which has requirements substantially
111 equivalent to the requirements of this section.

112 (g) Any physician applying to the board to supervise
113 either a Type A or Type B physician assistant shall
114 provide a job description that sets forth the range of
115 medical services to be provided by such assistant. Be-
116 fore a physician assistant can be employed or other-
117 wise use his skills, the supervising physician must ob-
118 tain approval of the job description from the board.
119 The board may revoke or suspend any certification of an
120 assistant to a physician for cause, after giving such per-
121 son an opportunity to be heard in the manner provided
122 by sections eight and nine, article one of this chapter.

123 (h) The supervising physician is responsible for ob-
124 serving, directing and evaluating the work, records and
125 practices of each physician assistant performing under
126 his supervision. He shall notify the board in writing
127 of any termination of his supervisory relationship with a
128 physician assistant within ten days of the termination.
129 The legal responsibility for any physician assistant re-
130 mains with the supervising physician at all times, in-
131 cluding occasions when the assistant under his direction
132 and supervision, aids in the care and treatment of a
133 patient in a health care facility. A health care facility
134 is not legally responsible for the actions or omissions
135 of the physician assistant unless the physician assistant
136 is an employee of the facility.

137 (i) When functioning as a physician assistant, the
138 physician assistant shall wear a name tag that identifies
139 him and specifies his type of classification and the name
140 of his supervising physician. A two and one-half by
141 three and one-half inch card of identification shall be
142 furnished by the board upon certification of the physi-
143 cian assistant and shall specify the type of classification.

144 (j) A supervising physician shall not supervise at
145 any one time more than two physician assistants.

146 A physician assistant shall not sign any prescription.
147 He shall not perform any service that his supervising
148 physician is not qualified to perform. He shall not per-
149 form any service that is not included in his job descrip-
150 tion and approved by the board as provided for in this
151 section.

152 The provisions of this section do not authorize any
153 physician assistant to perform any specific function or
154 duty delegated by this code to those persons licensed
155 as chiropractors, dentists, dental hygienists, optometrists
156 or pharmacists or certified as nurse anesthetists.

157 (k) Each job description submitted by a licensed
158 supervising physician shall be accompanied by a fee of
159 fifty dollars. A fee of five dollars shall be charged for the
160 annual renewal of the certificate.

161 (l) It is unlawful for any person who is not certified
162 by the board as a physician assistant to use the title of
163 "physician assistant" or to represent to any other per-
164 son that he is a physician assistant. Any person who
165 violates the provisions of this subsection is guilty of a
166 misdemeanor, and, upon conviction thereof, shall be
167 fined not more than two thousand dollars.

168 (m) It is unlawful for any physician assistant to repre-
169 sent to any person that he is a physician, surgeon or podi-
170 atrist. Any person who violates the provisions of this
171 subsection is guilty of a felony, and, upon conviction
172 thereof, shall be imprisoned in the penitentiary for not
173 less than one nor more than two years, or be fined not
174 more than two thousand dollars, or both fined and im-
175 prisoned.

§30-3-17. Limitation of article.

1 The practice of medicine and surgery by persons pos-
2 sessing the degree of doctor of osteopathy and authorized
3 by the laws of this state to practice medicine and surgery
4 shall in no way be affected by the provisions of this
5 article.

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

James L. Davis
Chairman Senate Committee

Clarence C. Christensen Jr.
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1980.

Jack C. Mullis
Clerk of the Senate

Cliff Blankenship
Clerk of the House of Delegates

W. T. Blanton
President of the Senate

Cliff M. Lee Jr.
Speaker House of Delegates

The within is approved this the 26
day of March, 1980.

Paul G. Patton
Governor

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GOV. OF STATE

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