ENROLLED

Senate Bill No. 714

(BY SENATORS CHAFIN, ROGERS, JONES, ASH, COOK, HOLLIDAY, JARRELL, KAUFMAN, SHAW, STACY, TUCKER AND YANERO)

[Passed March 8, 1986; in effect ninety days from passage.]

AN ACT to amend and reenact sections six, nine and fourteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article fourteen of said chapter by adding thereto a new section, designated section twelve-a; to amend article sixteen of said chapter by adding thereto a new section, designated section eight-a; to amend and reenact section two, article twenty, chapter thirty-three of said code; to further amend said chapter thirty-three by adding thereto two new articles, designated articles twenty-b and twenty-c; and to amend chapter fifty-five of said code by adding thereto a new article, designated article seven-b, all relating generally to the comprehensive medical professional liability and malpractice insurance act; conduct of business of the state board of medicine; officers of such board and their compensation; meetings and proceedings of such board to be public with certain exceptions; records of such board and expungement thereof; confidentiality of such records
and certain exceptions thereto including disclosure upon court order; criminal penalties for unauthorized disclosure; applicability of physician-patient privilege; professional discipline of physicians and podiatrists; mandatory investigations; reporting of information to such board pertaining to professional malpractice and incompetence required; civil penalties for failure to report; grounds for license denial and discipline; investigations allowed; physical and mental examinations; disciplinary hearings; sanctions imposed by such board including civil penalties; judicial review; reporting by board; reapplication after disciplinary action; immunity from civil and criminal liability; voluntary limitations on license; probable cause determinations required and public proceedings thereafter; suspension and revocation of license proceedings against osteopathic physicians; mandatory investigations by the board of osteopathy; reporting of information to such board pertaining to professional malpractice and incompetence; civil penalties for failure to report; probable cause determinations by such board and public proceedings thereafter; suspension and revocation of license proceedings against chiropractors; mandatory investigations by the board of chiropractic examiners; reporting of information to such board pertaining to professional malpractice and incompetence; civil penalties for failure to report; probable cause determinations by such board and public proceedings thereafter; application of article pertaining to rates and rating organizations to exclude malpractice insurance rates and rating organizations in certain provisions; rate making for malpractice insurance; rate filings for malpractice insurance and information to be included therein; waiting period for such filings; commissioner's disapproval of such filings during waiting period and notice and hearings thereon; disapproval of filings subsequent to waiting period and notice and hearings thereon; hearings on filings upon request by persons aggrieved by such filings; public hearings required on certain filings; rating organizations for malpractice insurance to be licensed and requirements therefor; legislative rules to be promulgated to permit subscribing to such rating organizations; certain policies and rules of such rating organizations prohibited; cooperative activities among such rating organizations and
review thereof; purchase of certain services by such rating organizations; annual review of rates by commissioner and legislative rules establishing procedures for such review; legislative rules establishing procedures for submission of certain information by malpractice insurers; penalties for failure to submit such information; annual report of commissioner on such insurers and information pertaining thereto; studies by the commissioner and reports thereon; cancellation and nonrenewal of malpractice insurance policies void except upon certain reasons; reasons for such actions to be specified in notices to insured; notice periods for such cancellation or nonrenewal; hearings upon cancellation and nonrenewal; legislative findings and declaration of purpose of act; definitions of certain terms; elements of proof in medical professional liability actions; statute of limitations; ad damnum clause not to allege a specific dollar amount; mandatory pretrial procedures; frivolous claims and defenses; expert witness testimony and foundation therefor; limit on damages recoverable for noneconomic loss; applicability of article; and severability.

Be it enacted by the Legislature of West Virginia:

That sections six, nine and fourteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article fourteen of said chapter be amended by adding thereto a new section, designated section twelve-a; that article sixteen of said chapter be amended by adding thereto a new section, designated section eight-a; that section two, article twenty, chapter thirty-three of said code be amended and reenacted; that said chapter be further amended by adding thereto two new articles, designated articles twenty-b and twenty-c; and that chapter fifty-five of said code be amended by adding thereto a new article, designated article seven-b, all to read as follows:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

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

1 Every two years the board shall elect from among its
members a president and vice president. Regular meetings shall be held as scheduled by the rules and regulations of the board. Special meetings of the board may be called by the joint action of the president and vice president or by any three members of the board on seven days' prior written notice by mail or, in case of emergency, on two days' notice by telephone. With the exception of the state director of health, members of the board shall receive one hundred dollars for each day actually spent in attending the sessions of the board or its committees. A board member shall be reimbursed for all reasonable and necessary expenses actually incurred when a meeting is held in a location that is removed from the member's place of residence.

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

Meetings of the board shall be held in public session, except that the board may hold closed sessions to prepare, approve, grade or administer examinations. Disciplinary proceedings, prior to a finding of probable cause as provided in subsection (o), section fourteen of this article, shall be held in closed sessions, unless the party subject to discipline requests that the hearing be held in public session.

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

(a) The board shall maintain a permanent record of the names of all physicians and podiatrists licensed or otherwise lawfully practicing in this state and of all persons applying to be so licensed to practice, along with an individual historical record for each such individual containing reports and all other information furnished the board under this article or otherwise. Such record may include, in accordance with rules established by the board, additional items relating to the individual's record of professional practice that will facilitate proper review of such individual's professional competence.
(b) Upon a determination by the board that any report submitted to it is without merit, the report shall be expunged from the individual's historical record.

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

(d) A physician, podiatrist or applicant has the right to seek through court action the amendment or expungement of any part of his historical record.

(e) A physician, podiatrist or applicant shall be provided written notice within thirty days of the placement and substance of any information in his individual historical record that pertains to him and that was not submitted to the board by him.

(f) Except for information relating to biographical background, education, professional training and practice, prior disciplinary action by any entity and information contained on the licensure application, the board shall expunge information in an individual's historical record unless it has initiated a proceeding for a hearing upon such information within two years of the placing of the information into the historical record.

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

1. In an examination or disciplinary hearing sanctioned by the board or in any subsequent trial or appeal of a board action or order;

2. To physician or podiatrist licensing or disciplinary authorities of other jurisdictions, medical peer review committees, hospital governing bodies or other hospital or medical staff committees located within or outside this state which are concerned with granting, limiting or denying a physician or podiatrist hospital privileges:
Provided, That the board shall include along with any such disclosure an indication as to whether or not such information has been substantiated;

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

(4) To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted; and

(5) Pursuant to the provisions of subsection (o), section fourteen of this article.

(h) Orders of the board relating to disciplinary action against a physician or podiatrist are public information.

(i) Confidential information received, maintained or developed by the board or disclosed by the board to others as provided for in this article shall not be available for discovery or court subpoena or be introduced into evidence in any medical professional liability action or other action for damages arising out of the provision of or failure to provide health care services: Provided, That following the final action of the board in any disciplinary proceeding, such information may be released upon order of a court in a pending medical professional liability action upon a showing that the party seeking such information has substantial need for such information and would otherwise be unable, without undue hardship, to obtain the substantial equivalent of the information.

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

(k) Any physician-patient privilege does not apply in any investigation or proceeding by the board or by a medical peer review committee or by a hospital governing board with respect to relevant hospital medical records, while any of the aforesaid are acting within the scope of their authority: Provided, That the disclosure of any information pursuant to this provision shall not be considered a waiver of any such privilege in any other proceeding.
§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.

(a) The board may independently initiate disciplinary proceedings as well as initiate disciplinary proceedings based on information received from medical peer review committees, physicians, podiatrists, hospital administrators, professional societies and others. The board shall initiate investigations as to professional incompetence or other reasons for which a licensed physician or podiatrist may be adjudged unqualified if the board receives notice that five or more judgments or settlements arising from medical professional liability have been rendered or made against such physician or podiatrist.

(b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any physician or podiatrist known to that medical peer review committee. Copies of such requests for information from a medical peer review committee may be provided to the subject physician or podiatrist if, in the discretion of the board, the provision of such copies will not jeopardize the board's investigation. In the event that copies are so provided, the subject physician or podiatrist is allowed fifteen days to comment on the requested information and such comments must be considered by the board.

After the completion of a hospital's formal disciplinary procedure and after any resulting legal action, the chief executive officer of such hospital shall report in writing to the board within sixty days the name of any member of the medical staff or any other physician or podiatrist practicing in the hospital whose hospital privileges have been revoked, restricted, reduced or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against
any physician or podiatrist by the hospital upon the
recommendation of its medical staff relating to professional
ethics, medical incompetence, medical malpractice, moral
turpitude or drug or alcohol abuse. Temporary suspension
for failure to maintain records on a timely basis or failure to
attend staff or section meetings need not be reported.

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

Every person, partnership, corporation, association,
insurance company, professional society or other
organization providing professional liability insurance to a
physician or podiatrist in this state shall submit to the
board the following information within thirty days from
any judgment, dismissal or settlement of a civil action or of
any claim involving the insured: The date of any judgment,
dismissal or settlement; whether any appeal has been taken
on the judgment, and, if so, by which party; the amount of
any settlement or judgment against the insured; and such
other information as the board may require.

Within thirty days after a person known to be a physician
or podiatrist licensed or otherwise lawfully practicing
medicine and surgery or podiatry in this state or applying to
be so licensed is convicted of a felony under the laws of this
state, or of any crime under the laws of this state involving
alcohol or drugs in any way, including any controlled
substance under state or federal law, the clerk of the court
of record in which the conviction was entered shall forward
to the board a certified true and correct abstract of record of
the convicting court. The abstract shall include the name
and address of such physician or podiatrist or applicant, the
nature of the offense committed and the final judgment and
sentence of the court.

Upon a determination of the board that there is probable
cause to believe that any person, partnership, corporation,
association, insurance company, professional society or
other organization has failed or refused to make a report
required by this subsection, the board shall provide written
notice to the alleged violator stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. After reviewing the record of such hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a civil penalty of not less than one thousand dollars nor more than ten thousand dollars against such violator. Anyone so assessed shall be notified of the assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the board within thirty days, the attorney general may institute a civil action in the circuit court of Kanawha County to recover the amount of the assessment. In any such civil action, the court's review of the board's action shall be conducted in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

Any person may report to the board relevant facts about the conduct of any physician or podiatrist in this state which in the opinion of such person amounts to professional malpractice or professional incompetence. The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board. The filing of a report with the board pursuant to any provision of this article, any investigation by the board or any disposition of a case by the board does not preclude any action by a hospital, other health care facility or professional society comprised primarily of physicians or podiatrists to suspend, restrict or revoke the privileges or membership of such physician or podiatrist.

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

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

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

(3) False or deceptive advertising.

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

(5) Making or filing a report that the person knows to be false; intentionally or negligently failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record required by state or federal law; or inducing another person to do any of the foregoing. Such reports and records as are herein covered mean only those that are signed in the capacity as a licensed physician or podiatrist.

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

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

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

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

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

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

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

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

(13) Prescribing, dispensing, administering, mixing or
otherwise preparing a prescription drug, including any
controlled substance under state or federal law, other than
in good faith and in a therapeutic manner in accordance
with accepted medical standards and in the course of the
physician’s or podiatrist’s professional practice.

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

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

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

(17) Violating any provision of this article or a rule or
order of the board, or failing to comply with a subpoena or
subpoena duces tecum issued by the board.
(18) Conspiring with any other person to commit an act or committing an act that would tend to coerce, intimidate or preclude another physician or podiatrist from lawfully advertising his services.

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

(20) Professional incompetence.

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

(d) The board shall deny any application for a license or other authorization to practice medicine and surgery or podiatry in this state to any applicant who, and shall revoke the license of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the same effect as a verdict or plea of guilt.

(e) The board may refer any cases coming to its attention to an appropriate committee of an appropriate professional organization for investigation and report. Any such report shall contain recommendations for any necessary disciplinary measures and shall be filed with the board within ninety days of any such referral. The recommendations shall be considered by the board and the case may be further investigated by the board. The board after full investigation shall take whatever action it deems appropriate, as provided herein.
(f) The investigating body, as provided for in subsection (e) of this section, may request and the board under any circumstances may require a physician or podiatrist or person applying for licensure or other authorization to practice medicine and surgery or podiatry in this state to submit to a physical or mental examination by a physician or physicians approved by the board. A physician or podiatrist submitting to any such examination has the right, at his expense, to designate another physician to be present at the examination and make an independent report to the investigating body or the board. The expense of the examination shall be paid by the board. Any individual who applies for or accepts the privilege of practicing medicine and surgery or podiatry in this state is deemed to have given his consent to submit to all such examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication. If a person fails or refuses to submit to any such examination under circumstances which the board finds are not beyond his control, such failure or refusal is prima facie evidence of his inability to practice medicine and surgery or podiatry competently and in compliance with the standards of acceptable and prevailing medical practice.

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

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

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

(1) Deny his application for a license or other
authorization to practice medicine and surgery or podiatry;
(2) Administer a public reprimand;
(3) Suspend, limit or restrict his license or other
authorization to practice medicine and surgery or podiatry
for not more than five years, including limiting the practice
of such person to, or by the exclusion of, one or more areas of
practice, including limitations on practice privileges;
(4) Revoke his license or other authorization to practice
medicine and surgery or podiatry or to prescribe or dispense
controlled substances;
(5) Require him to submit to care, counseling or
treatment designated by the board as a condition for initial
or continued licensure or renewal of licensure or other
authorization to practice medicine and surgery or podiatry;
(6) Require him to participate in a program of education
prescribed by the board;
(7) Require him to practice under the direction of a
physician or podiatrist designated by the board for a
specified period of time; and
(8) Assess a civil fine of not less than one thousand
dollars nor more than ten thousand dollars.

(j) Notwithstanding the provisions of section eight,
article one, chapter thirty of this code, if the board
determines the evidence in its possession indicates that a
physician's or podiatrist's continuation in practice or
unrestricted practice constitutes an immediate danger to
the public, the board may take any of the actions provided
for in subsection (i) of this section on a temporary basis and
without a hearing, if institution of proceedings for a hearing
before the board are initiated simultaneously with the
temporary action and begin within fifteen days of such action. The board shall render its decision within five days of the conclusion of a hearing under this subsection. (k) Any person against whom disciplinary action is taken pursuant to the provisions of this article has the right to judicial review as provided in articles five and six, chapter twenty-nine-a of this code. Except with regard to an order of temporary suspension of a license for six months or less, a person shall not practice medicine and surgery or podiatry or deliver health care services in violation of any disciplinary order revoking or limiting his license while any such review is pending. Within sixty days, the board shall report its final action regarding restriction, limitation, suspension or revocation of the license of a physician or podiatrist, limitation on practice privileges or other disciplinary action against any physician or podiatrist to all appropriate state agencies, appropriate licensed health facilities and hospitals, insurance companies or associations writing medical malpractice insurance in this state, the American medical association, the American podiatry association, professional societies of physicians or podiatrists in the state and any entity responsible for the fiscal administration of medicare and medicaid. (l) Any person against whom disciplinary action has been taken under the provisions of this article shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the practice of medicine and surgery or podiatry on a general or limited basis. At the conclusion of a suspension, limitation or restriction period, the physician or podiatrist has the right to resume practice pursuant to the orders of the board: Provided, That for a revocation pursuant to subsection (d) of this section a reapplication shall not be accepted for a period of at least five years. (m) Any entity, organization or person, including the board, any member of the board, its agents or employees and any entity or organization or its members referred to in this article, any insurer, its agents or employees, a medical peer review committee and a hospital governing board, its members or any committee appointed by it acting without malice and without gross negligence in making any report or other information available to the board or a medical
374 peer review committee pursuant to law and any person
375 acting without malice and without gross negligence who
376 assists in the organization, investigation or preparation of
377 any such report or information or assists the board or a
378 hospital governing body or any such committee in carrying
379 out any of its duties or functions provided by law, is immune
380 from civil or criminal liability, except that the unlawful
381 disclosure of confidential information possessed by the
382 board is a misdemeanor as provided for in this article.
383 (n) A physician or podiatrist may request in writing to
384 the board a limitation on or the surrendering of his license
385 to practice medicine and surgery or podiatry or other
386 appropriate sanction as provided herein. The board may
387 grant such request and, if it considers it appropriate, may
388 waive the commencement or continuation of other
389 proceedings under this section. A physician or podiatrist
390 whose license is limited or surrendered or against whom
391 other action is taken under this subsection has a right at
392 reasonable intervals to petition for removal of any
393 restriction or limitation on or for reinstatement of his
394 license to practice medicine and surgery or podiatry.
395 (o) In every case considered by the board under this
396 article regarding discipline or licensure, whether initiated
397 by the board or upon complaint or information from any
398 person or organization, the board shall make a preliminary
399 determination as to whether probable cause exists to
400 substantiate charges of disqualification due to any reason
401 set forth in subsection (c) of this section. If such probable
402 cause is found to exist, all proceedings on such charges shall
403 be open to the public who shall be entitled to all reports,
404 records, and nondeliberative materials introduced at such
405 hearing, including the record of the final action taken:
406 Provided, That any medical records, which were introduced
407 at such hearing and which pertain to a person who has not
408 expressly waived his right to the confidentiality of such
409 records, shall not be open to the public nor is the public
410 entitled to such records. If a finding is made that probable
411 cause does not exist, the public has a right of access to the
412 complaint or other document setting forth the charges, the
413 findings of fact and conclusions supporting such finding
414 that probable cause does not exist, if the subject physician
415 or podiatrist consents to such access.
ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12a. Initiation of suspension or revocation proceedings allowed and required; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; probable cause determinations.

(a) The board may independently initiate suspension or revocation proceedings as well as initiate suspension or revocation proceedings based on information received from any person.

The board shall initiate investigations as to professional incompetence or other reasons for which a licensed osteopathic physician and surgeon may be adjudged unqualified if the board receives notice that five or more judgments or settlements arising from medical professional liability have been rendered or made against such osteopathic physician.

(b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any osteopathic physician known to that medical peer review committee. Copies of such requests for information from a medical peer review committee may be provided to the subject osteopathic physician if, in the discretion of the board, the provision of such copies will not jeopardize the board's investigation. In the event that copies are so provided, the subject osteopathic physician is allowed fifteen days to comment on the requested information and such comments must be considered by the board.

After the completion of a hospital's formal disciplinary procedure and after any resulting legal action, the chief executive officer of such hospital shall report in writing to the board within sixty days the name of any member of the medical staff or any other osteopathic physician practicing in the hospital whose hospital privileges have been revoked, restricted, reduced or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any osteopathic physician by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical malpractice, moral
turpitude or drug or alcohol abuse. Temporary suspension
for failure to maintain records on a timely basis or failure to
attend staff or section meetings need not be reported.

Any professional society in this state comprised primarily
of osteopathic physicians or physicians and surgeons of
other schools of medicine which takes formal disciplinary
action against a member relating to professional ethics,
professional incompetence, professional malpractice,
moral turpitude or drug or alcohol abuse, shall report in
writing to the board within sixty days of a final decision the
name of such member, together with all pertinent
information relating to such action.

Every person, partnership, corporation, association,
insurance company, professional society or other
organization providing professional liability insurance to
an osteopathic physician in this state shall submit to the
board the following information within thirty days from
any judgment, dismissal or settlement of a civil action or of
any claim involving the insured: The date of any judgment,
dismissal or settlement; whether any appeal has been taken
on the judgment and, if so, by which party; the amount of
any settlement or judgment against the insured; and such
other information as the board may require.

Within thirty days after a person known to be an
osteopathic physician licensed or otherwise lawfully
practicing medicine and surgery in this state or applying to
be so licensed is convicted of a felony under the laws of this
state, or of any crime under the laws of this state involving
alcohol or drugs in any way, including any controlled
substance under state or federal law, the clerk of the court
of record in which the conviction was entered shall forward
to the board a certified true and correct abstract of record of
the convicting court. The abstract shall include the name
and address of such osteopathic physician or applicant, the
nature of the offense committed and the final judgment and
sentence of the court.

Upon a determination of the board that there is probable
cause to believe that any person, partnership, corporation,
association, insurance company, professional society or
other organization has failed or refused to make a report
required by this subsection, the board shall provide written
notice to the alleged violator stating the nature of the
alleged violation and the time and place at which the
alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. After reviewing the record of such hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a civil penalty of not less than one thousand dollars nor more than ten thousand dollars against such violator. Anyone so assessed shall be notified of the assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the board within thirty days, the attorney general may institute a civil action in the circuit court of Kanawha County to recover the amount of the assessment. In any such civil action, the court's review of the board's action shall be conducted in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

Any person may report to the board relevant facts about the conduct of any osteopathic physician in this state which in the opinion of such person amounts to professional malpractice or professional incompetence. The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board. The filing of a report with the board pursuant to any provision of this article, any investigation by the board or any disposition of a case by the board does not preclude any action by a hospital, other health care facility or professional society comprised primarily of osteopathic physicians or physicians and surgeons of other schools of medicine to suspend, restrict or revoke the privileges or membership of such osteopathic physician. (c) In every case considered by the board under this article regarding suspension, revocation or issuance of a license whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to substantiate charges of cause to suspend, revoke or refuse to issue a license as set forth in subsection (a), section eleven of this article. If such probable cause is found to exist, all proceedings on such charges shall
be open to the public who shall be entitled to all reports, records, and nondeliberative materials introduced at such hearing, including the record of the final action taken: Provided, That any medical records, which were introduced at such hearing and which pertain to a person who has not expressly waived his right to the confidentiality of such records, shall not be open to the public nor is the public entitled to such records. If a finding is made that probable cause does not exist, the public has a right of access to the complaint or other document setting forth the charges, the findings of fact and conclusions supporting such finding that probable cause does not exist, if the subject osteopathic physician consents to such access.

ARTICLE 16. CHIROPRACTORS.

§30-16-8a. Initiation of suspension or revocation proceedings allowed and required; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; probable cause determinations.

(a) The board may independently initiate suspension or revocation proceedings as well as initiate suspension or revocation proceedings based on information received from any person. The board shall initiate investigations as to professional incompetence or other reasons for which a licensed chiropractor may be adjudged unqualified if the board receives notice that five or more judgments or settlements arising from medical professional liability have been rendered or made against such chiropractor.

(b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any chiropractor known to that medical peer review committee. Copies of such requests for information from a medical peer review committee may be provided to the subject chiropractor if, in the discretion of the board, the provision of such copies will not jeopardize the board's investigation. In the event that copies are so provided, the subject chiropractor is allowed fifteen days to comment on the requested information and such comments must be considered by the board.
After the completion of a hospital's formal disciplinary procedure and after any resulting legal action, the chief executive officer of such hospital shall report in writing to the board within sixty days the name of any member of the medical staff or any other chiropractor practicing in the hospital whose hospital privileges have been revoked, restricted, reduced or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any chiropractor by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

Any professional society in this state comprised primarily of chiropractors which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice, moral turpitude or drug or alcohol abuse shall report in writing to the board within sixty days of a final decision the name of such member, together with all pertinent information relating to such action.

Every person, partnership, corporation, association, insurance company, professional society or other organization providing professional liability insurance to a chiropractor in this state shall submit to the board the following information within thirty days from any judgment, dismissal or settlement of a civil action or of any claim involving the insured: The date of any judgment, dismissal or settlement; whether any appeal has been taken on the judgment, and, if so, by which party; the amount of any settlement or judgment against the insured; and such other information as the board may require.

Within thirty days after a person known to be a chiropractor licensed or otherwise lawfully practicing chiropractic in this state or applying to be so licensed is convicted of a felony under the laws of this state, or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the
conviction was entered shall forward to the board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of such chiropractor or applicant, the nature of the offense committed and the final judgment and sentence of the court.

Upon a determination of the board that there is probable cause to believe that any person, partnership, corporation, association, insurance company, professional society or other organization has failed or refused to make a report required by this subsection, the board shall provide written notice to the alleged violator stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. After reviewing the record of such hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a civil penalty of not less than one thousand dollars nor more than ten thousand dollars against such violator. Anyone so assessed shall be notified of the assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the board within thirty days, the attorney general may institute a civil action in the circuit court of Kanawha County to recover the amount of the assessment. In any such civil action, the court's review of the board's action shall be conducted in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

Any person may report to the board relevant facts about the conduct of any chiropractor in this state which in the opinion of such person amounts to professional malpractice or professional incompetence.

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

The filing of a report with the board pursuant to any provision of this article, any investigation by the board or any disposition of a case by the board does not preclude any action by a hospital, other health care facility or
professional society comprised primarily of chiropractors
to suspend, restrict or revoke the privileges or membership
of such chiropractor.

(c) In every case considered by the board under this article
regarding suspension, revocation or issuance of a license
whether initiated by the board or upon complaint or
information from any person or organization, the board
shall make a preliminary determination as to whether
probable cause exists to substantiate charges of grounds to
suspend, revoke or refuse to issue a license as set forth in
section eight of this article. If such probable cause is found
to exist, all proceedings on such charges shall be open to the
public who shall be entitled to all reports, records, and
nondeliberative materials introduced at such hearing,
including the record of the final action taken: Provided,
That any medical records, which were introduced at such
hearing and which pertain to a person who has not
expressly waived his right to the confidentiality of such
records, shall not be open to the public nor is the public
entitled to such records. If a finding is made that probable
cause does not exist, the public has a right of access to the
complaint or other document setting forth the charges, the
findings of fact and conclusions supporting such finding
that probable cause does not exist, if the subject
chiropractor consents to such access.

CHAPTER 33. INSURANCE.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-2. Scope of article.

(a) This article applies to fire, marine, casualty, and
surety insurance, on risks or operations in this state.
(b) This article shall not apply:
(1) To reinsurance, other than joint reinsurance to the
extent stated in section eleven of this article;
(2) To life or accident and sickness insurance;
(3) To insurance of vessels or craft, their cargoes, marine
builders’ risks, marine protection and indemnity, or other
risks commonly insured under marine, as distinguished
from inland marine, insurance policies;
(4) To insurance against loss of or damage to aircraft,
including their accessories and equipment, or against
liability, other than worker's compensation and employer's
liability, arising out of the ownership, maintenance or use
of aircraft;
(5) To title insurance;
(6) To malpractice insurance in so far as the provisions
of this article directly conflict and thereby are supplanted
by article twenty-a of this chapter.
(c) If any kind of insurance, subdivision or combination
thereof, or type of coverage, is subject to both the provisions
of this article expressly applicable to casualty and surety
insurance and to those expressly applicable to fire and
marine insurance, the commissioner may apply to filings
made for such kind of insurance the provisions of this
article which are in his judgment most suitable.

ARTICLE 20B. RATES FOR MALPRACTICE INSURANCE POLICIES.

§33-20B-1. Scope of article.
This article applies to malpractice insurance as defined in
subdivision (9), subsection (e), section ten, article one of this
chapter. Nothing in this article shall be construed to
supplant any provision of article twenty of this chapter
which does not directly conflict with the provisions herein.

§30-20B-2. Rate making.
Any and all modifications of rates made on or after the
effective date of this article shall be made in accordance
with the following provisions:
(a) Due consideration shall be given to the past loss
experience within and outside this state. No consideration
shall be given to the prospective or projected loss
experience within or outside this state except as prescribed
by the regulations of the commissioner promulgated
pursuant to subsection (a), section six of this article.
(b) Due consideration shall be given to catastrophe
hazards, if any, to a reasonable margin for underwriting
profit and contingencies, to dividends, savings or
unabsorbed premium deposits allowed or returned by
insurers to their policyholders, members or subscribers and
actual past expenses and demonstrable prospective or
projected expenses applicable to this state.
(c) Rates shall not be excessive, inadequate or unfairly
discriminatory.
(d) Except to the extent necessary to meet the provisions of subdivision (c) of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

(e) Rates made in accordance with this section may be used subject to the provisions of this article.

§33-20B-3. Rate filings.

(a) Every filing for malpractice insurance made pursuant to subsection (a), section four, article twenty of this chapter shall state the proposed effective date thereof, the character and extent of the coverage contemplated, and information in support of such filing. The information furnished in support of a filing shall include (i) the experience or judgment of the insurer or rating organization making the filing; (ii) its interpretation of any statistical data the filing relies upon; (iii) the experience of other insurers or rating organizations; and (iv) any other relevant factors required by the commissioner. When a filing is not accompanied by the information required by this section upon which the insurer supports such filing, the commissioner shall require such insurer to furnish such information and, in such event, the waiting period prescribed by subsection (b) of this section shall commence as of the date such information is furnished.

A filing and any supporting information shall be open to public inspection as soon as the filing is received by the commissioner. Any interested party may file a brief with the commissioner supporting his position concerning the filing. Any person or organization may file with the commissioner a signed statement declaring and supporting his or its position concerning the filing. Upon receipt of any such statement prior to the effective date of the filing, the commissioner shall mail or deliver a copy of such statement to the filer, which may file such reply as it may desire to make. This section shall not be applicable to any memorandum or statement of any kind by any employee of the commissioner.

(b) Every such filing shall be on file for a waiting period of sixty days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed thirty days if he gives written notice within
such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner within the waiting period or any extension thereof.

(c) No insurer shall make or issue a contract or policy of malpractice insurance except in accordance with the filings which are in effect for said insurer as provided in this article.

§30-20B-4. Disapproval of filings.

(a) If within the waiting period or any extension thereof as provided in subsection (b), section three of this article, the commissioner finds that a filing does not meet the requirements of this article, he shall send to the insurer or rating organization which made such filing written notice of disapproval of such filing specifying therein in what respects he finds such filing fails to meet the requirements of this article and stating that such filing shall not be effective. Within thirty days from the issuance of written notice of disapproval, any insurer or rating organization aggrieved by such disapproval of any filing may request a hearing thereon pursuant to section thirteen, article two of this chapter.

(b) If at anytime subsequent to the waiting period or any extension thereof as provided in subsection (b), section three of this article, the commissioner finds that a filing does not meet the requirements of this article, he shall send to the insurer or rating organization which made such filing a written order specifying in what respect he finds that such filing fails to meet the requirements of this article and a date, not less than thirty days from the issuance of such order, when such filing shall be deemed no longer effective. Within thirty days from the issuance of such order, any insurer or rating organization aggrieved by such order may request a hearing thereon pursuant to section thirteen, article two of this chapter. Any such order shall not affect
any contract or policy made or issued prior to the expiration
date set forth in such order.
(c) Any person or organization aggrieved by any filing
which is in effect or the application thereof may request a
hearing thereon pursuant to section thirteen, article two of
this chapter. The insurer or rating organization which made
such filing shall be notified in writing upon receipt of any
such request for hearing and thereby made a party to such
hearing. Upon such hearing, if the commissioner finds that
such filing fails to meet the requirements of this article, he
shall issue an order specifying in what respects he so finds
and a date, not less than thirty days from the issuance of
such order, when such filings shall be deemed no longer
effective.
(d) The commissioner shall hold a public hearing upon
every filing which requests an increase in general rates of
ten percent or more and upon every filing which, in the
opinion of the commissioner, is of such import that it will
affect the public. The insurer or rating organization which
made such filing shall be notified in writing not less than
fifteen days prior to the hearing date. Notice of the time,
place and filing to be considered shall be published as a
Class II legal advertisement in every county in the state in
accordance with article three, chapter fifty-nine of this
code.
§33-20B-5. Rating organizations.
(a) A corporation, an unincorporated association, a
partnership or an individual, whether located within or
outside this state, may make application to the
commissioner for license as a rating organization for such
kinds of malpractice insurance as are specified in its
application and shall file therewith: (1) a copy of its
constitution, its articles of agreement or association or its
certificates of incorporation, and of its bylaws, rules and
regulations governing the conduct of its business; (2) a list
of its members and subscribers; (3) the name and address of
a resident of this state as attorney-in-fact upon whom
notices or orders of the commissioner or process affecting
such rating organization may be served; and (4) a statement
of its qualifications as a rating organization. If the
commissioner finds that the applicant is competent,
trustworthy and otherwise qualified to act as a rating
organization and that its constitution, articles of agreement
or association or certificate of incorporation, and its
bylaws, rules and regulations governing the conduct of its
business conform to the requirements of law, he shall issue a
license specifying the kinds of insurance or subdivisions
thereof for which the applicant is authorized to act as a
rating organization. Every such application shall be
filed within sixty days of the date of its filing with him. Licenses
issued pursuant to this section shall remain in effect for
three years unless sooner suspended or revoked by the
commissioner. The fee for said license shall be twenty-five
dollars, which fee shall be in addition to all other fees,
licenses or taxes to which a rating organization might
otherwise be subject, and all fees so collected shall be paid
to the state treasury pursuant to subsection (b), section
thirteen, article three of this chapter. In the event the rating
organization ceases to meet the requirements of this article,
The license issued pursuant to this section may be suspended
or revoked by the commissioner upon notice and hearing
pursuant to article five, chapter twenty-nine-a of this code.
Every rating organization shall notify the commissioner
promptly of every change in: (1) its constitution, its articles
of agreement or association or its certificate of
incorporation, and its bylaws, rules and regulations
governing the conduct of its business; (2) its list of members
and subscribers; and (3) the name and address of the
resident of this state designated as attorney-in-fact by it
upon whom notices or orders of the commissioner or process
affecting such rating organization may be served.

(b) The commissioner shall promulgate legislative rules
pursuant to article three, chapter twenty-nine-a of this
code prescribing procedures for rating organizations to
permit any insurer not a member to become a subscriber to
its rating services for any kind of insurance for which it is
authorized to act as a rating organization pursuant to this
section. Each rating organization shall furnish its rating
services without discrimination to its members and
subscribers. The reasonableness of any legislative rule in its
application to subscribers shall be reviewed by the
commissioner upon request of any such subscriber. If the
commissioner finds, upon notice and hearing provided pursuant to article five, chapter twenty-nine-a of this code, that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule is not to be applicable to subscribers and promulgate a revised rule. The denial of any insurer’s application for subscribership in contravention of a legislative rule or the failure to approve or deny such an application within thirty days after submission to the rating organization shall be reviewed by the commissioner upon request of the aggrieved insurer. If the commissioner finds, upon notice and hearing provided pursuant to article five, chapter twenty-nine-a of this code, that the insurer has been wrongfully denied subscribership, he shall order the rating organization to admit the insurer as a subscriber.

(c) No rating organization shall adopt any policy or rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(d) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this article or article twenty of this chapter is hereby authorized, provided the filings resulting from such cooperation are subject to all the provisions of this article and article twenty which are applicable to filings generally. The commissioner may review such cooperative activities and practices. If the commissioner finds, upon notice and hearing provided pursuant to article five, chapter twenty-nine-a of this code, that any such activity or practice is unfair, unreasonable or otherwise inconsistent with the provisions of this article, he shall issue a written order specifying in what respects such activity or practice is unfair, unreasonable or otherwise inconsistent with the provisions of this article, and requiring that such activity or practice be discontinued immediately.

(e) Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers in a manner consistent with the.
§33-20B-6. Rate review and reporting.

(a) The commissioner shall review annually the rules, rates and rating plans filed and in effect for each insurer providing five percent or more of the malpractice insurance coverage in this state in the preceding calendar year to determine whether such filings continue to meet the requirements of this article and whether such filings are unfair or inappropriate given the loss experience in this state in the preceding year.

Within two hundred forty days of the effective date of this article, the commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code, establishing procedures for the fair and appropriate evaluation and determination of the past loss experience and prospective or projected loss experience of insurers within and outside this state, actual past expenses incurred in this state and demonstrable prospective or projected expenses applicable to this state.

(b) Within one hundred eighty days of the effective date of this article, the commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code, establishing procedures whereby each insurer providing five percent or more of the malpractice insurance coverage in this state shall submit to the commissioner the following information:

1. The number of claims filed per category;
2. The number of civil actions filed;
3. The number of civil actions compromised or settled and the amount of each such compromise or settlement;
4. The number of verdicts in civil actions and the amount of each such verdict;
5. The number of civil actions appealed and the disposition of each such appeal;
6. The number of civil actions dismissed and the cause of each such dismissal;
7. The total dollar amount paid in claims;
8. The total dollar amount paid to plaintiffs in civil actions;
9. The number of claims closed without payment and the amount held in reserve for each such claim;
10. The total dollar amount expended for loss adjustment expenses, commissions and brokerage expenses;
(11) The total dollar amount expended in defense and litigation of claims;
(12) The total dollar amount held in reserve for anticipated claims;
(13) Net profit or loss;
(14) Profits from investment income on net realized capital gains and loss reserves and unearned premiums; and
(15) The number of malpractice insurance policies cancelled for reasons other than non-payment of premiums.

Any insurer who fails to submit any and all such information to the commissioner as required by this subsection in accordance with the regulations promulgated hereunder shall be fined ten thousand dollars for each of the first five such failures per year and shall be fined one hundred thousand dollars for the sixth and each subsequent such failure per year.

(c) Beginning in the year one thousand nine hundred eighty-six, the commissioner shall report annually during the month of November to the joint standing committee on the judiciary the following information pertaining to each insurer providing five percent or more of the malpractice insurance coverage in this state:

(1) The loss experience within the state during the preceding calendar year;
(2) The rules, rates and rating plans in effect on the date of such report;
(3) The investment portfolio, including reserves, and the annual rate of return thereon; and
(4) The information submitted to the commissioner pursuant to the regulations promulgated by authority of subsection (b) of this section.

§33-20B-7. Studies by the commissioner.

The commissioner is hereby directed to study the feasibility and desirability of creating joint underwriting associations or alternative pooling agreements to facilitate the issuance and underwriting of malpractice insurance policies in this state. The commissioner is further directed to identify and study the policies and practices of all insurers in setting dollar amounts to be held in reserve for anticipated claims and claims filed against malpractice insurance policies in this state.
Beginning in the year one thousand nine hundred eighty-six, the commissioner shall report periodically the results of the studies required by this section to the joint standing committee on the judiciary. Beginning in the year one thousand nine hundred eighty-seven, the commissioner shall file an annual report of the results of such studies with the Legislature on the first day of its regular session.

ARTICLE 20C. CANCELLATION OR NONRENEWAL OF MALPRACTICE INSURANCE POLICIES.

§33-20C-1. Scope of article.

This article applies to malpractice insurance as defined in subdivision (9), subsection (e), section ten, article one of this chapter. This article applies to malpractice insurance policies which have been in effect for at least sixty days or have been renewed at least once.

§33-20C-2. Cancellation and nonrenewal prohibited except for specified reasons; notice.

No insurer once having issued or delivered a policy providing malpractice insurance in this state shall cancel or fail to renew such policy, except for one or more of the following reasons:

(a) The named insured fails to discharge any of his obligations to pay premiums for such policy or any installment thereof within a reasonable time of the due date;

(b) The policy was obtained through material misrepresentation;

(c) The insured violates any of the material terms and conditions of the policy;

(d) The insured’s experiences render him an increased risk, which experiences may include revocation or suspension of a professional license or two or more claims paid or judgments rendered against the insured for professional liability within a three-year period.

(e) The unavailability of reinsurance, upon sufficient proof thereof being supplied to the commissioner.

Any purported cancellation or failure to renew a policy providing malpractice insurance attempted in contravention of this section shall be void.
§33-20C-3. Insurer to specify reasons for cancellation and non-renewal.

In every instance in which a policy or contract of malpractice insurance is cancelled or is not renewed by the insurer, the insurer or his duly authorized agent shall cite within the written notice of the action the allowable reason in section two of this article for which such action was taken and shall state with specificity the circumstances giving rise to the allowable reason so cited. The notice of the action shall further state that the insured has a right to request a hearing pursuant to section five of this article within thirty days.

§33-20C-4. Notice period for cancellation or nonrenewal.

(a) No insurer shall fail to renew a policy or contract providing malpractice insurance unless written notice of such nonrenewal is forwarded to the insured by certified mail, return receipt requested, not less than ninety days prior to the expiration date of such policy.

(b) No insurer shall cancel a policy or contract providing malpractice insurance during the term of such policy unless written notice of such cancellation is forwarded to the insured by certified mail, return receipt requested, not more than thirty days after the reason for such cancellation, as provided in section two of this article, arose or occurred or the insurer learned that it arose or occurred and not less than thirty days prior to the effective cancellation date.

(c) Notwithstanding any other provision of this article, the insurer shall renew any malpractice insurance policy that has not been renewed due to the insured's failure to pay the renewal premium when due if none of the other grounds for failure to renew as set forth in section two of this article exist and the insurer makes application for renewal within ninety days of the original expiration date of the policy. If a policy is renewed as provided in this subsection, the coverage afforded need not be retroactive to the original expiration date of the policy, but may resume upon the renewal date at the current premium levels offered by the company.

§33-20C-5. Hearings and review.

Any insured aggrieved by the cancellation or failure to
renew a policy or contract providing malpractice insurance
may request a hearing before the commissioner or his
designee within thirty days of the receipt of any such notice.
The hearing shall be conducted pursuant to section
thirteen, article two of this chapter. The policy shall remain
in effect until entry of the commissioner's order. Any party
aggrieved by an order of the commissioner may seek
judicial review in the circuit court of the county in which
the insured resides in accordance with section fourteen,
article two of this chapter.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION;
JUDICIAL SALE.

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-1. Legislative findings and declaration of purpose.

The Legislature hereby finds and declares that the
citizens of this state are entitled to the best medical care and
facilities available and that health care providers offer an
essential and basic service which requires that the public
policy of this state encourage and facilitate the provision of
such service to our citizens;
That as in every human endeavor the possibility of injury
or death from negligent conduct commands that protection
of the public served by health care providers be recognized
as an important state interest;
That our system of litigation is an essential component of
this state interest in providing adequate and reasonable
compensation to those persons who suffer from injury or
death as a result of professional negligence;
That liability insurance is a key part of our system of
litigation, affording compensation to the injured while
fulfilling the need fairness of spreading the cost of the
risks of injury;
That a further important component of these protections
is the capacity and willingness of health care providers to
monitor and effectively control their professional
competency, so as to protect the public and insure to the
extent possible the highest quality of care;
That it is the duty and responsibility of the Legislature to
balance the rights of our individual citizens to adequate and
reasonable compensation with the broad public interest in
the provision of services by qualified health care providers
who can themselves obtain the protection of reasonably
priced and extensive liability coverage;
That in recent years, the cost of insurance coverage has
risen dramatically while the nature and extent of coverage
has diminished, leaving the health care providers and the
injured without the full benefit of professional liability
insurance coverage;
That many of the factors and reasons contributing to the
increased cost and diminished availability of professional
liability insurance arise from the historic inability of this
state to effectively and fairly regulate the insurance
industry so as to guarantee our citizens that rates are
appropriate, that purchasers of insurance coverage are not
treated arbitrarily, and that rates reflect the competency
and experience of the insured health care providers.
Therefore, the purpose of this enactment is to provide for
a comprehensive resolution of the matters and factors
which the Legislature finds must be addressed to
accomplish the goals set forth above. In so doing, the
Legislature has determined that reforms in the common law
and statutory rights of our citizens to compensation for
injury and death, in the regulation of rate making and other
practices by the liability insurance industry, and in the
authority of medical licensing boards to effectively regulate
and discipline the health care providers under such board
must be enacted together as necessary and mutual
ingredients of the appropriate legislative response.

§55-7B-2. Definitions.

(a) “Health care” means any act or treatment performed
or furnished, or which should have been performed or
furnished, by any health care provider for, to or on behalf of
a patient during the patient’s medical care, treatment or
confinement.

(b) “Health care facility” means any clinic, hospital,
nursing home, or extended care facility in and licensed by
the state of West Virginia and any state operated institution
of clinic providing health care.

(c) “Health care provider” means a person, partnership,
corporation, facility or institution licensed by, or certified
in, this state or another state, to provide health care or
professional health care services, including but not limited
to a physician, osteopathic physician, hospital, dentist,
registered or licensed practical nurse, optometrist,
podiatrist, chiropractor, physical therapist, or
psychologist, or an officer, employee or agent thereof acting
in the course and scope of such officer's, employee's or
agent's employment.
(d) "Medical professional liability" means any liability
for damages resulting from the death or injury of a person
for any tort or breach of contract based on health care
services rendered, or which should have been rendered, by a
health care provider or health care facility to a patient.
(e) "Patient" means a natural person who receives or
should have received health care from a licensed health care
provider under a contract, expressed or implied.
(f) "Representative" means the spouse, parent,
guardian, trustee, attorney or other legal agent of another.
(g) "Noneconomic loss" means losses including, but not
limited to, pain, suffering, mental anguish and grief.
§55-7B-3. Elements of proof.
1 The following are necessary elements of proof that an
2 injury or death resulted from the failure of a health care
3 provider to follow the accepted standard of care:
4 (a) The health care provider failed to exercise that
5 degree of care, skill and learning required or expected of a
6 reasonable, prudent health care provider in the profession
7 or class to which the health care provider belongs acting in
8 the same or similar circumstances; and
9 (b) Such failure was a proximate cause of the injury or
10 death.
§55-7B-4. Health care injuries; limitations of actions;
exceptions.
1 (a) A cause of action for injury to a person alleging
2 medical professional liability against a health care provider
3 arises as of the date of injury, except as provided in
4 subsection (b) of this section, and must be commenced
5 within two years of the date of such injury, or within two
6 years of the date when such person discovers, or with the
7 exercise of reasonable diligence, should have discovered
8 such injury, whichever last occurs: Provided, That in no
event shall any such action be commenced more than ten
years after the date of injury.

(b) A cause of action for injury to a minor, brought by or
on behalf of a minor who was under the age of ten years at
the time of such injury, shall be commenced within two
years of the date of such injury, or prior to the minor's
twelfth birthday, whichever provides the longer period.

(c) The periods of limitation set forth in this section
shall be tolled for any period during which the health care
provider or its representative has committed fraud or
collusion by concealing or misrepresenting material facts
about the injury.

§55-7B-5. Health care actions; complaint; specific amount of
damages not to be stated.

In any medical professional liability action against a
health care provider, no specific dollar amount or figure
may be included in the complaint, but the complaint may
include a statement reciting that the minimum
jurisdictional amount established for filing the action is
satisfied. However, any party defendant may at any time
request a written statement setting forth the nature and
amount of damages being sought. The request shall be
served upon the plaintiff who shall serve a responsive
statement as to the damages sought within thirty days
thereafter. If no response is served within the thirty days,
the party defendant requesting the statement may petition
the court in which the action is pending to order the
plaintiff to serve a responsive statement.

§55-7B-6. Pretrial procedures.

(a) In each medical professional liability action against
a health care provider, not less than nine nor more than
twelve months following the filing of answer by all
defendants, a mandatory status conference shall be held at
which, in addition to any matters otherwise required, the
parties shall:

(1) Inform the court as to the status of the action,
particularly as to the identification of contested facts and
issues and the progress of discovery and the period of time
for, and nature of, anticipated discovery; and

(2) On behalf of the plaintiff, certify to the court that
either an expert witness has or will be retained to testify on behalf of the plaintiff as to the applicable standard of care or that under the alleged facts of the action, no expert witness will be required. If the court determines that expert testimony will be required, the court shall provide a reasonable period of time for obtaining an expert witness and the action shall not be scheduled for trial, unless the defendant agrees otherwise, until such period has concluded. It shall be the duty of the defendant to schedule such conference with the court upon proper notice to the plaintiff.

(b) In the event that the court determines prior to trial that either party is presenting or relying upon a frivolous or dilatory claim or defense, for which there is no reasonable basis in fact or at law, the court may direct in any final judgment the payment to the prevailing party of reasonable litigation expenses, including deposition and subpoena expenses, travel expenses incurred by the party, and such other expenses necessary to the maintenance of the action, excluding attorney's fees and expenses.

§55-7B-7. Testimony of expert witness on standard of care.

The applicable standard of care and a defendant's failure to meet said standard, if at issue, shall be established in medical professional liability cases by the plaintiff by testimony of one or more knowledgeable, competent expert witnesses if required by the court. Such expert testimony may only be admitted in evidence if the foundation, therefor, is first laid establishing that: (a) the opinion is actually held by the expert witness; (b) the opinion can be testified to with reasonable medical probability; (c) such expert witness possesses professional knowledge and expertise coupled with knowledge of the applicable standard of care to which his or her expert opinion testimony is addressed; (d) such expert maintains a current license to practice medicine in one of the states of the United States; and (e) such expert is engaged or qualified in the same or substantially similar medical field as the defendant health care provider.

§55-7B-8. Limit on liability for noneconomic loss.

In any medical professional liability action brought
against a health care provider, the maximum amount recoverable as damages for noneconomic loss shall not exceed one million dollars and the jury shall be so instructed.

§55-7B-9. Effective date; applicability of provisions.

1 The provisions of this article shall not apply to injuries which occur before the effective date of this article.

§55-7B-10. Severability.

1 If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce A. Williams
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Jeff C. Hall
Clerk of the Senate

Donald J. Kog bottle, clerk of the House of Delegates

Dan Tonowandah
President of the Senate

Joseph P. Alleva
Speaker House of Delegates

The within..............this the 26th day of March, 1986.

Rudolph R. Brame
Governor
PRESENTED TO THE
GOVERNOR

Date 3/21/86
Time 4:37 p.m.