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No. 714

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986



ENROLLED

SENATE BILL NO. 714

(By Senator Chafin, et al)



PASSED March 8, 1986

In Effect 90 days from Passage



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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

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

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

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

**§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 the
2 names of all physicians and podiatrists licensed or
3 otherwise lawfully practicing in this state and of all persons
4 applying to be so licensed to practice, along with an
5 individual historical record for each such individual
6 containing reports and all other information furnished the
7 board under this article or otherwise. Such record may
8 include, in accordance with rules established by the board,
9 additional items relating to the individual's record of
10 professional practice that will facilitate proper review of
11 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 by
18 the board pursuant to this article and to place into such
19 record a statement of reasonable length of his own view of
20 the correctness or relevance of any information existing in
21 such record. Such statement shall at all times accompany
22 that part of the record in contention.

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

26 (e) A physician, podiatrist or applicant shall be
27 provided written notice within thirty days of the placement
28 and substance of any information in his individual
29 historical 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 practice,
33 prior disciplinary action by any entity and information
34 contained on the licensure application, the board shall
35 expunge information in an individual's historical record
36 unless it has initiated a proceeding for a hearing upon such
37 information within two years of the placing of the
38 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
44 confidential information in the following circumstances:

45 (1) In an examination or disciplinary hearing
46 sanctioned 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 or
51 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 such
55 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;

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

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

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

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

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

87 (k) Any physician-patient privilege does not apply in
88 any investigation or proceeding by the board or by a
89 medical peer review committee or by a hospital governing
90 board with respect to relevant hospital medical records,
91 while any of the aforesaid are acting within the scope of
92 their authority: *Provided*, That the disclosure of any
93 information pursuant to this provision shall not be
94 considered a waiver of any such privilege in any other
95 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.

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
5 administrators, professional societies and others.

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

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

24 After the completion of a hospital's formal disciplinary
25 procedure and after any resulting legal action, the chief
26 executive officer of such hospital shall report in writing to
27 the board within sixty days the name of any member of the
28 medical staff or any other physician or podiatrist practicing
29 in the hospital whose hospital privileges have been revoked,
30 restricted, reduced or terminated for any cause, including
31 resignation, together with all pertinent information
32 relating to such action. The chief executive officer shall also
33 report any other formal disciplinary action taken against

34 any physician or podiatrist by the hospital upon the
35 recommendation of its medical staff relating to professional
36 ethics, medical incompetence, medical malpractice, moral
37 turpitude or drug or alcohol abuse. Temporary suspension
38 for failure to maintain records on a timely basis or failure to
39 attend staff or section meetings need not be reported.

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

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

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

72 Upon a determination of the board that there is probable
73 cause to believe that any person, partnership, corporation,
74 association, insurance company, professional society or
75 other organization has failed or refused to make a report
76 required by this subsection, the board shall provide written

77 notice to the alleged violator stating the nature of the
78 alleged violation and the time and place at which the
79 alleged violator shall appear to show good cause why a civil
80 penalty should not be imposed. The hearing shall be
81 conducted in accordance with the provisions of article five,
82 chapter twenty-nine-a of this code. After reviewing the
83 record of such hearing, if the board determines that a
84 violation of this subsection has occurred, the board shall
85 assess a civil penalty of not less than one thousand dollars
86 nor more than ten thousand dollars against such violator.
87 Anyone so assessed shall be notified of the assessment in
88 writing and the notice shall specify the reasons for the
89 assessment. If the violator fails to pay the amount of the
90 assessment to the board within thirty days, the attorney
91 general may institute a civil action in the circuit court of
92 Kanawha County to recover the amount of the assessment.
93 In any such civil action, the court's review of the board's
94 action shall be conducted in accordance with the provisions
95 of section four, article five, chapter twenty-nine-a of this
96 code.

97 Any person may report to the board relevant facts about
98 the conduct of any physician or podiatrist in this state
99 which in the opinion of such person amounts to professional
100 malpractice or professional incompetence.

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

104 The filing of a report with the board pursuant to any
105 provision of this article, any investigation by the board or
106 any disposition of a case by the board does not preclude any
107 action by a hospital, other health care facility or
108 professional society comprised primarily of physicians or
109 podiatrists to suspend, restrict or revoke the privileges or
110 membership of such physician or podiatrist.

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

117 (1) Attempting to obtain, obtaining, renewing or
118 attempting to renew a license to practice medicine and

119 surgery or podiatry by bribery, fraudulent
120 misrepresentation or through known error of the board.

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

126 (3) False or deceptive advertising.

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

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

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

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

158 As used herein, "proprietary interest" does not include an
159 ownership interest in a building in which space is leased to a
160 clinical laboratory or pharmacy at the prevailing rate under

161 a lease arrangement that is not conditional upon the income
162 or gross receipts of the clinical laboratory or pharmacy.

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

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

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

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

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

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

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

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

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

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

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

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

210 (20) Professional incompetence.

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

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

238 (e) The board may refer any cases coming to its attention
239 to an appropriate committee of an appropriate professional
240 organization for investigation and report. Any such report
241 shall contain recommendations for any necessary
242 disciplinary measures and shall be filed with the board
243 within ninety days of any such referral. The
244 recommendations shall be considered by the board and the
245 case may be further investigated by the board. The board
246 after full investigation shall take whatever action it deems
247 appropriate, as provided herein.

248 (f) The investigating body, as provided for in subsection
249 (e) of this section, may request and the board under any
250 circumstances may require a physician or podiatrist or
251 person applying for licensure or other authorization to
252 practice medicine and surgery or podiatry in this state to
253 submit to a physical or mental examination by a physician
254 or physicians approved by the board. A physician or
255 podiatrist submitting to any such examination has the
256 right, at his expense, to designate another physician to be
257 present at the examination and make an independent report
258 to the investigating body or the board. The expense of the
259 examination shall be paid by the board. Any individual who
260 applies for or accepts the privilege of practicing medicine
261 and surgery or podiatry in this state is deemed to have given
262 his consent to submit to all such examinations when
263 requested to do so in writing by the board and to have
264 waived all objections to the admissibility of the testimony
265 or examination report of any examining physician on the
266 ground that the testimony or report is privileged
267 communication. If a person fails or refuses to submit to any
268 such examination under circumstances which the board
269 finds are not beyond his control, such failure or refusal is
270 prima facie evidence of his inability to practice medicine
271 and surgery or podiatry competently and in compliance
272 with the standards of acceptable and prevailing medical
273 practice.

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

278 (h) In every disciplinary or licensure denial action, the
279 board shall furnish the physician or podiatrist or applicant
280 with written notice setting out with particularity the
281 reasons for its action. Disciplinary and licensure denial
282 hearings shall be conducted in accordance with the
283 provisions of article five, chapter twenty-nine-a of this
284 code. However, hearings shall be heard upon sworn
285 testimony and the rules of evidence for trial courts of record
286 in this state shall apply to all such hearings. A transcript of
287 all hearings under this section shall be made, and the
288 respondent may obtain a copy of the transcript at his
289 expense. The physician or podiatrist has the right to defend

290 against any such charge by the introduction of evidence, the
291 right to be represented by counsel, the right to present and
292 cross-examine witnesses and the right to have subpoenas
293 and subpoenas duces tecum issued on his behalf for the
294 attendance of witnesses and the production of documents.
295 The board shall make all its final actions public. The order
296 shall contain the terms of all action taken by the board.

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

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

303 (2) Administer a public reprimand;

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

309 (4) Revoke his license or other authorization to practice
310 medicine and surgery or podiatry or to prescribe or dispense
311 controlled substances;

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

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

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

321 (8) Assess a civil fine of not less than one thousand
322 dollars nor more than ten thousand dollars.

323 (j) Notwithstanding the provisions of section eight,
324 article one, chapter thirty of this code, if the board
325 determines the evidence in its possession indicates that a
326 physician's or podiatrist's continuation in practice or
327 unrestricted practice constitutes an immediate danger to
328 the public, the board may take any of the actions provided
329 for in subsection (i) of this section on a temporary basis and
330 without a hearing, if institution of proceedings for a hearing
331 before the board are initiated simultaneously with the

332 temporary action and begin within fifteen days of such
333 action. The board shall render its decision within five days
334 of the conclusion of a hearing under this subsection.

335 (k) Any person against whom disciplinary action is
336 taken pursuant to the provisions of this article has the right
337 to judicial review as provided in articles five and six,
338 chapter twenty-nine-a of this code. Except with regard to
339 an order of temporary suspension of a license for six months
340 or less, a person shall not practice medicine and surgery or
341 podiatry or deliver health care services in violation of any
342 disciplinary order revoking or limiting his license while any
343 such review is pending. Within sixty days, the board shall
344 report its final action regarding restriction, limitation,
345 suspension or revocation of the license of a physician or
346 podiatrist, limitation on practice privileges or other
347 disciplinary action against any physician or podiatrist to all
348 appropriate state agencies, appropriate licensed health
349 facilities and hospitals, insurance companies or
350 associations writing medical malpractice insurance in this
351 state, the American medical association, the American
352 podiatry association, professional societies of physicians or
353 podiatrists in the state and any entity responsible for the
354 fiscal administration of medicare and medicaid.

355 (l) Any person against whom disciplinary action has
356 been taken under the provisions of this article shall at
357 reasonable intervals be afforded an opportunity to
358 demonstrate that he can resume the practice of medicine
359 and surgery or podiatry on a general or limited basis. At the
360 conclusion of a suspension, limitation or restriction period,
361 the physician or podiatrist has the right to resume practice
362 pursuant to the orders of the board: *Provided*, That for a
363 revocation pursuant to subsection (d) of this section a
364 reapplication shall not be accepted for a period of at least
365 five years.

366 (m) Any entity, organization or person, including the
367 board, any member of the board, its agents or employees
368 and any entity or organization or its members referred to in
369 this article, any insurer, its agents or employees, a medical
370 peer review committee and a hospital governing board, its
371 members or any committee appointed by it acting without
372 malice and without gross negligence in making any report
373 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.**

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

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

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

24 After the completion of a hospital's formal disciplinary
25 procedure and after any resulting legal action, the chief
26 executive officer of such hospital shall report in writing to
27 the board within sixty days the name of any member of the
28 medical staff or any other osteopathic physician practicing
29 in the hospital whose hospital privileges have been revoked,
30 restricted, reduced or terminated for any cause, including
31 resignation, together with all pertinent information
32 relating to such action. The chief executive officer shall also
33 report any other formal disciplinary action taken against
34 any osteopathic physician by the hospital upon the
35 recommendation of its medical staff relating to professional
36 ethics, medical incompetence, medical malpractice, moral

37 turpitude or drug or alcohol abuse. Temporary suspension
38 for failure to maintain records on a timely basis or failure to
39 attend staff or section meetings need not be reported.

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

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

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

73 Upon a determination of the board that there is probable
74 cause to believe that any person, partnership, corporation,
75 association, insurance company, professional society or
76 other organization has failed or refused to make a report
77 required by this subsection, the board shall provide written
78 notice to the alleged violator stating the nature of the
79 alleged violation and the time and place at which the

80 alleged violator shall appear to show good cause why a civil
81 penalty should not be imposed. The hearing shall be
82 conducted in accordance with the provisions of article five,
83 chapter twenty-nine-a of this code. After reviewing the
84 record of such hearing, if the board determines that a
85 violation of this subsection has occurred, the board shall
86 assess a civil penalty of not less than one thousand dollars
87 nor more than ten thousand dollars against such violator.
88 Anyone so assessed shall be notified of the assessment in
89 writing and the notice shall specify the reasons for the
90 assessment. If the violator fails to pay the amount of the
91 assessment to the board within thirty days, the attorney
92 general may institute a civil action in the circuit court of
93 Kanawha County to recover the amount of the assessment.
94 In any such civil action, the court's review of the board's
95 action shall be conducted in accordance with the provisions
96 of section four, article five, chapter twenty-nine-a of this
97 code.

98 Any person may report to the board relevant facts about
99 the conduct of any osteopathic physician in this state which
100 in the opinion of such person amounts to professional
101 malpractice or professional incompetence.

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

105 The filing of a report with the board pursuant to any
106 provision of this article, any investigation by the board or
107 any disposition of a case by the board does not preclude any
108 action by a hospital, other health care facility or
109 professional society comprised primarily of osteopathic
110 physicians or physicians and surgeons of other schools of
111 medicine to suspend, restrict or revoke the privileges or
112 membership of such osteopathic physician.

113 (c) In every case considered by the board under this
114 article regarding suspension, revocation or issuance of a
115 license whether initiated by the board or upon complaint or
116 information from any person or organization, the board
117 shall make a preliminary determination as to whether
118 probable cause exists to substantiate charges of cause to
119 suspend, revoke or refuse to issue a license as set forth in
120 subsection (a), section eleven of this article. If such probable
121 cause is found to exist, all proceedings on such charges shall

122 be open to the public who shall be entitled to all reports,
123 records, and nondeliberative materials introduced at such
124 hearing, including the record of the final action taken:
125 *Provided*, That any medical records, which were introduced
126 at such hearing and which pertain to a person who has not
127 expressly waived his right to the confidentiality of such
128 records, shall not be open to the public nor is the public
129 entitled to such records. If a finding is made that probable
130 cause does not exist, the public has a right of access to the
131 complaint or other document setting forth the charges, the
132 findings of fact and conclusions supporting such finding
133 that probable cause does not exist, if the subject osteopathic
134 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.**

- 1 (a) The board may independently initiate suspension or
2 revocation proceedings as well as initiate suspension or
3 revocation proceedings based on information received from
4 any person.
5 The board shall initiate investigations as to professional
6 incompetence or other reasons for which a licensed
7 chiropractor may be adjudged unqualified if the board
8 receives notice that five or more judgments or settlements
9 arising from medical professional liability have been
10 rendered or made against such chiropractor.
11 (b) Upon request of the board, any medical peer review
12 committee in this state shall report any information that
13 may relate to the practice or performance of any
14 chiropractor known to that medical peer review committee.
15 Copies of such requests for information from a medical peer
16 review committee may be provided to the subject
17 chiropractor if, in the discretion of the board, the provision
18 of such copies will not jeopardize the board's investigation.
19 In the event that copies are so provided, the subject
20 chiropractor is allowed fifteen days to comment on the
21 requested information and such comments must be
22 considered by the board.

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

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

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

58 Within thirty days after a person known to be a
59 chiropractor licensed or otherwise lawfully practicing
60 chiropractic in this state or applying to be so licensed is
61 convicted of a felony under the laws of this state, or of any
62 crime under the laws of this state involving alcohol or drugs
63 in any way, including any controlled substance under state
64 or federal law, the clerk of the court of record in which the

65 conviction was entered shall forward to the board a
66 certified true and correct abstract of record of the
67 convicting court. The abstract shall include the name and
68 address of such chiropractor or applicant, the nature of the
69 offense committed and the final judgment and sentence of
70 the court.

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

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

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

103 The filing of a report with the board pursuant to any
104 provision of this article, any investigation by the board or
105 any disposition of a case by the board does not preclude any
106 action by a hospital, other health care facility or

107 professional society comprised primarily of chiropractors
 108 to suspend, restrict or revoke the privileges or membership
 109 of such chiropractor.

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

CHAPTER 33. INSURANCE.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-2. Scope of article.

- 1 (a) This article applies to fire, marine, casualty, and
 2 surety insurance, on risks or operations in this state.
- 3 (b) This article shall not apply:
 - 4 (1) To reinsurance, other than joint reinsurance to the
 5 extent stated in section eleven of this article;
 - 6 (2) To life or accident and sickness insurance;
 - 7 (3) To insurance of vessels or craft, their cargoes, marine
 8 builders' risks, marine protection and indemnity, or other
 9 risks commonly insured under marine, as distinguished
 10 from inland marine, insurance policies;
 - 11 (4) To insurance against loss of or damage to aircraft,
 12 including their accessories and equipment, or against

13 liability, other than worker's compensation and employer's
14 liability, arising out of the ownership, maintenance or use
15 of aircraft;

16 (5) To title insurance;

17 (6) To malpractice insurance in so far as the provisions
18 of this article directly conflict and thereby are supplanted
19 by article twenty-a of this chapter.

20 (c) If any kind of insurance, subdivision or combination
21 thereof, or type of coverage, is subject to both the provisions
22 of this article expressly applicable to casualty and surety
23 insurance and to those expressly applicable to fire and
24 marine insurance, the commissioner may apply to filings
25 made for such kind of insurance the provisions of this
26 article which are in his judgment most suitable.

ARTICLE 20B. RATES FOR MALPRACTICE INSURANCE POLICIES.

§33-20B-1. Scope of article.

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

§30-20B-2. Rate making.

1 Any and all modifications of rates made on or after the
2 effective date of this article shall be made in accordance
3 with the following provisions:

4 (a) Due consideration shall be given to the past loss
5 experience within and outside this state. No consideration
6 shall be given to the prospective or projected loss
7 experience within or outside this state except as prescribed
8 by the regulations of the commissioner promulgated
9 pursuant to subsection (a), section six of this article.

10 (b) Due consideration shall be given to catastrophe
11 hazards, if any, to a reasonable margin for underwriting
12 profit and contingencies, to dividends, savings or
13 unabsorbed premium deposits allowed or returned by
14 insurers to their policyholders, members or subscribers and
15 actual past expenses and demonstrable prospective or
16 projected expenses applicable to this state.

17 (c) Rates shall not be excessive, inadequate or unfairly
18 discriminatory.

19 (d) Except to the extent necessary to meet the provisions
20 of subdivision (c) of this section, uniformity among insurers
21 in any matters within the scope of this section is neither
22 required nor prohibited.

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

§33-20B-3. Rate filings.

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

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

31 (b) Every such filing shall be on file for a waiting period
32 of sixty days before it becomes effective, which period may
33 be extended by the commissioner for an additional period
34 not to exceed thirty days if he gives written notice within

35 such waiting period to the insurer or rating organization
36 which made the filing that he needs such additional time for
37 the consideration of such filing. Upon written application
38 by such insurer or rating organization, the commissioner
39 may authorize a filing which he has reviewed to become
40 effective before the expiration of the waiting period or any
41 extension thereof. A filing shall be deemed to meet the
42 requirements of this article unless disapproved by the
43 commissioner within the waiting period or any extension
44 thereof.

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

§30-20B-4. Disapproval of filings.

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

14 (b) If at anytime subsequent to the waiting period or any
15 extension thereof as provided in subsection (b), section
16 three of this article, the commissioner finds that a filing
17 does not meet the requirements of this article, he shall send
18 to the insurer or rating organization which made such filing
19 a written order specifying in what respect he finds that such
20 filing fails to meet the requirements of this article and a
21 date, not less than thirty days from the issuance of such
22 order, when such filing shall be deemed no longer effective.
23 Within thirty days from the issuance of such order, any
24 insurer or rating organization aggrieved by such order may
25 request a hearing thereon pursuant to section thirteen,
26 article two of this chapter. Any such order shall not affect

27 any contract or policy made or issued prior to the expiration
28 date set forth in such order.

29 (c) Any person or organization aggrieved by any filing
30 which is in effect or the application thereof may request a
31 hearing thereon pursuant to section thirteen, article two of
32 this chapter. The insurer or rating organization which made
33 such filing shall be notified in writing upon receipt of any
34 such request for hearing and thereby made a party to such
35 hearing. Upon such hearing, if the commissioner finds that
36 such filing fails to meet the requirements of this article, he
37 shall issue an order specifying in what respects he so finds
38 and a date, not less than thirty days from the issuance of
39 such order, when such filings shall be deemed no longer
40 effective.

41 (d) The commissioner shall hold a public hearing upon
42 every filing which requests an increase in general rates of
43 ten percent or more and upon every filing which, in the
44 opinion of the commissioner, is of such import that it will
45 affect the public. The insurer or rating organization which
46 made such filing shall be notified in writing not less than
47 fifteen days prior to the hearing date. Notice of the time,
48 place and filing to be considered shall be published as a
49 Class II legal advertisement in every county in the state in
50 accordance with article three, chapter fifty-nine of this
51 code.

§33-20B-5. Rating organizations.

1 (a) A corporation, an unincorporated association, a
2 partnership or an individual, whether located within or
3 outside this state, may make application to the
4 commissioner for license as a rating organization for such
5 kinds of malpractice insurance as are specified in its
6 application and shall file therewith: (1) a copy of its
7 constitution, its articles of agreement or association or its
8 certificates of incorporation, and of its bylaws, rules and
9 regulations governing the conduct of its business; (2) a list
10 of its members and subscribers; (3) the name and address of
11 a resident of this state as attorney-in-fact upon whom
12 notices or orders of the commissioner or process affecting
13 such rating organization may be served; and (4) a statement
14 of its qualifications as a rating organization. If the
15 commissioner finds that the applicant is competent,

16 trustworthy and otherwise qualified to act as a rating
17 organization and that its constitution, articles of agreement
18 or association or certificate of incorporation, and its
19 bylaws, rules and regulations governing the conduct of its
20 business conform to the requirements of law, he shall issue a
21 license specifying the kinds of insurance or subdivisions
22 thereof for which the applicant is authorized to act as a
23 rating organization. Every such application shall be
24 granted or denied in whole or in part by the commissioner
25 within sixty days of the date of its filing with him. Licenses
26 issued pursuant to this section shall remain in effect for
27 three years unless sooner suspended or revoked by the
28 commissioner. The fee for said license shall be twenty-five
29 dollars, which fee shall be in addition to all other fees,
30 licenses or taxes to which a rating organization might
31 otherwise be subject, and all fees so collected shall be paid
32 to the state treasury pursuant to subsection (b), section
33 thirteen, article three of this chapter. In the event the rating
34 organization ceases to meet the requirements of this article,
35 the license issued pursuant to this section may be suspended
36 or revoked by the commissioner upon notice and hearing
37 pursuant to article five, chapter twenty-nine-a of this code.
38 Every rating organization shall notify the commissioner
39 promptly of every change in: (1) its constitution, its articles
40 of agreement or association or its certificate of
41 incorporation, and its bylaws, rules and regulations
42 governing the conduct of its business; (2) its list of members
43 and subscribers; and (3) the name and address of the
44 resident of this state designated as attorney-in-fact by it
45 upon whom notices or orders of the commissioner or process
46 affecting such rating organization may be served.

47 (b) The commissioner shall promulgate legislative rules
48 pursuant to article three, chapter twenty-nine-a of this
49 code prescribing procedures for rating organizations to
50 permit any insurer not a member to become a subscriber to
51 its rating services for any kind of insurance for which it is
52 authorized to act as a rating organization pursuant to this
53 section. Each rating organization shall furnish its rating
54 services without discrimination to its members and
55 subscribers. The reasonableness of any legislative rule in its
56 application to subscribers shall be reviewed by the
57 commissioner upon request of any such subscriber. If the

58 commissioner finds, upon notice and hearing provided
59 pursuant to article five, chapter twenty-nine-a of this code,
60 that such rule or regulation is unreasonable in its
61 application to subscribers, he shall order that such rule is
62 not to be applicable to subscribers and promulgate a revised
63 rule. The denial of any insurer's application for
64 subscribership in contravention of a legislative rule or the
65 failure to approve or deny such an application within thirty
66 days after submission to the rating organization shall be
67 reviewed by the commissioner upon request of the
68 aggrieved insurer. If the commissioner finds, upon notice
69 and hearing provided pursuant to article five, chapter
70 twenty-nine-a of this code, that the insurer has been
71 wrongfully denied subscribership, he shall order the rating
72 organization to admit the insurer as a subscriber.

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

78 (d) Cooperation among rating organizations or among
79 rating organizations and insurers in rate making or in other
80 matters within the scope of this article or article twenty of
81 this chapter is hereby authorized, provided the filings
82 resulting from such cooperation are subject to all the
83 provisions of this article and article twenty which are
84 applicable to filings generally.

85 The commissioner may review such cooperative activities
86 and practices. If the commissioner finds, upon notice and
87 hearing provided pursuant to article five, chapter twenty-
88 nine-a of this code, that any such activity or practice is
89 unfair, unreasonable or otherwise inconsistent with the
90 provisions of this article, he shall issue a written order
91 specifying in what respects such activity or practice is
92 unfair, unreasonable or otherwise inconsistent with the
93 provisions of this article, and requiring that such activity or
94 practice be discontinued immediately.

95 (e) Any rating organization may subscribe for or
96 purchase actuarial, technical or other services, and such
97 services shall be available to all members and subscribers
98 without discrimination.

§33-20B-6. Rate review and reporting.

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

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

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

25 (1) The number of claims filed per category;

26 (2) The number of civil actions filed;

27 (3) The number of civil actions compromised or settled
28 and the amount of each such compromise or settlement;

29 (4) The number of verdicts in civil actions and the
30 amount of each such verdict;

31 (5) The number of civil actions appealed and the
32 disposition of each such appeal;

33 (6) The number of civil actions dismissed and the cause
34 of each such dismissal;

35 (7) The total dollar amount paid in claims;

36 (8) The total dollar amount paid to plaintiffs in civil
37 actions;

38 (9) The number of claims closed without payment and
39 the amount held in reserve for each such claim;

40 (10) The total dollar amount expended for loss
41 adjustment expenses, commissions and brokerage
42 expenses;

43 (11) The total dollar amount expended in defense and
44 litigation of claims;

45 (12) The total dollar amount held in reserve for
46 anticipated claims;

47 (13) Net profit or loss;

48 (14) Profits from investment income on net realized
49 capital gains and loss reserves and unearned premiums; and

50 (15) The number of malpractice insurance policies
51 cancelled for reasons other than non-payment of premiums.

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

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

65 (1) The loss experience within the state during the
66 preceding calendar year;

67 (2) The rules, rates and rating plans in effect on the date
68 of such report;

69 (3) The investment portfolio, including reserves, and the
70 annual rate of return thereon; and

71 (4) The information submitted to the commissioner
72 pursuant to the regulations promulgated by authority of
73 subsection (b) of this section.

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

1 The commissioner is hereby directed to study the
2 feasibility and desirability of creating joint underwriting
3 associations or alternative pooling agreements to facilitate
4 the issuance and underwriting of malpractice insurance
5 policies in this state. The commissioner is further directed
6 to identify and study the policies and practices of all
7 insurers in setting dollar amounts to be held in reserve for
8 anticipated claims and claims filed against malpractice
9 insurance policies in this state.

10 Beginning in the year one thousand nine hundred eighty-
11 six, the commissioner shall report periodically the results of
12 the studies required by this section to the joint standing
13 committee on the judiciary. Beginning in the year one
14 thousand nine hundred eighty-seven, the commissioner
15 shall file an annual report of the results of such studies with
16 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.

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

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

1 No insurer once having issued or delivered a policy
2 providing malpractice insurance in this state shall cancel or
3 fail to renew such policy, except for one or more of the
4 following reasons:
5 (a) The named insured fails to discharge any of his
6 obligations to pay premiums for such policy or any
7 installment thereof within a reasonable time of the due
8 date;
9 (b) The policy was obtained through material
10 misrepresentation;
11 (c) The insured violates any of the material terms and
12 conditions of the policy;
13 (d) The insured's experiences render him an increased
14 risk, which experiences may include revocation or
15 suspension of a professional license or two or more claims
16 paid or judgments rendered against the insured for
17 professional liability within a three-year period.
18 (e) The unavailability of reinsurance, upon sufficient
19 proof thereof being supplied to the commissioner.
20 Any purported cancellation or failure to renew a policy
21 providing malpractice insurance attempted in
22 contravention of this section shall be void.

§33-20C-3. Insurer to specify reasons for cancellation and non-renewal.

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

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

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

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

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

§33-20C-5. Hearings and review.

1 Any insured aggrieved by the cancellation or failure to

2 renew a policy or contract providing malpractice insurance
3 may request a hearing before the commissioner or his
4 designee within thirty days of the receipt of any such notice.
5 The hearing shall be conducted pursuant to section
6 thirteen, article two of this chapter. The policy shall remain
7 in effect until entry of the commissioner's order. Any party
8 aggrieved by an order of the commissioner may seek
9 judicial review in the circuit court of the county in which
10 the insured resides in accordance with section fourteen,
11 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.

1 The Legislature hereby finds and declares that the
2 citizens of this state are entitled to the best medical care and
3 facilities available and that health care providers offer an
4 essential and basic service which requires that the public
5 policy of this state encourage and facilitate the provision of
6 such service to our citizens;

7 That as in every human endeavor the possibility of injury
8 or death from negligent conduct commands that protection
9 of the public served by health care providers be recognized
10 as an important state interest;

11 That our system of litigation is an essential component of
12 this state interest in providing adequate and reasonable
13 compensation to those persons who suffer from injury or
14 death as a result of professional negligence;

15 That liability insurance is a key part of our system of
16 litigation, affording compensation to the injured while
17 fulfilling the need of fairness of spreading the cost of the
18 risks of injury; ~~and~~

19 That a further important component of these protections
20 is the capacity and willingness of health care providers to
21 monitor and effectively control their professional
22 competency, so as to protect the public and insure to the
23 extent possible the highest quality of care;

24 That it is the duty and responsibility of the Legislature to
25 balance the rights of our individual citizens to adequate and
26 reasonable compensation with the broad public interest in

27 the provision of services by qualified health care providers
28 who can themselves obtain the protection of reasonably
29 priced and extensive liability coverage;

30 That in recent years, the cost of insurance coverage has
31 risen dramatically while the nature and extent of coverage
32 has diminished, leaving the health care providers and the
33 injured without the full benefit of professional liability
34 insurance coverage;

35 That many of the factors and reasons contributing to the
36 increased cost and diminished availability of professional
37 liability insurance arise from the historic inability of this
38 state to effectively and fairly regulate the insurance
39 industry so as to guarantee our citizens that rates are
40 appropriate, that purchasers of insurance coverage are not
41 treated arbitrarily, and that rates reflect the competency
42 and experience of the insured health care providers.

43 Therefore, the purpose of this enactment is to provide for
44 a comprehensive resolution of the matters and factors
45 which the Legislature finds must be addressed to
46 accomplish the goals set forth above. In so doing, the
47 Legislature has determined that reforms in the common law
48 and statutory rights of our citizens to compensation for
49 injury and death, in the regulation of rate making and other
50 practices by the liability insurance industry, and in the
51 authority of medical licensing boards to effectively regulate
52 and discipline the health care providers under such board
53 must be enacted together as necessary and mutual
54 ingredients of the appropriate legislative response.

§55-7B-2. Definitions.

1 (a) "Health care" means any act or treatment performed
2 or furnished, or which should have been performed or
3 furnished, by any health care provider for, to or on behalf of
4 a patient during the patient's medical care, treatment or
5 confinement.

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

10 (c) "Health care provider" means a person, partnership,
11 corporation, facility or institution licensed by, or certified
12 in, this state or another state, to provide health care or

13 professional health care services, including but not limited
14 to a physician, osteopathic physician, hospital, dentist,
15 registered or licensed practical nurse, optometrist,
16 podiatrist, chiropractor, physical therapist, or
17 psychologist, or an officer, employee or agent thereof acting
18 in the course and scope of such officer's, employee's or
19 agent's employment.

20 (d) "Medical professional liability" means any liability
21 for damages resulting from the death or injury of a person
22 for any tort or breach of contract based on health care
23 services rendered, or which should have been rendered, by a
24 health care provider or health care facility to a patient.

25 (e) "Patient" means a natural person who receives or
26 should have received health care from a licensed health care
27 provider under a contract, expressed or implied.

28 (f) "Representative" means the spouse, parent,
29 guardian, trustee, attorney or other legal agent of another.

30 (g) "Noneconomic loss" means losses including, but not
31 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

9 event shall any such action be commenced more than ten
10 years after the date of injury.

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

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

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

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

§55-7B-6. Pretrial procedures.

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

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

11 (2) On behalf of the plaintiff, certify to the court that

12 either an expert witness has or will be retained to testify on
13 behalf of the plaintiff as to the applicable standard of care
14 or that under the alleged facts of the action, no expert
15 witness will be required. If the court determines that expert
16 testimony will be required, the court shall provide a
17 reasonable period of time for obtaining an expert witness
18 and the action shall not be scheduled for trial, unless the
19 defendant agrees otherwise, until such period has
20 concluded. It shall be the duty of the defendant to schedule
21 such conference with the court upon proper notice to the
22 plaintiff.

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

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

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

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

1 In any medical professional liability action brought

2 against a health care provider, the maximum amount
3 recoverable as damages for noneconomic loss shall not
4 exceed one million dollars and the jury shall be so
5 instructed.

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

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

§55-7B-10. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held invalid, such
3 invalidity shall not affect other provisions or applications
4 of this article, and to this end the provisions of this article
5 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.

Judd C. Wells

.....
Clerk of the Senate

Donald T. Hoop

.....
Clerk of the House of Delegates

Sam Terhune

.....
President of the Senate

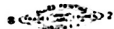
Joseph P. Allright

.....
Speaker House of Delegates

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

Arch A. Moore, Jr.

.....
Governor



PRESENTED TO THE

GOVERNOR

Date 3/21/86

Time 4:27 p.m.

RECEIVED
1991 MAR 29 PM 6 57
CLERK OF COURTS

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86