

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 4131

(By Mr. Del. B. Hatfield & White)

— ● —

Passed March 6, 1990

In Effect ninety days from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4131
(By DELEGATES B. HATFIELD AND WHITE)

[Passed March 6, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact section nine, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia Medical Practice Act and the records of the board of medicine; eliminating the confidentiality of certain records and the criminal penalty for violations of the same; providing a method to encourage physicians, podiatrists and physician assistants to voluntarily seek treatment of an alcohol or chemical dependency; and providing that one voluntary agreement to seek treatment shall be confidential and not available to public access or discovery.

Be it enacted by the Legislature of West Virginia:

That section nine, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-9. Records of board; expungement; examination; notice; public information; voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges.

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

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

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

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

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

34 (f) Except for information relating to biographical
35 background, education, professional training and
36 practice, a voluntary agreement entered into pursuant
37 to subsection (h) of this section, prior disciplinary action
38 by any entity, or information contained on the licensure
39 application, the board shall expunge information in an
40 individual's historical record unless it has initiated a

41 proceeding for a hearing upon such information within
42 two years of the placing of the information into the
43 historical record.

44 (g) Orders of the board relating to disciplinary action
45 against a physician, podiatrist, or physician assistant
46 are public information.

47 (h)(1) In order to encourage voluntary reporting of
48 alcohol or other chemical dependency impairment and
49 in recognition of the fact that alcoholism and chemical
50 dependency are illnesses, a physician, podiatrist, or
51 physician assistant licensed, certified, or otherwise
52 lawfully practicing in this state may enter into a
53 voluntary agreement with the board reporting his or her
54 participation in a chemical dependency or alcohol
55 treatment program or reporting an alcohol or chemical
56 dependency impairment to the board and seek treat-
57 ment for his or her dependency. Pursuant to said
58 agreement the board shall impose limitations on the
59 practice of said physician, podiatrist, or physician
60 assistant.

61 (2) Any voluntary agreement entered into pursuant to
62 this subsection shall not be considered a disciplinary
63 action or order by the board and shall not be public
64 information if:

65 (A) Such voluntary agreement is the result of the
66 physician, podiatrist, or physician assistant reporting to
67 the board his or her participation in a chemical
68 dependency or alcohol treatment program or reporting
69 to the board his or her alcohol or chemical dependency
70 impairment and requesting such an agreement for the
71 purpose of seeking treatment; and

72 (B) The board has not received nor filed any written
73 complaints regarding said physician, podiatrist, or
74 physician assistant relating to an alcohol or chemical
75 dependency impairment affecting the care and treat-
76 ment of patients, nor received any reports pursuant to
77 subsection (b), section fourteen of this article relating to
78 an alcohol or chemical dependency impairment.

79 (3) If any physician, podiatrist, or physician assistant

80 enters into a voluntary agreement with the board
81 pursuant to this subsection and then fails to comply with
82 or fulfill the terms of said agreement, the board shall
83 initiate disciplinary proceedings pursuant to subsection
84 (a), section fourteen of this article.

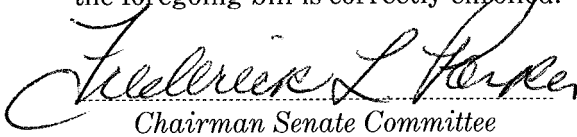
85 (4) If the board has not instituted any disciplinary
86 proceeding as provided for in this article, any informa-
87 tion received, maintained, or developed by the board
88 relating to the alcohol or chemical dependency impair-
89 ment of any physician, podiatrist, physician assistant
90 and any voluntary agreement made pursuant to this
91 subsection shall be confidential and not available for
92 public information, discovery, or court subpoena, nor for
93 introduction into evidence in any medical professional
94 liability action or other action for damages arising out
95 of the provision of or failure to provide health care
96 services.

97 In the board's annual report of its activities to the
98 Legislature required under section seven of this article,
99 the board shall include information regarding the
100 success of the voluntary agreement mechanism estab-
101 lished therein: *Provided*, That in making such report the
102 board shall not disclose any personally identifiable
103 information relating to any physician, podiatrist, or
104 physician assistant participating in a voluntary agree-
105 ment as provided herein.

106 Notwithstanding any of the foregoing provisions, the
107 board may cooperate with and provide documentation of
108 any voluntary agreement entered into pursuant to this
109 subsection to licensing boards in other jurisdictions, as
110 may be appropriate.

111 (i) Any physician-patient privilege does not apply in
112 any investigation or proceeding by the board or by a
113 medical peer review committee or by a hospital govern-
114 ing board with respect to relevant hospital medical
115 records, while any of the aforesaid are acting within the
116 scope of their authority: *Provided*, That the disclosure
117 of any information pursuant to this provision shall not
118 be considered a waiver of any such privilege in any
119 other proceeding.

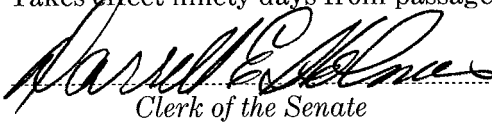
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

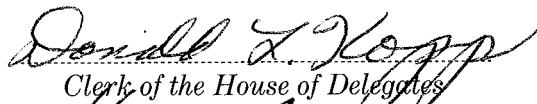

Chairman Senate Committee



Chairman House Committee

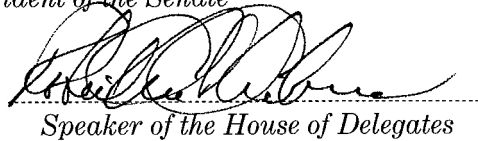
Originating in the House.

Takes effect ninety days from passage.

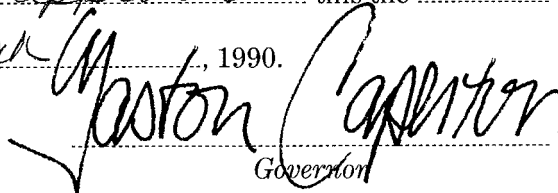

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 19th
day of March, 1990.


Governor

PRESENTED TO THE

GOVERNOR

Date

3/13/90

Time

2:30 PM

RECEIVED

1630 MAR 19 PM 4:19

OFFICE OF POST VOUCHER
SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/19/90