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

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

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

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

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

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

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

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

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

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

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

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

(3) If any physician, podiatrist, or physician assistant
enters into a voluntary agreement with the board pursuant to this subsection and then fails to comply with or fulfill the terms of said agreement, the board shall initiate disciplinary proceedings pursuant to subsection (a), section fourteen of this article.

(4) If the board has not instituted any disciplinary proceeding as provided for in this article, any information received, maintained, or developed by the board relating to the alcohol or chemical dependency impairment of any physician, podiatrist, physician assistant and any voluntary agreement made pursuant to this subsection shall be confidential and not available for public information, discovery, or court subpoena, nor for introduction into evidence in any medical professional liability action or other action for damages arising out of the provision of or failure to provide health care services.

In the board's annual report of its activities to the Legislature required under section seven of this article, the board shall include information regarding the success of the voluntary agreement mechanism established therein: Provided, That in making such report the board shall not disclose any personally identifiable information relating to any physician, podiatrist, or physician assistant participating in a voluntary agreement as provided herein.

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

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