WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED
Committee Substitute for
SENATE BILL NO. 49

(By Senator BLATNIK)

PASSED March 11, 1995
In Effect 90 Days From Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 49

(SENATOR BLATNIK, original sponsor)

[Passed March 11, 1995; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, three, four-a, five, six, seven, eight, ten, eleven, twelve and fifteen, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections one-a and seven-a, all relating to state boards of examination or registration; application of article; legislative findings and declaration; registration of officers; bond of secretary; lay members for professional boards; meetings; quorum; powers relating to investigations; duties; applications for licensing; setting of fees; examination of applicants; contents of licenses or certificates; requirements for continuing education; grounds for denial, suspension or revocation of license; probation; hearings; disposition of fees and fines; annual audits; compensation and expenses of members; records of
proceedings; register of applicants; annual reports; immunity of members; limitations on liability of reporting professionals; reporting results of litigation; and penalties.

Be it enacted by the Legislature of West Virginia:

That sections one, three, four-a, five, six, seven, eight, ten, eleven, twelve and fifteen, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections one-a and seven-a, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-1. Application of article.

Unless otherwise specifically provided, every board of examination or registration referred to in this chapter shall conform to the requirements prescribed in the following sections of this article.

§30-1-1a. Legislative findings and declaration.

The Legislature hereby finds and declares that as a matter of public policy, the practice of the professions referred to in this chapter is a privilege and not a natural right of individuals. The fundamental purpose of licensure and registration is to protect the public and any license, registration, certificate or other authorization to practice issued pursuant to this statute is a revocable privilege.

§30-1-3. Officers; bond of secretary.

Every board referred to in this chapter shall elect annually from its members a president and a secretary who shall hold their offices for one year and until their successors are elected: Provided, That the state board of law examiners, the state board of examiners for nurses and the state board of dental examiners may each elect a secretary from outside its membership. Such officers shall register annually with the governor, the secretary
of administration, the legislative auditor and the secretary of state. The secretary shall execute a surety bond conditioned as required by law, which bond shall be approved by the attorney general as to form and by the auditor as to sufficiency, and, when so approved, shall be filed and recorded in the office of the secretary of state. The premium on said bond shall be regarded a proper and necessary expense of the board.

§30-1-4a. Lay members for professional boards.

Notwithstanding any provisions of this code to the contrary, the governor shall appoint at least one lay person to represent the interests of the public on every health professional licensing board, referred to in this chapter. If the total number of members on any of these boards after the appointment of one such lay person is an even number, one additional lay person shall be appointed. These lay members shall serve in addition to any other members otherwise provided for by law or rules. These lay members shall be of the age of eighteen years or over, of good moral character and competent to represent and safeguard the interests of the public. Each lay member is empowered to participate in and vote on all transactions and businesses of the board, committee or group to which he or she is appointed.

Any person whose addition to a board as a lay member under the provisions of this section results in the addition of an odd number of lay additions to the board shall serve for a term ending in an odd-numbered year on the date in that year on which terms of the professional members expire; of such members first appointed, each shall serve for a term ending on such date in the year one thousand nine hundred seventy-nine, and the successor to each such person shall serve for a term equal in length to the terms of the other professional members of the board. Any person whose addition to a board as a lay member under the provisions of this section results in the addition of an even number of lay additions to the board, shall serve for a term ending in an even-
numbered year on the date in that year on which terms
of the professional members expire; of such members
first appointed, each shall serve for a term ending on
such date in the year one thousand nine hundred sev-
enty-eight, and the successor to each such person shall
serve for a term equal in length to the terms of the other
professional members of the board.

§30-1-5. Meetings; quorum; powers relating to investigations;
duties.

Every board referred to in this chapter shall hold at
least one meeting each year, at such times and places as
it may prescribe by rule, for the examination of appli-
cants who desire to practice their respective professions
or occupations in this state, and for the transaction of
other business as may legally come before it. The board
may hold additional meetings as may be necessary,
which shall be called by the secretary at the direction of
the president or upon the written request of any three
members. A majority of the members of the board
constitutes a quorum for the transaction of its business.
The board is authorized to compel the attendance of
witnesses, to issue subpoenas, to conduct investigations
and hire an investigator and to take testimony and proof
concerning any matter within its jurisdiction, and for
these purposes the president and secretary of the board
are authorized to administer oaths.

Every board referred to in this chapter has a duty to,
and shall in a timely manner, investigate and resolve
complaints made to it and shall provide public access to
the record of disposition of complaints made to it in
accordance with the provisions of chapter twenty-nine-b
of this code; and every board has a duty to report, and
shall report in a timely manner upon receiving notice
thereof, violations of individual practice acts contained
in this chapter by an individual, to the board by which
the individual may be licensed. Every person licensed or
registered by such board has a duty to report, and shall
report in a timely manner, to the board which licenses or
registers him or her, a known or observed violation of the
practice act or the board's rules by any other person
licensed or registered by the same board. Law-
enforcement agencies or their personnel and courts shall
report in a timely manner to the appropriate board any
violations of individual practice acts by any individual.

Whenever a board referred to in this chapter obtains
information that a person subject to its authority has
engaged in, is engaging in or is about to engage in any
act which constitutes or will constitute a violation of the
provisions of this chapter administered and enforced by
that board, it may make application to the circuit court
for an order enjoining the acts and upon a showing that
the person has engaged, is engaging or is about to engage
in any such act, an injunction, restraining order or other
order as the court may deem appropriate shall be entered
by the court.

§30-1-6. Application; renewal and single service fees; exami-
nation; reexamination.

Every applicant for license or registration under the
provisions of this chapter shall apply therefor in writing
to the proper board and shall transmit with his or her
application an examination fee which the board is
authorized to charge for an examination or investigation
into the applicant’s qualifications to practice.

Each board referred to in this chapter is authorized to
establish by rule a deadline for application for examina-
tion which shall be no less than ten nor more than ninety
days prior to the date of the examination.

Boards may set by rule fees relating to the licensing or
registering of individuals, which shall be sufficient to
enable the boards to carry out effectively their responsi-
bilities of licensure or registration and discipline of
individuals subject to their authority: Provided, That
when any board proposes to promulgate a rule regarding
fees for licensing or registration, that board shall notify
its membership of the proposed rule by mailing a copy
thereof to the membership at the time that the proposed rule is filed with the secretary of state for publication in the state register in accordance with section five, article three, chapter twenty-nine-a of this code.

§30-1-7. Contents of license or certificate of registration.

Every license or certificate of registration issued by each board shall bear a serial number, the full name of the applicant, the date of issuance, the seal of the board and shall be signed by its president and secretary or executive secretary. No license or certificate of registration granted or issued under the provisions of this chapter may be assigned.

§30-1-7a. Continuing education.

Each board referred to in this chapter shall establish continuing education requirements as a prerequisite to license renewal. Each board shall develop continuing education criteria appropriate to its discipline, which shall include, but not be limited to, course content, course approval, hours required and reporting periods.

§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.

(a) Every board referred to in this chapter is authorized to suspend or revoke the license of any person convicted of a felony or who has been found to have engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct. Where any person has been so convicted of a felony or has been found to have engaged in such conduct, practices or acts, every board referred to in this chapter is further authorized to enter into consent decrees, to reprimand, to enter into probation orders; to levy fines not to exceed one thousand dollars per day per violation; or any of these, singly or in combination; and further, to assess administrative costs in addition thereto: Provided, That
any costs assessed shall be placed in the special account of said board and any fine levied shall be deposited in the state treasury's general revenue fund. For purposes of this section, the word "felony" means a felony or crime punishable as a felony under the laws of this state, the United States or any of them. Every board referred to in this chapter is authorized to promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.

(b) Notwithstanding any other provision of law to the contrary, no certificate, license, registration or authority issued under the provisions of this chapter may be suspended or revoked without a prior hearing before the board or court issuing said certificate, license, registration or authority: Provided, That this subsection does not apply in cases where a board is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the individual's continuation in practice constitutes an immediate danger to the public.

(c) In all proceedings before a board or court for the suspension or revocation of any certificate, license, registration or authority issued under the provisions of this chapter, a statement of the charges against the holder thereof and a notice of the time and place of hearing shall be served upon the person as a notice is served under section one, article two, chapter fifty-six of this code, at least thirty days prior to the hearing and he or she may appear with witnesses and be heard in person, by counsel, or both. The board may take oral or written proof, for or against the accused, as it may deem advisable. If upon hearing the board finds that the charges are true, it may suspend or revoke the certificate, license, registration or authority, and suspension or
revocation shall take from the person all rights and privileges acquired thereby.

Pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, informal disposition may also be made by the board of any contested case by stipulation, agreed settlement, consent order or default. Further, the board may suspend its decision and place a licensee found by the board to be in violation of the applicable practice on probation.

(d) Any person denied a license, certificate, registration or authority who believes the denial was in violation of this article or the article under which said license, certificate, registration or authority is authorized shall be entitled to a hearing on the action denying said license, certificate, registration or authority. Hearings under this subsection shall be in accordance with the provisions for hearings set forth in subsection (c) of this section.

(e) A stenographic report of each proceeding on the denial, suspension or revocation of a certificate, license, registration or authority shall be made at the expense of the board and a transcript thereof retained in its files. The board shall make a written report of its findings, which shall constitute part of the record.

(f) All proceedings under the provisions of this section are subject to review by the supreme court of appeals.

§30-1-10. Disposition of moneys; fines; annual audit.

The secretary of every board referred to in this chapter shall receive and account for all moneys derived by virtue of the provisions of this chapter applicable to it and shall pay them into a separate special fund of the state treasury established for each board where the funds shall be used exclusively by each board for purposes of administration and enforcement of its statute: Provided, That when the special fund of any board accumulates in excess of two times the annual budget of the board or ten thousand dollars, whichever is greater,
the amount in excess shall be transferred by the state
treasurer to the state general revenue fund: Provided,
however, That any fines levied shall be deposited in the
general revenue fund of the state treasury. The state
auditor shall audit the financial records of each board
annually and shall report to each board and the Legisla-
ture as to the audit.

§30-1-11. Compensation of members; expenses.

Each member of every board shall receive compensa-
tion and expense reimbursement not in excess of the
amount paid to members of the Legislature for their
interim duties as recommended by the citizens legislative
compensation commission and authorized by law for
each day or portion thereof engaged in the discharge of
official duties.

§30-1-12. Record of proceedings; register of applicants;
certified copies of records prima facie evidence;
report to governor and Legislature.

The secretary of every board shall keep a record of its
proceedings and a register of all applicants for license or
registration, showing for each the date of his or her
application, his or her name, age, educational and other
qualifications, place of residence, whether an examina-
tion was required, whether the applicant was rejected or
a certificate of license or registration granted, the date
of this action, the license or registration number, all
renewals, if required, and any suspension or revocation
thereof. The books and register of the board shall be
open to public inspection at all reasonable times, and the
books and register, or a copy of any part thereof, certi-
fied by the secretary and attested by the seal of the
board, shall be prima facie evidence of all matters
recorded therein.

On or before the first day of January of each year in
which the Legislature meets in regular session the board
shall submit to the governor and to the Legislature a
report of its transactions for the preceding two years,
together with an itemized statement of its receipts and
disbursements, a full list of the names of all persons licensed or registered by it during that period and statistical reports by county of practice, by specialty, if appropriate to the particular profession, and a list of any complaints filed regarding those so licensed or registered and any action taken thereon, certified by the president and the secretary. A copy of the report shall be filed with the secretary of state.

§30-1-15. Civil immunity for board members; liability limitations of professionals reporting to boards; peer review committees and professional review committees; reporting results of litigation to committees; procedure for imposing penalties.

(a) All members of the boards herein are immune from civil liability while acting within the scope of their duties as board members.

(b) Any member of a professional group or organization, who is subject to the provisions of this chapter, including, but not limited to, doctors of medicine, doctors of chiropractic, doctors of veterinary medicine, osteopathic physicians and surgeons, doctors of dentistry, pharmacists, attorneys-at-law, real estate brokers, architects, professional engineers, certified public accountants, public accountants, registered nurses or licensed practical nurses who, pursuant to the provisions of this chapter, or pursuant to any rule promulgated by the applicable governing board for that profession, or pursuant to the rules or by-laws of any peer review organization, reports or otherwise provides evidence of the professional negligence, impairment or incompetence of another member of his or her profession to the governing board for the profession or to any peer review organization or committee, is not liable to any person for making such a report: Provided, That the report is made without actual malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.
(c) If a claim or cause of action is asserted against a member of any profession included within the provisions of this chapter, whether an individual or an entity, as a result of the filing of a report by that member pursuant to the provisions of this chapter, or the rules of the applicable governing board for that profession, or pursuant to the rules or by-laws of any peer review organization or committee, and the claim or cause of action is subsequently dismissed, settled or adjudicated in favor of the person or entity making the required report, the person or persons who initiated the claim or action is liable for all attorney's fees, costs and expenses incurred by the reporting professional or entity only if the circuit court finds that the action was brought with malice or in violation of rule eleven of the West Virginia rules of civil procedure.

(d) Within thirty days of the dismissal, settlement, adjudication or other termination of any claim or cause of action asserted against any professional or entity reporting under the provisions of this chapter, the person or persons filing the claim or cause of action shall submit to the applicable governing board the following information:

1. The parties involved;
2. The court in which the action was filed, if applicable;
3. The basis and nature of the claim or cause of action; and
4. The result or disposition of the claim or cause of action.

(e) The governing boards of each profession subject to the provisions of this chapter shall promulgate legislative rules pursuant to the provisions of chapter twenty-nine-a of this code, establishing procedures for imposing sanctions and penalties against any member of the profession who fails to submit to the board the information required by this section.
62 (f) The provisions of this section do not preclude the
63 application of any protection of immunity which may be
64 otherwise set forth under any article in this chapter.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Speaker House of Delegates

The within is disapproved this the 21st day of ________________, 1995.

Governor