WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1999

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ENROLLED

House Bill No. 2082
(By Mr. Speaker, Mr. Kiss)

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Passed March 12, 1999
In Effect Ninety Days from Passage
ENROLLED

H. B. 2082

(BY MR. SPEAKER, MR. KISS)

[Passed March 12, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, ten, thirteen, fourteen and fifteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article three by adding thereto a new section, designated section eighteen, all relating to the West Virginia medical practice act; expanding the purposes of the article creating the board of medicine; authorizing the board to enter into reciprocity agreements with other jurisdictions; providing an exemption for eligible graduates of certain foreign medical schools from meeting additional requirements for licensure; defining the term "telemedicine"; requiring licensure for persons engaged in the practice of telemedicine, and providing exceptions; expanding the basis for board investigations; eliminating certain mandatory reporting; providing additional due process protections for physicians subject to disciplinary proceedings; stating the evidentiary standard for board action; permitting assessment of cost against complainant in certain cases; providing for remand in cases of after-discovered evidence; mediation; authorizing the formation of medical corporations with licensed osteopathic physicians; and continuing the board pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:
That sections two, ten, thirteen, fourteen and fifteen, article three, 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 a new section, designated section eighteen, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-2. Purpose.

The purpose of this article is to provide for the licensure and professional discipline of physicians and podiatrists and for the certification and discipline of physician assistants and to provide a professional environment that encourages the delivery of quality medical services within this state.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

(a) The board shall issue a license to practice medicine and surgery or to practice podiatry to any individual who is qualified to do so in accordance with the provisions of this article.

(b) For an individual to be licensed to practice medicine and surgery in this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable examination fee, the amount of the reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of medicine and surgery;

(2) He or she must provide evidence of graduation and receipt of the degree of doctor of medicine or its equivalent from a school of medicine, which is approved by the liaison committee on medical education or by the board;

(3) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the accreditation council for graduate medical education; and
(4) He or she must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice medicine and surgery. The board shall before the date of examination determine what will constitute a passing score: Provided, That the board, or a majority of them, may accept in lieu of an examination of applicants, the certificate of the national board of medical examiners: Provided, however, That the board is authorized to enter into reciprocity agreements with medical licensing authorities in other states, the District of Columbia, Canada or the Commonwealth of Puerto Rico, and, for an applicant who: (i) Is currently fully licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state or jurisdiction having reciprocity; (ii) has been engaged on a full-time professional basis in the practice of medicine within that state or jurisdiction for a period of at least five years; and (iii) is not the subject of any pending disciplinary action by a medical licensing board and has not been the subject of professional discipline by a medical licensing board in any jurisdiction, the board may permit licensure in this state by reciprocity. If an applicant fails to pass the examination on two occasions, he or she shall successfully complete a course of study or training, as approved by the board, designed to improve his or her ability to engage in the practice of medicine and surgery, before being eligible for reexamination.

(c) In addition to the requirements of subsection (b) hereof, any individual who has received the degree of doctor of medicine or its equivalent from a school of medicine located outside of the United States, the Commonwealth of Puerto Rico and Canada, to be licensed to practice medicine in this state, must also meet the following additional requirements and limitations:

(1) He or she must be able to demonstrate to the satisfaction of the board his or her ability to communicate in the English language;

(2) Before taking a licensure examination, he or she must have fulfilled the requirements of the educational commission
for foreign medical graduates for certification, or he or she must provide
evidence of receipt of a passing score on the examination of the
educational commission for foreign medical graduates: Provided, That an applicant who: (i) Is currently fully
licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state, the District of Columbia, Canada or the Commonwealth of Puerto Rico; (ii) has been engaged on a full-time professional basis in the practice of medicine within the state or jurisdiction where the applicant is fully licensed for a period of at least five years; and (iii) is not the subject of any pending disciplinary action by a medical licensing board and has not been the subject of professional discipline by a medical licensing board in any jurisdiction, is not required to have a certificate from the educational commission for foreign medical graduates;

(3) He or she must submit evidence to the board of either: (i) Having successfully completed a minimum of two years of graduate clinical training in a program approved by the accreditation council for graduate medical education; or (ii) current certification by a member board of the American Board of Medical Specialties.

(d) For an individual to be licensed to practice podiatry in this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable examination fee, the amount of the reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of podiatric medicine;

(2) He or she must provide evidence of graduation and receipt of the degree of doctor of podiatric medicine and its equivalent from a school of podiatric medicine which is approved by the council of podiatry education or by the board;

(3) He or she must pass an examination approved by the board, which examination can be related to a national standard.
The examination shall be in the English language and be designed to ascertain an applicant’s fitness to practice podiatric medicine. The board shall before the date of examination determine what will constitute a passing score. If an applicant fails to pass the examination on two occasions, he or she shall successfully complete a course of study or training, as approved by the board, designed to improve his or her ability to engage in the practice of podiatric medicine, before being eligible for reexamination; and

(4) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the council on podiatric medical education, or the colleges of podiatric medicine. The board may consider a minimum of two years of graduate podiatric clinical training in the U. S. armed forces or three years private podiatric clinical experience in lieu of this requirement.

(e) All licenses to practice medicine and surgery granted prior to the first day of July, one thousand nine hundred ninety-one, and valid on that date, shall continue in full effect for the term and under the conditions provided by law at the time of the granting of the license: Provided, That the provisions of subsection (d) of this section shall not apply to any person legally entitled to practice chiropody or podiatry in this state prior to the eleventh day of June, one thousand nine hundred sixty-five: Provided, however, That all persons licensed to practice chiropody prior to the eleventh day of June, one thousand nine hundred sixty-five, shall be permitted to use the term “chiropody-podiatry” and shall have the rights, privileges and responsibilities of a podiatrist set out in this article.

§30-3-13. Unauthorized practice of medicine and surgery or podiatry; criminal penalties; limitations.

(a) A person shall not engage in the practice of medicine and surgery or podiatry, hold himself or herself out as qualified to practice medicine and surgery or podiatry or use any title, word or abbreviation to indicate to or induce others to believe
that he or she is licensed to practice medicine and surgery or
podiatry in this state unless he or she is actually licensed under
the provisions of this article. A person engaged in the practice
of telemedicine is considered to be engaged in the practice of
medicine within this state and is subject to the licensure
requirements of this article. As used in this section, the
"practice of telemedicine" means the use of electronic informa-
tion and communication technologies to provide health care
when distance separates participants and includes one or both
of the following: (1) The diagnosis of a patient within this state
by a physician located outside this state as a result of the
transmission of individual patient data, specimens or other
material by electronic or other means from within this state to
the physician or his or her agent; or (2) the rendering of
treatment to a patient within this state by a physician located
outside this state as a result of transmission of individual patient
data, specimens or other material by electronic or other means
from within this state to the physician or his or her agent. No
person may practice as a physician's assistant, hold himself or
herself out as qualified to practice as a physician's assistant, or
use any title, word or abbreviation to indicate to or induce
others to believe that he or she is licensed to practice as a
physician's assistant in this state unless he or she is actually
licensed under the provisions of this article. Any person who
violates the provisions of this subsection is guilty of a misde-
meanor and, upon conviction thereof, shall be fined not more
than ten thousand dollars, or imprisoned in the county jail not
more than twelve months, or both fined and imprisoned.

(b) The provisions of this section do not apply to:

(1) Persons who are duly licensed health care providers
under other pertinent provisions of this code and are acting
within the scope of their license;

(2) Physicians or podiatrists licensed in other states or
foreign countries who are acting in a consulting capacity with
physicians or podiatrists duly licensed in this state, for a period
of not more than three months: Provided, That this exemption
is applicable on a one-time only basis.
(3) An individual physician or podiatrist, or physician or podiatrist, or physician or podiatrist groups, or physicians or podiatrists at a tertiary care or university hospital outside this state and engaged in the practice of telemedicine who consult or render second opinions concerning diagnosis or treatment of patients within this state: (i) In an emergency or without compensation or expectation of compensation; or (ii) on an irregular or infrequent basis which occurs less than once a month or less than twelve times in a calendar year.

(4) Persons holding licenses granted by another state or foreign country who are commissioned medical officers of, a member of or employed by the armed forces of the United States, the United States public health service, the veterans’ administration of the United States, any federal institution or any other federal agency while engaged in the performance of their official duties;

(5) Any person providing first-aid care in emergency situations;

(6) The practice of the religious tenets of any recognized church in the administration of assistance to the sick or suffering by mental or spiritual means;

(7) Visiting medical faculty engaged in teaching or research duties at a medical school or institution recognized by the board and who are in this state for periods of not more than six months: Provided, That the individuals do not otherwise engage in the practice of medicine or podiatry outside of the auspices of their sponsoring institutions;

(8) Persons enrolled in a school of medicine approved by the liaison committee on medical education or by the board, or persons enrolled in a school of podiatric medicine approved by the council of podiatry education or by the board, or persons enrolled in an undergraduate or graduate physician assistant program approved by the committee on allied health education and accreditation or its successor on behalf of the American Medical Association or by the board, or persons engaged in graduate medical training in a program approved by the liaison...
committee on graduate medical education or the board, or engaged in graduate podiatric training in a program approved by the council on podiatric medical education or by the board, who are performing functions in the course of training including with respect to functions performed by medical residents or medical students under the supervision of a licensed physician, ordering and obtaining laboratory tests, medications and other patient orders by computer or other electronic means and no other provision of this code to the contrary may be construed to prohibit or limit medical residents' or medical students' use of computers or other electronic devices in this manner;

(9) The fitting, recommending or sale of corrective shoes, arch supports or similar mechanical appliances in commercial establishments; and

(10) The fitting or sale of a prosthetic or orthotic device not involving any surgical procedure, in accord with a prescription of a physician, osteopathic physician, or where chiropractors or podiatrists are authorized by law to prescribe such a prosthetic or orthotic device, in accord with a prescription of a chiropractor or podiatrist, by a practitioner or registered technician certified by the American Board for Certification of Orthotics and Prosthetics in either prosthetics or orthotics: Provided, That the sale of any prosthetic or orthotic device by a partnership, proprietorship or corporation which employs such a practitioner or registered technician who fitted the prosthetic or orthotic device shall not constitute the unauthorized practice of medicine: Provided, however, That the practitioner or registered technician may, without a prescription, make recommendation solely to a physician or osteopathic physician or to a chiropractor or podiatrist otherwise authorized by law to prescribe a particular prosthetic or orthotic device, regarding any prosthetic or orthotic device to be used for a patient upon a request for such recommendation.

(c) This section shall not be construed as being in any way a limitation upon the services of a physician's assistant performed in accordance with the provisions of this article.
(d) Persons covered under this article may be permitted to utilize electronic signature or unique electronic identification to effectively sign materials, transmitted by computer or other electronic means, upon which signature is required for the purpose of authorized medical practice. Such signatures are deemed legal and valid for purposes related to the provision of medical services. This subsection does not confer any new practice privilege or right on any persons covered under this article.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.

(a) The board may independently initiate disciplinary proceedings as well as initiate disciplinary proceedings based on information received from medical peer review committees, physicians, podiatrists, hospital administrators, professional societies and others.

The board may initiate investigations as to professional incompetence or other reasons for which a licensed physician or podiatrist may be adjudged unqualified based upon criminal convictions; complaints by citizens, pharmacists, physicians, podiatrists, peer review committees, hospital administrators, professional societies or others; or if there are five judgments or settlements within the most recent five-year period in excess of fifty thousand dollars each. The board may not consider any judgments or settlements as conclusive evidence of professional incompetence or conclusive lack of qualification to practice.

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

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

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

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

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

Upon a determination of the board that there is probable
cause to believe that any person, partnership, corporation,
association, insurance company, professional society or other
organization has failed or refused to make a report required by
this subsection, the board shall provide written notice to the
alleged violator stating the nature of the alleged violation and
the time and place at which the alleged violator shall appear to
show good cause why a civil penalty should not be imposed.
The hearing shall be conducted in accordance with the provi-
sions of article five, chapter twenty-nine-a of this code. After
reviewing the record of the hearing, if the board determines that
a violation of this subsection has occurred, the board shall
assess a civil penalty of not less than one thousand dollars nor
more than ten thousand dollars against the violator. Anyone so
assessed shall be notified of the assessment in writing and the
notice shall specify the reasons for the assessment. If the
violator fails to pay the amount of the assessment to the board
within thirty days, the attorney general may institute a civil
action in the circuit court of Kanawha County to recover the
amount of the assessment. In any such civil action, the court's
review of the board's action shall be conducted in accordance
with the provisions of section four, article five, chapter twenty-
ine-a of this code. Notwithstanding any other provision of this
article to the contrary, when there are conflicting views by
recognized experts as to whether any alleged conduct breaches
an applicable standard of care, the evidence must be clear and
convincing before the board may find that the physician has
demonstrated a lack of professional competence to practice with
a reasonable degree of skill and safety for patients.

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

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

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

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

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

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

(3) False or deceptive advertising;

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

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

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

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

As used herein, "proprietary interest" does not include an ownership interest in a building in which space is leased to a clinical laboratory or pharmacy at the prevailing rate under a lease arrangement that is not conditional upon the income or gross receipts of the clinical laboratory or pharmacy;
(8) Exercising influence within a patient-physician relationship for the purpose of engaging a patient in sexual activity;

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

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

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

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

(13) Prescribing, dispensing, administering, mixing or otherwise preparing a prescription drug, including any controlled substance under state or federal law, other than in good faith and in a therapeutic manner in accordance with accepted medical standards and in the course of the physician’s or podiatrist’s professional practice: Provided, That a physician who discharges his or her professional obligation to relieve the pain and suffering and promote the dignity and autonomy of dying patients in his or her care, and in so doing, exceeds the average dosage of a pain relieving controlled substance, in Schedule II and III of the Uniform Control Substance Act, does not violate this article;

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

(15) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the person knows or has reason to know he or she is not competent to perform;
(16) Delegating professional responsibilities to a person when the physician or podiatrist delegating the responsibilities knows or has reason to know that the person is not qualified by training, experience or licensure to perform them;

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

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

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

(20) Professional incompetence;

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

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

(e) The board may refer any cases coming to its attention to
an appropriate committee of an appropriate professional
organization for investigation and report. Except for complaints
related to obtaining initial licensure to practice medicine and
surgery or podiatry in this state by bribery or fraudulent
misrepresentation, any complaint filed more than two years
after the complainant knew, or in the exercise of reasonable
diligence should have known, of the existence of grounds for
the complaint, shall be dismissed: Provided, That in cases of
contact alleged to be part of a pattern of similar misconduct or
professional incapacity that, if continued, would pose risks of
a serious or substantial nature to the physician or podiatrist’s
current patients, the investigating body may conduct a limited
investigation related to the physician or podiatrist’s current
capacity and qualification to practice, and may recommend
conditions, restrictions or limitations on the physician or
podiatrist’s license to practice that it considers necessary for the
protection of the public. Any report shall contain recommenda-
tions for any necessary disciplinary measures and shall be filed
with the board within ninety days of any referral. The recom-
mandations shall be considered by the board and the case may
be further investigated by the board. The board after full
investigation shall take whatever action it deems appropriate, as
provided herein.

(f) The investigating body, as provided for in subsection (e)
of this section, may request and the board under any circum-
stances may require a physician or podiatrist or person applying
for licensure or other authorization to practice medicine and
surgery or podiatry in this state to submit to a physical or
mental examination by a physician or physicians approved by
the board. A physician or podiatrist submitting to any such
examination has the right, at his or her expense, to designate
another physician to be present at the examination and make an
independent report to the investigating body or the board. The
expense of the examination shall be paid by the board. Any individual who applies for or accepts the privilege of practicing medicine and surgery or podiatry in this state is deemed to have given his or her consent to submit to all examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication. If a person fails or refuses to submit to any such examination under circumstances which the board finds are not beyond his or her control, failure or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry competently and in compliance with the standards of acceptable and prevailing medical practice.

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

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

(i) In disciplinary actions in which probable cause has been found by the board, the board shall, within twenty days of the
date of service of the written notice of charges or sixty days prior to the date of the scheduled hearing, whichever is sooner, provide the respondent with the complete identity, address, and telephone number of any person known to the board with knowledge about the facts of any of the charges; provide a copy of any statements in the possession of or under the control of the board; provide a list of proposed witnesses with addresses and telephone numbers, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing. Provided, That the board shall not be required to furnish or produce any materials which contain opinion work product information or would be violative of the attorney-client privilege. Within twenty days of the date of service of the written notice of charges, the board shall be required to disclose any exculpatory evidence with a continuing duty to do so throughout the disciplinary process. Within thirty days of receipt of the board’s mandatory discovery, the respondent shall provide the board with the complete identity, address, and telephone number of any person known to the respondent with knowledge about the facts of any of the charges; provide a list of proposed witnesses with addresses and telephone numbers, to be called at hearing, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing.

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

(1) Deny his or her application for a license or other authorization to practice medicine and surgery or podiatry;
(2) Administer a public reprimand;

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

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

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

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

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

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

(k) Notwithstanding the provisions of section eight, article one, chapter thirty of this code, if the board determines the evidence in its possession indicates that a physician’s or podiatrist’s continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may take any of the actions provided for in subsection (i) of this section on a temporary basis and without a hearing, if institution of proceedings for a hearing before the board are initiated simultaneously with the temporary action and begin within fifteen days of the action. The board shall render its decision within five days of the conclusion of a hearing under this subsection.

(l) Any person against whom disciplinary action is taken pursuant to the provisions of this article has the right to judicial review as provided in articles five and six, chapter twenty-nine-
Provided, That a circuit judge may also remand the matter to the board if it appears from competent evidence presented to it in support of a motion for remand that there is newly discovered evidence of such a character as ought to produce an opposite result at a second hearing on the merits before the board and:

(1) The evidence appears to have been discovered since the board hearing; and

(2) The physician or podiatrist exercised due diligence in asserting his or her evidence and that due diligence would not have secured the newly discovered evidence prior to the appeal.

Except with regard to an order of temporary suspension of a license for six months or less, a person may not practice medicine and surgery or podiatry or deliver health care services in violation of any disciplinary order revoking or limiting his or her license while any such review is pending. Within sixty days, the board shall report its final action regarding restriction, limitation, suspension or revocation of the license of a physician or podiatrist, limitation on practice privileges or other disciplinary action against any physician or podiatrist to all appropriate state agencies, appropriate licensed health facilities and hospitals, insurance companies or associations writing medical malpractice insurance in this state, the American Medical Association, the American Podiatry Association, professional societies of physicians or podiatrists in the state and any entity responsible for the fiscal administration of medicare and medicaid.

(m) Any person against whom disciplinary action has been taken under the provisions of this article shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the practice of medicine and surgery or podiatry on a general or limited basis. At the conclusion of a suspension, limitation or restriction period, the physician or podiatrist has the right to resume practice pursuant to the orders of the board: Provided, That for a revocation pursuant to subsection (d) of this section a reapplication may not be accepted for a period of at least five years.
(n) Any entity, organization or person, including the board, any member of the board, its agents or employees and any entity or organization or its members referred to in this article, any insurer, its agents or employees, a medical peer review committee and a hospital governing board, its members or any committee appointed by it acting without malice and without gross negligence in making any report or other information available to the board or a medical peer review committee pursuant to law and any person acting without malice and without gross negligence who assists in the organization, investigation or preparation of any such report or information or assists the board or a hospital governing body or any committee in carrying out any of its duties or functions provided by law, is immune from civil or criminal liability, except that the unlawful disclosure of confidential information possessed by the board is a misdemeanor as provided for in this article.

(o) A physician or podiatrist may request in writing to the board a limitation on or the surrendering of his or her license to practice medicine and surgery or podiatry or other appropriate sanction as provided herein. The board may grant the request and, if it considers it appropriate, may waive the commencement or continuation of other proceedings under this section. A physician or podiatrist whose license is limited or surrendered or against whom other action is taken under this subsection has a right at reasonable intervals to petition for removal of any restriction or limitation on or for reinstatement of his or her license to practice medicine and surgery or podiatry.

(p) In every case considered by the board under this article regarding discipline or licensure, whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to substantiate charges of disqualification due to any reason set forth in subsection (c) of this section. If probable cause is found to exist, all proceedings on the charges shall be open to the public who shall be entitled to all reports, records, and non-deliberative materials introduced at the hearing, including the record of the final action taken:
Provided, That any medical records, which were introduced at the hearing and which pertain to a person who has not expressly waived his or her right to the confidentiality of the records, may not be open to the public nor is the public entitled to the records.

(q) Notwithstanding any other provisions of this article, the board may at any time, on its own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the West Virginia state bar's mediator referral service of certified mediators with expertise in professional disciplinary matters. The board and the physician or podiatrist may choose a mediator from this list. If the board and the physician or podiatrist are unable to agree on a mediator, the board shall designate a mediator from this listing by neutral rotation. The mediation shall not be considered a proceeding open to the public and any reports and records introduced at the mediation shall not become part of the public record. The mediator and all participants in the mediation shall maintain and preserve the confidentiality of all mediation proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the disciplinary or licensure matter mediated. Provided, That any confidentiality agreement and any written agreement made and signed by the parties as a result of mediation may be used in any proceedings subsequently instituted to enforce the written agreement. The agreements may be used in other proceedings if the parties agree in writing to do this.

§30-3-15. Medical corporations; podiatry corporations; application for registration; fees; notice to secretary of state of issuance of certificate; action by secretary of state; rights and limitations generally; biennial registration; when practice to cease; admissibility and effect of certificate signed by secretary of board; criminal penalty; severability.
(a) When one or more physicians duly licensed to practice medicine and surgery in this state under this article, or one or more physicians duly licensed under this article and one or more physicians duly licensed under article fourteen of this chapter, or one or more podiatrists duly licensed to practice podiatry in this state wish to form a medical or podiatry corporation, respectively, such physician or physicians or podiatrist or podiatrists shall file a written application therefor with the board on a form prescribed by it and shall furnish proof satisfactory to the board that each applicant is a duly licensed physician or podiatrist. A fee, not to exceed five hundred dollars, the amount of such fee to be set by the board, shall accompany each application. Upon its determination that each applicant is duly licensed, the board shall notify the secretary of state that a certificate of authorization has been issued to the person or persons making the application. When the secretary of state receives such notification from the board, he or she shall attach such authorization to the corporation application and, upon compliance by the corporation with the pertinent provisions of chapter thirty-one of this code, shall notify the incorporators that such corporation, through duly licensed physicians or through duly licensed podiatrists, may engage in the practice of medicine and surgery or the practice of podiatry.

(b) A medical corporation may practice medicine and surgery only through individual physicians duly licensed to practice medicine and surgery in this state and a podiatrist may practice podiatry only through individual podiatrists duly licensed to practice podiatry in this state, but such physicians or podiatrists may be employees rather than shareholders of such corporation, and nothing herein contained shall be construed to require a license for or other legal authorization of any individual employed by such corporation to perform services for which no license or other legal authorization is otherwise required. Nothing contained in this article is meant or intended to change in any way the rights, duties, privileges, responsibilities and liabilities incident to the physician-patient or podiatrist-patient relationship nor is it meant or intended to change in any way the personal character of the physician-patient or podiatrist-patient relationship.
relationship. A corporation holding such certificate of authori-
40 zation shall register biennially, on or before the thirtieth day of
41 June, on a form prescribed by the board, and shall pay an
42 annual registration fee not to exceed three hundred dollars, the
43 amount of such fee to be set by the board.
44
45 (c) A medical or podiatry corporation holding a certificate
46 of authorization shall cease to engage in the practice of medi-
47 cine and surgery or the practice of podiatry upon being notified
48 by the board that any of its shareholders is no longer a duly
49 licensed physician or podiatrist, or when any shares of such
50 corporation have been sold or disposed of to a person who is
51 not a duly licensed physician or podiatrist: Provided, That the
52 personal representative of a deceased shareholder shall have a
53 period, not to exceed twelve months from the date of such
54 shareholder’s death, to dispose of such shares; but nothing
55 contained herein shall be construed as affecting the existence of
56 such corporation or its right to continue to operate for all lawful
57 purposes other than the practice of medicine and surgery or the
58 practice of podiatry.
59
60 (d) No corporation shall practice medicine and surgery or
61 any of its branches, or hold itself out as being capable of
62 practicing medicine and surgery, or practice podiatry or hold
63 itself out as being capable of practicing podiatry, without a
64 certificate from the board; nor shall any corporation practice
65 medicine and surgery or any of its branches or hold itself out as
66 being capable of practicing medicine and surgery, or practice
67 podiatry or hold itself out as being capable of practicing
68 podiatry, after its certificate has been revoked, or if suspended,
69 during the term of such suspension. A certificate signed by the
70 secretary of the board to which is affixed the official seal of the
71 board to the effect that it appears from the records of the board
72 that no such certificate to practice medicine and surgery or any
73 of its branches, or to practice podiatry, in the state has been
74 issued to any such corporation specified therein or that such
75 certificate has been revoked or suspended shall be admissible
76 in evidence in all courts of this state and shall be prima facie
evidence of the facts stated therein.
(e) Any officer, shareholder or employee of such corporation who participates in a violation of any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding one thousand dollars.

§30-3-18. Continuation of board.

The board of medicine shall continue to exist until the first day of July, two thousand, pursuant to the provisions of article ten, chapter four of this code, to allow for the completion of a preliminary performance review by the joint committee on government operations.

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

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signatures]

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ______ approved this the ______ day of ______, 1999.

Governor