

SB 243

FILED

2002 MAR 12 P 5:59

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2002

**ENROLLED**

Committee Substitute for

SENATE BILL NO. 243

(By Senators Wooten, Bowman and Rowe)

PASSED February 27, 2002

In Effect ninety days from Passage

FILED

2002 MAR 12 P 5: 59

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 243**

(SENATORS WOOTON, BOWMAN AND ROWE, *original sponsors*)

---

[Passed February 27, 2002; in effect ninety days from passage.]

---

AN ACT to amend and reenact section fourteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article three-c of said chapter by adding thereto a new section, designated section four, all relating to the professional discipline of physicians and podiatrists; requiring hospitals to report certain information to the board of medicine regarding disciplinary actions and related legal actions against physicians or podiatrists; requiring managed care organizations to report certain information to the board of medicine regarding physicians or podiatrists; defining "managed care organization"; including state board of risk and insurance management among entities which must report on certain legal actions to the board of medicine;

requiring clerks of courts to forward certain court orders to the board of medicine; updating terminology and making certain technical revisions; authorizing board of medicine to revoke licenses for period not to exceed ten years; prohibiting physicians or podiatrists from practicing medicine, surgery or podiatry or to otherwise deliver health care services when license is temporarily suspended; eliminating ability of physician or podiatrist whose license is revoked because of a felony drug conviction from reapplying for licensure after five years; and authorizing defendants who prevail in civil actions filed as a result of peer review to recover attorney fees and court costs in certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

That section fourteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article three-c of said chapter be amended by adding thereto a new section, designated section four, all to read as follows:

**ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.**

**§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to medical professional liability 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 administra-
- 5 tors, professional societies and others.

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

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

29 The chief executive officer of every hospital shall, within  
30 sixty days after the completion of the hospital's formal  
31 disciplinary procedure and also after the commencement  
32 of and again after the conclusion of any resulting legal  
33 action, report in writing to the board the name of any  
34 member of the medical staff or any other physician or  
35 podiatrist practicing in the hospital whose hospital  
36 privileges have been revoked, restricted, reduced or  
37 terminated for any cause, including resignation, together  
38 with all pertinent information relating to such action. The  
39 chief executive officer shall also report any other formal  
40 disciplinary action taken against any physician or podia-  
41 trist by the hospital upon the recommendation of its  
42 medical staff relating to professional ethics, medical

43 incompetence, medical professional liability, moral  
44 turpitude or drug or alcohol abuse. Temporary suspension  
45 for failure to maintain records on a timely basis or failure  
46 to attend staff or section meetings need not be reported.  
47 Voluntary cessation of hospital privileges for reasons  
48 unrelated to professional competence or ethics need not be  
49 reported.

50 Any managed care organization operating in this state  
51 which provides a formal peer review process shall report  
52 in writing to the board, within sixty days after the comple-  
53 tion of any formal peer review process and also within  
54 sixty days after the commencement of and again after the  
55 conclusion of any resulting legal action, the name of any  
56 physician or podiatrist whose credentialing has been  
57 revoked or not renewed by the managed care organization.  
58 The managed care organization shall also report in writing  
59 to the board any other disciplinary action taken against a  
60 physician or podiatrist relating to professional ethics,  
61 professional liability, moral turpitude or drug or alcohol  
62 abuse within sixty days after completion of a formal peer  
63 review process which results in the action taken by the  
64 managed care organization. For purposes of this subsec-  
65 tion, "managed care organization" means a plan that  
66 establishes, operates or maintains a network of health care  
67 providers who have entered into agreements with and been  
68 credentialed by the plan to provide health care services to  
69 enrollees or insureds to whom the plan has the ultimate  
70 obligation to arrange for the provision of or payment for  
71 health care services through organizational arrangements  
72 for ongoing quality assurance, utilization review programs  
73 or dispute resolutions.

74 Any professional society in this state comprised primar-  
75 ily of physicians or podiatrists which takes formal disci-  
76 plinary action against a member relating to professional  
77 ethics, professional incompetence, medical professional  
78 liability, moral turpitude or drug or alcohol abuse, shall  
79 report in writing to the board within sixty days of a final

80 decision the name of the member, together with all  
81 pertinent information relating to the action.

82 Every person, partnership, corporation, association,  
83 insurance company, professional society or other organiza-  
84 tion providing professional liability insurance to a physi-  
85 cian or podiatrist in this state, including the state board of  
86 risk and insurance management, shall submit to the board  
87 the following information within thirty days from any  
88 judgment or settlement of a civil or medical professional  
89 liability action excepting product liability actions: The  
90 date of any judgment or settlement; whether any appeal  
91 has been taken on the judgment and, if so, by which party;  
92 the amount of any settlement or judgment against the  
93 insured; and other information as the board may require.

94 Within thirty days from the entry of an order by a court  
95 in a medical professional liability action or other civil  
96 action wherein a physician or podiatrist licensed by the  
97 board is determined to have rendered health care services  
98 below the applicable standard of care, the clerk of the  
99 court in which the order was entered shall forward a  
100 certified copy of the order to the board.

101 Within thirty days after a person known to be a physi-  
102 cian or podiatrist licensed or otherwise lawfully practicing  
103 medicine and surgery or podiatry in this state or applying  
104 to be so licensed is convicted of a felony under the laws of  
105 this state or of any crime under the laws of this state  
106 involving alcohol or drugs in any way, including any  
107 controlled substance under state or federal law, the clerk  
108 of the court of record in which the conviction was entered  
109 shall forward to the board a certified true and correct  
110 abstract of record of the convicting court. The abstract  
111 shall include the name and address of the physician or  
112 podiatrist or applicant, the nature of the offense commit-  
113 ted and the final judgment and sentence of the court.

114 Upon a determination of the board that there is probable  
115 cause to believe that any person, partnership, corporation,

116 association, insurance company, professional society or  
117 other organization has failed or refused to make a report  
118 required by this subsection, the board shall provide  
119 written notice to the alleged violator stating the nature of  
120 the alleged violation and the time and place at which the  
121 alleged violator shall appear to show good cause why a  
122 civil penalty should not be imposed. The hearing shall be  
123 conducted in accordance with the provisions of article five,  
124 chapter twenty-nine-a of this code. After reviewing the  
125 record of the hearing, if the board determines that a  
126 violation of this subsection has occurred, the board shall  
127 assess a civil penalty of not less than one thousand dollars  
128 nor more than ten thousand dollars against the violator.  
129 Anyone so assessed shall be notified of the assessment in  
130 writing and the notice shall specify the reasons for the  
131 assessment. If the violator fails to pay the amount of the  
132 assessment to the board within thirty days, the attorney  
133 general may institute a civil action in the circuit court of  
134 Kanawha County to recover the amount of the assessment.  
135 In any such civil action, the court's review of the board's  
136 action shall be conducted in accordance with the provi-  
137 sions of section four, article five, chapter twenty-nine-a of  
138 this code. Notwithstanding any other provision of this  
139 article to the contrary, when there are conflicting views by  
140 recognized experts as to whether any alleged conduct  
141 breaches an applicable standard of care, the evidence must  
142 be clear and convincing before the board may find that the  
143 physician has demonstrated a lack of professional compe-  
144 tence to practice with a reasonable degree of skill and  
145 safety for patients.

146 Any person may report to the board relevant facts about  
147 the conduct of any physician or podiatrist in this state  
148 which in the opinion of that person amounts to medical  
149 professional liability or professional incompetence.

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

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

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

166 (1) Attempting to obtain, obtaining, renewing or at-  
167 tempting to renew a license to practice medicine and  
168 surgery or podiatry by bribery, fraudulent misrepresenta-  
169 tion or through known error of the board;

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

175 (3) False or deceptive advertising;

176 (4) Aiding, assisting, procuring or advising any unautho-  
177 rized person to practice medicine and surgery or podiatry  
178 contrary to law;

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

187 (6) Requesting, receiving or paying directly or indirectly  
188 a payment, rebate, refund, commission, credit or other  
189 form of profit or valuable consideration for the referral of  
190 patients to any person or entity in connection with provid-  
191 ing medical or other health care services or clinical  
192 laboratory services, supplies of any kind, drugs, medica-  
193 tion or any other medical goods, services or devices used in  
194 connection with medical or other health care services;

195 (7) Unprofessional conduct by any physician or podia-  
196 trist in referring a patient to any clinical laboratory or  
197 pharmacy in which the physician or podiatrist has a  
198 proprietary interest unless the physician or podiatrist  
199 discloses in writing such interest to the patient. The  
200 written disclosure shall indicate that the patient may  
201 choose any clinical laboratory for purposes of having any  
202 laboratory work or assignment performed or any phar-  
203 macy for purposes of purchasing any prescribed drug or  
204 any other medical goods or devices used in connection  
205 with medical or other health care services;

206 As used herein, "proprietary interest" does not include  
207 an ownership interest in a building in which space is  
208 leased to a clinical laboratory or pharmacy at the prevail-  
209 ing rate under a lease arrangement that is not conditional  
210 upon the income or gross receipts of the clinical laboratory  
211 or pharmacy;

212 (8) Exercising influence within a patient-physician  
213 relationship for the purpose of engaging a patient in  
214 sexual activity;

215 (9) Making a deceptive, untrue or fraudulent representa-  
216 tion in the practice of medicine and surgery or podiatry;

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

219 (11) Failing to keep written records justifying the course  
220 of treatment of a patient, the records to include, but not be

221 limited to, patient histories, examination and test results  
222 and treatment rendered, if any;

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

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

241 (14) Performing any procedure or prescribing any  
242 therapy that, by the accepted standards of medical prac-  
243 tice in the community, would constitute experimentation  
244 on human subjects without first obtaining full, informed  
245 and written consent;

246 (15) Practicing or offering to practice beyond the scope  
247 permitted by law or accepting and performing professional  
248 responsibilities that the person knows or has reason to  
249 know he or she is not competent to perform;

250 (16) Delegating professional responsibilities to a person  
251 when the physician or podiatrist delegating the responsi-  
252 bilities knows or has reason to know that the person is not  
253 qualified by training, experience or licensure to perform  
254 them;

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

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

262 (19) Gross negligence in the use and control of prescrip-  
263 tion forms;

264 (20) Professional incompetence; or

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

278 (d) The board shall deny any application for a license or  
279 other authorization to practice medicine and surgery or  
280 podiatry in this state to any applicant who, and shall  
281 revoke the license of any physician or podiatrist licensed  
282 or otherwise lawfully practicing within this state who, is  
283 found guilty by any court of competent jurisdiction of any  
284 felony involving prescribing, selling, administering,  
285 dispensing, mixing or otherwise preparing any prescrip-  
286 tion drug, including any controlled substance under state  
287 or federal law, for other than generally accepted therapeu-  
288 tic purposes. Presentation to the board of a certified copy  
289 of the guilty verdict or plea rendered in the court is

290 sufficient proof thereof for the purposes of this article. A  
291 plea of nolo contendere has the same effect as a verdict or  
292 plea of guilt.

293 (e) The board may refer any cases coming to its attention  
294 to an appropriate committee of an appropriate profes-  
295 sional organization for investigation and report. Except  
296 for complaints related to obtaining initial licensure to  
297 practice medicine and surgery or podiatry in this state by  
298 bribery or fraudulent misrepresentation, any complaint  
299 filed more than two years after the complainant knew, or  
300 in the exercise of reasonable diligence should have known,  
301 of the existence of grounds for the complaint, shall be  
302 dismissed: *Provided*, That in cases of conduct alleged to  
303 be part of a pattern of similar misconduct or professional  
304 incapacity that, if continued, would pose risks of a serious  
305 or substantial nature to the physician or podiatrist's  
306 current patients, the investigating body may conduct a  
307 limited investigation related to the physician or podia-  
308 trist's current capacity and qualification to practice and  
309 may recommend conditions, restrictions or limitations on  
310 the physician or podiatrist's license to practice that it  
311 considers necessary for the protection of the public. Any  
312 report shall contain recommendations for any necessary  
313 disciplinary measures and shall be filed with the board  
314 within ninety days of any referral. The recommendations  
315 shall be considered by the board and the case may be  
316 further investigated by the board. The board after full  
317 investigation shall take whatever action it deems appro-  
318 priate, as provided herein.

319 (f) The investigating body, as provided for in subsection  
320 (e) of this section, may request and the board under any  
321 circumstances may require a physician or podiatrist or  
322 person applying for licensure or other authorization to  
323 practice medicine and surgery or podiatry in this state to  
324 submit to a physical or mental examination by a physician  
325 or physicians approved by the board. A physician or  
326 podiatrist submitting to any such examination has the

327 right, at his or her expense, to designate another physician  
328 to be present at the examination and make an independent  
329 report to the investigating body or the board. The expense  
330 of the examination shall be paid by the board. Any  
331 individual who applies for or accepts the privilege of  
332 practicing medicine and surgery or podiatry in this state  
333 is considered to have given his or her consent to submit to  
334 all examinations when requested to do so in writing by the  
335 board and to have waived all objections to the admissibil-  
336 ity of the testimony or examination report of any examin-  
337 ing physician on the ground that the testimony or report is  
338 privileged communication. If a person fails or refuses to  
339 submit to any such examination under circumstances  
340 which the board finds are not beyond his or her control,  
341 failure or refusal is prima facie evidence of his or her  
342 inability to practice medicine and surgery or podiatry  
343 competently and in compliance with the standards of  
344 acceptable and prevailing medical practice.

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

349 (h) In every disciplinary or licensure denial action, the  
350 board shall furnish the physician or podiatrist or applicant  
351 with written notice setting out with particularity the  
352 reasons for its action. Disciplinary and licensure denial  
353 hearings shall be conducted in accordance with the  
354 provisions of article five, chapter twenty-nine-a of this  
355 code. However, hearings shall be heard upon sworn  
356 testimony and the rules of evidence for trial courts of  
357 record in this state shall apply to all hearings. A tran-  
358 script of all hearings under this section shall be made and  
359 the respondent may obtain a copy of the transcript at his  
360 or her expense. The physician or podiatrist has the right  
361 to defend against any charge by the introduction of  
362 evidence, the right to be represented by counsel, the right  
363 to present and cross-examine witnesses and the right to

364 have subpoenas and subpoenas duces tecum issued on his  
365 or her behalf for the attendance of witnesses and the  
366 production of documents. The board shall make all its  
367 final actions public. The order shall contain the terms of  
368 all action taken by the board.

369 (i) In disciplinary actions in which probable cause has  
370 been found by the board, the board shall, within twenty  
371 days of the date of service of the written notice of charges  
372 or sixty days prior to the date of the scheduled hearing,  
373 whichever is sooner, provide the respondent with the  
374 complete identity, address and telephone number of any  
375 person known to the board with knowledge about the facts  
376 of any of the charges; provide a copy of any statements in  
377 the possession of or under the control of the board; provide  
378 a list of proposed witnesses with addresses and telephone  
379 numbers, with a brief summary of his or her anticipated  
380 testimony; provide disclosure of any trial expert pursuant  
381 to the requirements of rule 26(b)(4) of the West Virginia  
382 rules of civil procedure; provide inspection and copying of  
383 the results of any reports of physical and mental examina-  
384 tions or scientific tests or experiments; and provide a list  
385 and copy of any proposed exhibit to be used at the hearing;  
386 *Provided*, That the board shall not be required to furnish  
387 or produce any materials which contain opinion work  
388 product information or would be a violation of the  
389 attorney-client privilege. Within twenty days of the date  
390 of service of the written notice of charges, the board shall  
391 be required to disclose any exculpatory evidence with a  
392 continuing duty to do so throughout the disciplinary  
393 process. Within thirty days of receipt of the board's  
394 mandatory discovery, the respondent shall provide the  
395 board with the complete identity, address and telephone  
396 number of any person known to the respondent with  
397 knowledge about the facts of any of the charges; provide  
398 a list of proposed witnesses with addresses and telephone  
399 numbers, to be called at hearing, with a brief summary of  
400 his or her anticipated testimony; provide disclosure of any  
401 trial expert pursuant to the requirements of rule 26(b)(4)

402 of the West Virginia rules of civil procedure; provide  
403 inspection and copying of the results of any reports of  
404 physical and mental examinations or scientific tests or  
405 experiments; and provide a list and copy of any proposed  
406 exhibit to be used at the hearing.

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

411 (1) Deny his or her application for a license or other  
412 authorization to practice medicine and surgery or podia-  
413 try;

414 (2) Administer a public reprimand;

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

421 (4) Revoke his or her license or other authorization to  
422 practice medicine and surgery or podiatry or to prescribe  
423 or dispense controlled substances for a period not to  
424 exceed ten years;

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

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

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

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

437 (k) Notwithstanding the provisions of section eight,  
438 article one, chapter thirty of this code, if the board deter-  
439 mines the evidence in its possession indicates that a  
440 physician's or podiatrist's continuation in practice or  
441 unrestricted practice constitutes an immediate danger to  
442 the public, the board may take any of the actions provided  
443 for in subsection (j) of this section on a temporary basis  
444 and without a hearing if institution of proceedings for a  
445 hearing before the board are initiated simultaneously with  
446 the temporary action and begin within fifteen days of the  
447 action. The board shall render its decision within five  
448 days of the conclusion of a hearing under this subsection.

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

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

460 (2) The physician or podiatrist exercised due diligence in  
461 asserting his or her evidence and that due diligence would  
462 not have secured the newly discovered evidence prior to  
463 the appeal. A person may not practice medicine and  
464 surgery or podiatry or deliver health care services in  
465 violation of any disciplinary order revoking, suspending or  
466 limiting his or her license while any appeal is pending.  
467 Within sixty days, the board shall report its final action  
468 regarding restriction, limitation, suspension or revocation  
469 of the license of a physician or podiatrist, limitation on  
470 practice privileges or other disciplinary action against any

471 physician or podiatrist to all appropriate state agencies,  
472 appropriate licensed health facilities and hospitals,  
473 insurance companies or associations writing medical  
474 malpractice insurance in this state, the American medical  
475 association, the American podiatry association, profes-  
476 sional societies of physicians or podiatrists in the state and  
477 any entity responsible for the fiscal administration of  
478 medicare and medicaid.

479 (m) Any person against whom disciplinary action has  
480 been taken under the provisions of this article shall, at  
481 reasonable intervals, be afforded an opportunity to  
482 demonstrate that he or she can resume the practice of  
483 medicine and surgery or podiatry on a general or limited  
484 basis. At the conclusion of a suspension, limitation or  
485 restriction period the physician or podiatrist may resume  
486 practice if the board has so ordered.

487 (n) Any entity, organization or person, including the  
488 board, any member of the board, its agents or employees  
489 and any entity or organization or its members referred to  
490 in this article, any insurer, its agents or employees, a  
491 medical peer review committee and a hospital governing  
492 board, its members or any committee appointed by it  
493 acting without malice and without gross negligence in  
494 making any report or other information available to the  
495 board or a medical peer review committee pursuant to law  
496 and any person acting without malice and without gross  
497 negligence who assists in the organization, investigation or  
498 preparation of any such report or information or assists  
499 the board or a hospital governing body or any committee  
500 in carrying out any of its duties or functions provided by  
501 law is immune from civil or criminal liability, except that  
502 the unlawful disclosure of confidential information  
503 possessed by the board is a misdemeanor as provided for  
504 in this article.

505 (o) A physician or podiatrist may request in writing to  
506 the board a limitation on or the surrendering of his or her  
507 license to practice medicine and surgery or podiatry or

508 other appropriate sanction as provided herein. The board  
509 may grant the request and, if it considers it appropriate,  
510 may waive the commencement or continuation of other  
511 proceedings under this section. A physician or podiatrist  
512 whose license is limited or surrendered or against whom  
513 other action is taken under this subsection may, at reason-  
514 able intervals, petition for removal of any restriction or  
515 limitation on or for reinstatement of his or her license to  
516 practice medicine and surgery or podiatry.

517 (p) In every case considered by the board under this  
518 article regarding discipline or licensure, whether initiated  
519 by the board or upon complaint or information from any  
520 person or organization, the board shall make a preliminary  
521 determination as to whether probable cause exists to  
522 substantiate charges of disqualification due to any reason  
523 set forth in subsection (c) of this section. If probable cause  
524 is found to exist, all proceedings on the charges shall be  
525 open to the public who shall be entitled to all reports,  
526 records and nondeliberative materials introduced at the  
527 hearing, including the record of the final action taken:  
528 *Provided*, That any medical records, which were intro-  
529 duced at the hearing and which pertain to a person who  
530 has not expressly waived his or her right to the confidenti-  
531 ality of the records, may not be open to the public nor is  
532 the public entitled to the records.

533 (q) Notwithstanding any other provisions of this article,  
534 the board may, at any time, on its own motion, or upon  
535 motion by the complainant, or upon motion by the physi-  
536 cian or podiatrist, or by stipulation of the parties, refer the  
537 matter to mediation. The board shall obtain a list from the  
538 West Virginia state bar's mediator referral service of  
539 certified mediators with expertise in professional disci-  
540 plinary matters. The board and the physician or podiatrist  
541 may choose a mediator from this list. If the board and the  
542 physician or podiatrist are unable to agree on a mediator,  
543 the board shall designate a mediator from this listing by  
544 neutral rotation. The mediation shall not be considered a

545 proceeding open to the public and any reports and records  
546 introduced at the mediation shall not become part of the  
547 public record. The mediator and all participants in the  
548 mediation shall maintain and preserve the confidentiality  
549 of all mediation proceedings and records. The mediator  
550 may not be subpoenaed or called to testify or otherwise be  
551 subject to process requiring disclosure of confidential  
552 information in any proceeding relating to or arising out of  
553 the disciplinary or licensure matter mediated: *Provided,*  
554 That any confidentiality agreement and any written  
555 agreement made and signed by the parties as a result of  
556 mediation may be used in any proceedings subsequently  
557 instituted to enforce the written agreement. The agree-  
558 ments may be used in other proceedings if the parties  
559 agree in writing.

**ARTICLE 3C. HEALTH CARE PEER REVIEW ORGANIZATION PROTEC-  
TION.**

**§30-3C-4. Liability for court costs and attorney fees in certain  
civil actions.**

1 Any party or parties who institute an action as a result  
2 of a peer review may be liable for court costs and reason-  
3 able attorney's fees, if the defendant substantially prevails  
4 and if the action, or the plaintiff's conduct during the  
5 litigation of the action, was frivolous, unreasonable,  
6 without foundation, or in bad faith.

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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is* approved this the *12<sup>th</sup>*  
Day of *March*, 2002.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/6/12

Time

10:05 AM