Senate Bill No. 573

(By Senators Prezioso, McKenzie, Foster, Stollings, Kessler and Jenkins)

[Passed March 8, 2007; in effect ninety days from passage.]
ENROLLED

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(BY SENATORS PREZIOSO, McKENZIE, FOSTER, STOLLINGS, KESSLER AND JENKINS)

[Passed March 8, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §30-3-9, §30-3-12 and §30-3-16 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §30-3D-1, §30-3D-2 and §30-3D-3; and to amend said code by adding thereto a new section, designated §30-14-11a, all relating to authorizing the West Virginia Board of Medicine and the West Virginia Board of Osteopathy; designating programs in which physicians, podiatrists and physician assistants may be monitored while they pursue treatment and recovery for alcohol abuse, chemical dependency or major mental illness; enrolling on a voluntary basis without being subject to disciplinary
action if the person complies with the goals and restrictions of the program; and requiring licenses for physicians, podiatrists and physician assistants to expire rather than being suspended if required continuing education is not documented.

Be it enacted by the Legislature of West Virginia:

That §30-3-9, §30-3-12 and §30-3-16 of the Code of West Virginia, 1931, as amended be amended and reenacted; that said code be amended by adding thereto a new article, designated §30-3D-1, §30-3D-2 and §30-3D-3, and that said code be amended by adding thereto a new section, designated §30-14-11a, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

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

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

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

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

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

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

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

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

49 (h) (1) In order to encourage voluntary participation in
50 monitored alcohol chemical dependency or major
51 mental illness programs and in recognition of the fact
52 that major mental illness, alcoholism and chemical
53 dependency are illnesses, a physician, podiatrist or
54 physician assistant licensed, certified or otherwise
55 lawfully practicing in this state or applying for a license
56 to practice in this state may enter into a voluntary
57 agreement with the physician health program as defined
58 in section two, article three-d of this chapter. The
59 agreement between the physician, podiatrist or
60 physician assistant and the physician health program
61 shall include a jointly agreed upon treatment program
62 and mandatory conditions and procedures to monitor
63 compliance with the program of recovery.

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

68 (A) Such voluntary agreement is the result of the
69 physician, podiatrist or physician assistant
70 self-enrolling or voluntarily participating in the board-
71 designated physician health program;

72 (B) The board has not received nor filed any written
73 complaints regarding said physician, podiatrist or
74 physician assistant relating to an alcohol, chemical
dependency or major mental illness affecting the care
and treatment of patients, nor received any reports
pursuant to subsection (b), section fourteen of this
article relating to an alcohol or chemical dependency
impairment; and

(C) The physician, podiatrist or physician assistant is
in compliance with the voluntary treatment program
and the conditions and procedures to monitor
compliance.

(3) If any physician, podiatrist or physician assistant
enters into a voluntary agreement with the board-
approved physician health program, pursuant to this
subsection and then fails to comply with or fulfill the
terms of said agreement, the physician health program
shall report the noncompliance to the board within
twenty-four hours. The board may initiate disciplinary
proceedings pursuant to subsection (a), section fourteen
of this article or may permit continued participation in
the physician health program or both.

(4) If the board has not instituted any disciplinary
proceeding as provided for in this article, any
information received, maintained or developed by the
board relating to the alcohol or chemical dependency
impairment of any physician, podiatrist or physician
assistant and any voluntary agreement made pursuant
to this subsection shall be confidential and not available
for public information, discovery or court subpoena, nor
for introduction into evidence in any medical
professional liability action or other action for damages
arising out of the provision of or failure to provide
health care services.
In the board's annual report of its activities to the Legislature required under section seven of this article, the board shall include information regarding the success of the voluntary agreement mechanism established therein: Provided, That in making such report, the board shall not disclose any personally identifiable information relating to any physician, podiatrist or physician assistant participating in a voluntary agreement as provided herein.

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

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

§30-3-12. Biennial renewal of license to practice medicine and surgery or podiatry; continuing education; rules; fee; inactive license.

(a) A license to practice medicine and surgery or podiatry in this state is valid for a term of two years.

(b) The license shall be renewed:
(1) Upon receipt of a reasonable fee, as set by the board;

(2) Submission of an application on forms provided by the board; and

(3) A certification of participation in and successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, during the preceding two-year period.

(c) The application may not require disclosure of a voluntary agreement entered into pursuant to subsection (h), section nine of this article.

(d) Continuing medical education satisfactory to the board is continuing medical education designated as Category I by the American Medical Association or the Academy of Family Physicians and alternate categories approved by the board.

(e) Continuing podiatric education satisfactory to the board is continuing podiatric education approved by the Council on Podiatric Education and alternate categories approved by the board.

(f) Notwithstanding any provision of this chapter to the contrary, beginning the first day of July, two thousand seven, failure to timely submit to the board a certification of successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, shall result in the automatic expiration of any license to practice medicine and
surgery or podiatry until such time as the certification, with all supporting written documentation, is submitted to and approved by the board.

(g) If a license is automatically expired and reinstatement is sought within one year of the automatic expiration, the former licensee shall:

(1) Provide certification with supporting written documentation of the successful completion of the required continuing education;

(2) Pay a renewal fee; and

(3) Pay a reinstatement fee equal to fifty percent of the renewal fee.

(h) If a license is automatically expired and more than one year has passed since the automatic expiration, the former licensee shall:

(1) Apply for a new license;

(2) Provide certification with supporting written documentation of the successful completion of the required continuing education; and

(3) Pay such fees as determined by the board.

(i) Any individual who accepts the privilege of practicing medicine and surgery or podiatry in this state is required to provide supporting written documentation of the continuing education represented as received within thirty days of receipt of a written request to do so by the board. If a licensee fails or
refuses to provide supporting written documentation of the continuing education represented as received as required in this section, such failure or refusal to provide supporting written documentation is prima facie evidence of renewing a license to practice medicine and surgery or podiatry by fraudulent misrepresentation.

(j) The board may renew, on an inactive basis, the license of a physician or podiatrist who is currently licensed to practice medicine and surgery or podiatry in, but is not actually practicing, medicine and surgery or podiatry in this state. A physician or podiatrist holding an inactive license shall not practice medicine and surgery or podiatry in this state.

(k) An inactive license may be converted by the board to an active license upon a written request by the licensee to the board that:

(1) Accounts for his or her period of inactivity to the satisfaction of the board; and

(2) Submits written documentation of participation in and successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, during each preceding two-year period.

(l) An inactive license may be obtained upon receipt of a reasonable fee, as set by the board, and submission of an application on forms provided by the board on a biennial basis.
(m) The board may not require any physician or podiatrist who is retired or retiring from the active practice of medicine and surgery or the practice of podiatry and who is voluntarily surrendering their license to return to the board the license certificate issued to them by the board.

§30-3-16. Physician assistants; definitions; Board of Medicine rules; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure; responsibilities of supervising physician; legal responsibility for physician assistants; reporting by health care facilities; identification; limitations on employment and duties; fees; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.

(a) As used in this section:

(1) “Approved program” means an educational program for physician assistants approved and accredited by the committee on allied health education and accreditation on behalf of the American Medical Association or its successor;

(2) “Health care facility” means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic or physician’s office;

(3) “Physician assistant” means an assistant to a physician who is a graduate of an approved program of instruction in primary health care or surgery, has attained a baccalaureate or master’s degree, has passed the national certification examination and is qualified
to perform direct patient care services under the supervision of a physician;

(4) "Physician assistant-midwife" means a physician assistant who meets all qualifications set forth under subdivision (3) of this subsection and fulfills the requirements set forth in subsection (d) of this section, is subject to all provisions of this section and assists in the management and care of a woman and her infant during the prenatal, delivery and postnatal periods; and

(5) "Supervising physician" means a doctor or doctors of medicine or podiatry permanently licensed in this state who assume legal and supervisory responsibility for the work or training of any physician assistant under his or her supervision.

(b) The board shall promulgate rules pursuant to the provisions of article three, chapter twenty-nine-a of this code governing the extent to which physician assistants may function in this state. The rules shall provide that the physician assistant is limited to the performance of those services for which he or she is trained and that he or she performs only under the supervision and control of a physician permanently licensed in this state, but that supervision and control does not require the personal presence of the supervising physician at the place or places where services are rendered if the physician assistant's normal place of employment is on the premises of the supervising physician. The supervising physician may send the physician assistant off the premises to perform duties under his or her direction, but a separate place of work for the physician assistant may not be established. In promulgating the rules, the board shall allow the physician assistant to
perform those procedures and examinations and in the case of certain authorized physician assistants to prescribe at the direction of his or her supervising physician in accordance with subsection (n) of this section those categories of drugs submitted to it in the job description required by this section. Certain authorized physician assistants may pronounce death in accordance with the rules proposed by the board which receive legislative approval. The board shall compile and publish an annual report that includes a list of currently licensed physician assistants and their employers and location in the state.

(c) The board shall license as a physician assistant any person who files an application together with a proposed job description and furnishes satisfactory evidence to it that he or she has met the following standards:

(1) Is a graduate of an approved program of instruction in primary health care or surgery;

(2) Has passed the certifying examination for a primary care physician assistant administered by the national commission on certification of physician assistants and has maintained certification by that commission so as to be currently certified;

(3) Is of good moral character; and

(4) Has attained a baccalaureate or master's degree.

(d) The board shall license as a physician assistant-midwife any person who meets the standards set forth under subsection (d) of this section and, in addition
thereto, the following standards:

(1) Is a graduate of a school of midwifery accredited by the American college of nurse-midwives;

(2) Has passed an examination approved by the board; and

(3) Practices midwifery under the supervision of a board-certified obstetrician, gynecologist or a board-certified family practice physician who routinely practices obstetrics.

(e) The board may license as a physician assistant any person who files an application together with a proposed job description and furnishes satisfactory evidence that he or she is of good moral character and meets either of the following standards:

(1) He or she is a graduate of an approved program of instruction in primary health care or surgery prior to the first day of July, one thousand nine hundred ninety-four, and has passed the certifying examination for a physician assistant administered by the national commission on certification of physician assistants and has maintained certification by that commission so as to be currently certified; or

(2) He or she had been certified by the board as a physician assistant then classified as “Type B” prior to the first day of July, one thousand nine hundred eighty-three.

(f) Licensure of an assistant to a physician practicing the specialty of ophthalmology is permitted under this
Provided, That a physician assistant may not dispense a prescription for a refraction.

(g) When any graduate of an approved program submits an application to the board for a physician assistant license, accompanied by a job description as referenced by this section, the board shall issue to that applicant a temporary license allowing that applicant to function as a physician assistant until the applicant successfully passes the national commission on certification of physician assistants' certifying examination: Provided, That the applicant shall sit for and obtain a passing score on the examination next offered following graduation from the approved program. No applicant shall receive a temporary license who, following graduation from an approved program, has sat for and not obtained a passing score on the examination. A physician assistant who has not been certified by the National Board of Medical Examiners on behalf of the national commission on certification of physician assistants will be restricted to work under the direct supervision of the supervising physician.

(h) A physician assistant who has been issued a temporary license shall, within thirty days of receipt of written notice from the national commission on certification of physician assistants of his or her performance on the certifying examination, notify the board in writing of his or her results. In the event of failure of that examination, the temporary license shall expire and terminate automatically and the board shall so notify the physician assistant in writing.

(i) Any physician applying to the board to supervise a physician assistant shall affirm that the range of
medical services set forth in the physician assistant's job
description are consistent with the skills and training of
the supervising physician and the physician assistant.
Before a physician assistant can be employed or
otherwise use his or her skills, the supervising physician
and the physician assistant must obtain approval of the
job description from the board. The board may revoke
or suspend any license of an assistant to a physician for
cause, after giving that assistant an opportunity to be
heard in the manner provided by article five, chapter
twenty-nine-a of this code and as set forth in rules duly
adopted by the board.

(j) The supervising physician is responsible for
observing, directing and evaluating the work, records
and practices of each physician assistant performing
under his or her supervision. He or she shall notify the
board in writing of any termination of his or her
supervisory relationship with a physician assistant
within ten days of the termination. The legal
responsibility for any physician assistant remains with
the supervising physician at all times, including
occasions when the assistant under his or her direction
and supervision, aids in the care and treatment of a
patient in a health care facility. In his or her
absence, a supervising physician must designate an
alternate supervising physician, however, the legal
responsibility remains with the supervising physician at
all times. A health care facility is not legally responsible
for the actions or omissions of the physician assistant
unless the physician assistant is an employee of the
facility.

(k) The acts or omissions of a physician assistant
employed by health care facilities providing inpatient or
outpatient services shall be the legal responsibility of the facilities. Physician assistants employed by facilities in staff positions shall be supervised by a permanently licensed physician.

(l) A health care facility shall report in writing to the board within sixty days after the completion of the facility's formal disciplinary procedure, and also after the commencement, and again after the conclusion, of any resulting legal action, the name of any physician assistant practicing in the facility whose privileges at the facility have been revoked, restricted, reduced or terminated for any cause including resignation, together with all pertinent information relating to the action. The health care facility shall also report any other formal disciplinary action taken against any physician assistant by the facility relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

(m) When functioning as a physician assistant, the physician assistant shall wear a name tag that identifies him or her as a physician assistant. A two and one-half by three and one-half inch card of identification shall be furnished by the board upon licensure of the physician assistant.

(n) A physician assistant may write or sign prescriptions or transmit prescriptions by word of mouth, telephone or other means of communication at the direction of his or her supervising physician. The board shall promulgate rules pursuant to the provisions
of article three, chapter twenty-nine-a of this code
governing the eligibility and extent to which a
physician assistant may prescribe at the direction of the
supervising physician. The rules shall include, but not
be limited to, the following:

(1) Provisions for approving a state formulary
classifying pharmacologic categories of drugs that may
be prescribed by a physician assistant:

(A) The following categories of drugs shall be
excluded from the formulary: Schedules I and II of the
Uniform Controlled Substances Act, anticoagulants,
antineoplastic, radiopharmaceuticals, general
anesthetics and radiographic contrast materials;

(B) Drugs listed under Schedule III shall be limited to
a 72-hour supply without refill; and

(C) Categories of other drugs may be excluded as
determined by the board;

(2) All pharmacological categories of drugs to be
prescribed by a physician assistant shall be listed in
each job description submitted to the board as required
in subsection (i) of this section;

(3) The maximum dosage a physician assistant may
prescribe;

(4) A requirement that to be eligible for prescription
privileges, a physician assistant shall have performed
patient care services for a minimum of two years
immediately preceding the submission to the board of
the job description containing prescription privileges
and shall have successfully completed an accredited course of instruction in clinical pharmacology approved by the board; and

(5) A requirement that to maintain prescription privileges, a physician assistant shall continue to maintain national certification as a physician assistant and, in meeting the national certification requirements, shall complete a minimum of ten hours of continuing education in rational drug therapy in each certification period. Nothing in this subsection shall be construed to permit a physician assistant to independently prescribe or dispense drugs.

(o) A supervising physician may not supervise at any one time more than three full-time physician assistants or their equivalent, except that a physician may supervise up to four hospital-employed physician assistants. No physician shall supervise more than four physician assistants at any one time.

(p) A physician assistant may not sign any prescription, except in the case of an authorized physician assistant at the direction of his or her supervising physician in accordance with the provisions of subsection (n) of this section. A physician assistant may not perform any service that his or her supervising physician is not qualified to perform. A physician assistant may not perform any service that is not included in his or her job description and approved by the board as provided for in this section.

(q) The provisions of this section do not authorize any physician assistant to perform any specific function or duty delegated by this code to those persons licensed as
chiropractors, dentists, dental hygienists, optometrists or pharmacists or certified as nurse anesthetists.

(r) Each application for licensure submitted by a licensed supervising physician under this section is to be accompanied by a fee of one hundred dollars. A fee of fifty dollars is to be charged for the biennial renewal of the license. A fee of twenty-five dollars is to be charged for any change of supervising physician.

(s) As a condition of renewal of physician assistant license, each physician assistant shall provide written documentation of participation in and successful completion during the preceding two-year period of continuing education, in the number of hours specified by the board by rule, designated as Category I by the American Medical Association, American Academy of Physician Assistants or the Academy of Family Physicians and continuing education, in the number of hours specified by the board by rule, designated as Category II by the association or either academy.

(t) Notwithstanding any provision of this chapter to the contrary, beginning the first day of July, two thousand seven, failure to timely submit the required written documentation shall result in the automatic expiration of any license as a physician assistant until the written documentation is submitted to and approved by the board.

(u) If a license is automatically expired and reinstatement is sought within one year of the automatic expiration, the former licensee shall:

(1) Provide certification with supporting written
documentation of the successful completion of the required continuing education;

(2) Pay a renewal fee; and

(3) Pay a reinstatement fee equal to fifty percent of the renewal fee.

(v) If a license is automatically expired and more than one year has passed since the automatic expiration, the former licensee shall:

(1) Apply for a new license;

(2) Provide certification with supporting written documentation of the successful completion of the required continuing education; and

(3) Pay such fees as determined by the board.

(w) It is unlawful for any physician assistant to represent to any person that he or she is a physician, surgeon or podiatrist. Any person who violates the provisions of this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than two years, or be fined not more than two thousand dollars, or both fined and imprisoned.

(x) All physician assistants holding valid certificates issued by the board prior to the first day of July, one thousand nine hundred ninety-two, shall be considered to be licensed under this section.
ARTICLE 3D. PHYSICIAN HEALTH PROGRAMS.

§30-3D-1. Definitions.

For the purposes of this article, the following words and terms have the meanings ascribed to them, unless the context clearly indicates otherwise.

(1) "Boards" mean the West Virginia Board of Medicine and Board of Osteopathy.

(2) "Major mental illness" means a diagnosis of a mental disorder within the axis of psychotic or affective or mood, or alcohol or chemical abuse, or alcohol or chemical dependency, as stipulated in the International Code of Diagnosis.

(3) "Physician and physician assistant" mean those health care professionals licensed by the West Virginia Board of Medicine or the West Virginia Board of Osteopathy.

(4) "Podiatrist" means those individuals licensed by the West Virginia Board of Medicine to undertake the practice of podiatry.

(5) "Qualifying illness" means the diagnosis of alcohol or substance abuse or alcohol or substance dependency or major mental illness.

§30-3D-2. Physician health program.

(a) The boards are authorized to designate one or more physician health programs. To be eligible for designation by the boards, a physician health program shall:
(1) Agree to make their services available to all licensed West Virginia physicians, podiatrists and physicians' assistants with a qualifying illness;

(2) Provide for the education of physicians, podiatrists and physicians' assistants with respect to the recognition and treatment of alcohol, chemical dependency and mental illness and the availability of the physician health program for qualifying illnesses;

(3) Offer assistance to any person in referring a physician, podiatrist or physicians' assistant for purposes of assessment or treatment or both for a qualifying illness;

(4) Monitor the status of a physician, podiatrist or physicians' assistant who enters treatment for a qualifying illness pursuant to a written, voluntary agreement during treatment;

(5) Monitor the compliance of a physician, podiatrist or physicians' assistant who enters into a written, voluntary agreement for a qualifying illness with the physician health program setting forth a course for recovery;

(6) Agree to accept referrals from the boards to provide monitoring services pursuant to a board order; and

(7) Include such other requirements as the boards deem necessary.

(b) A designated physician health program shall:
(1) Set and collect reasonable fees, grants and donations for administration and services provided;

(2) Work collaboratively with the boards to develop model compliance agreements;

(3) Work collaboratively with the boards to identify qualified providers of services as may be needed by the individuals participating in the physician health program;

(4) Report to the boards no less than annually, statistics including the number of individuals served by license held; the number of compliant individuals; the number of individuals who have successfully completed their agreement period; and the number of individuals reported to a particular board for suspected noncompliance. Provided, that in making such report the physician health program shall not disclose any personally identifiable information relating to any physician, podiatrist or physician assistant participating in a voluntary agreement as provided herein.

(c) The fact that a physician, physician's assistant or podiatrist is participating in a designated physician health program is confidential, as is all physicians, podiatrists or physicians assistants patient information, acquired, created or used by the physician health program, and it shall remain confidential and may not be subject to discovery or subpoena in a civil case. The disclosure of participation and noncompliance to the appropriate board, as required by a compliance agreement, waives the confidentiality as to the appropriate board for disciplinary purposes.
(d) The physician health program and all persons engaged in physician health program activities are immune from civil liability and no civil action may be brought or maintained while the physician health program and all persons engaged in physician health program activities are acting in good faith and within the scope of their duties.

(e) The boards are immune from civil liability and no civil action may be brought or maintained against the boards or the state for an injury alleged to have been the result of the activities of the physician health program or the boards referral of an individual to the physician health program when they are acting in good faith and within the scope of their duties.

§30-3D-3. Discretionary authority of boards to designate programs.

The West Virginia Board of Medicine and the West Virginia Board of Osteopathy have the sole discretion to designate physician health programs for licensees of the respective boards and no provision of this article may be construed to entitle any physician, podiatrist or physician assistant to the creation or designation of a physician health program for any individual qualifying illness or group of qualifying illnesses.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-11a. Records of board; expungement; examination; notice; public information; voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges.
(a) The board shall maintain a permanent record of the names of all osteopathic physicians and osteopathic physician assistants, licensed, certified or otherwise lawfully practicing in this state and of all persons applying to be so licensed to practice, along with an individual historical record for each such individual containing reports and all other information furnished the board under this article or otherwise. When the board receives a report submitted pursuant to the provisions of section twelve-a of this article, or when the board receives or initiates a complaint regarding the conduct of anyone practicing osteopathic medicine or surgery, the board shall create a separate complaint file in which the board shall maintain all documents relating to the investigation and action upon the alleged conduct.

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

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

(d) An osteopathic physician, osteopathic physician assistant or applicant has the right to seek through court action the amendment or expungement of any part of his or her historical record.
(e) An osteopathic physician, osteopathic physician assistant or applicant shall be provided written notice within thirty days of the placement and substance of any information in his or her individual historical record that pertains to him or her and that was not submitted to the board by him or her, other than requests for verification of the status of the individual's license and the board's responses thereto.

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

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

(h) (1) In order to encourage voluntary participation in monitored alcohol, chemical dependency or major mental illness programs and in recognition of the fact that major mental illness, alcoholism and chemical dependency are illnesses, an osteopathic physician or osteopathic physician assistant licensed, certified, or otherwise lawfully practicing in this state or applying for a license to practice in this state may enter into a voluntary agreement with the board-designated physician health program. The agreement between the
physician or physician assistant and the physician health program shall include a jointly agreed upon treatment program and mandatory conditions and procedures to monitor compliance with the program of recovery.

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

(A) Such voluntary agreement is the result of the physician or physician assistant self-enrolling or voluntarily participating in the board-designated physician health program;

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

(C) The physician or physician assistant is in compliance with the voluntary treatment program and the conditions and procedures to monitor compliance.

(3) If any osteopathic physician or osteopathic physician assistant enters into a voluntary agreement with the board-approved physician health program, pursuant to this subsection and then fails to comply with, or fulfill the terms of said agreement the physician health program shall report the noncompliance to the board within twenty-four hours. The board may initiate
disciplinary proceedings pursuant to section eleven of
this article or may permit continued participation in the
physician health program or both.

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

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

Notwithstanding any of the foregoing provisions, the
board may cooperate with and provide documentation
of any voluntary agreement entered into pursuant to
this subsection to licensing boards in other jurisdictions
of which the board has become aware and as may be
appropriate.
(i) Any physician-patient privilege does not apply in any investigation or proceeding by the board or by a medical peer review committee or by a hospital governing board with respect to relevant hospital medical records, while any of the aforesaid are acting within the scope of their authority: Provided, That the disclosure of any information pursuant to this provision shall not be considered a waiver of any such privilege in any other proceeding.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the Day of , 2007.

Governor