

FILED

2012 APR -2 PM 3: 14

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

**SECOND REGULAR SESSION, 2012**



**SECOND  
ENROLLMENT**

HB 4239

**COMMITTEE SUBSTITUTE  
FOR**

**House Bill No. 4239**

(By Delegates Morgan and Perdue)



Amended and again passed, in an effort to meet  
the objections of the Governor, March 16, 2012

To Take Effect From Passage

**S E C O N D  
E N R O L L M E N T**

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 4239**

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**(BY DELEGATES MORGAN AND PERDUE)**

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**[Amended and again passed, in an effort to meet  
the objections of the Governor, March 16, 2012;  
to take effect from passage.]**

**AN ACT to amend and reenact §30-14-1, §30-14-2, §30-14-3 and §30-14-12b of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Board of Osteopathy; renaming the board the West Virginia Board of Osteopathic Medicine; providing definitions; increasing board membership; providing board composition; increasing the board membership term length; adding term limits; authorizing certain associations to make recommendations on board membership; and adding certain requirements to qualify to serve on the board.**

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

**That §30-14-1, §30-14-2, §30-14-3 and §30-14-12b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:**

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**ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.**

**§30-14-1. License required.**

1 It is unlawful for any person to practice or offer to  
2 practice medicine and surgery as an osteopathic physician  
3 and surgeon in this state without a license or permit issued by  
4 the West Virginia Board of Osteopathic Medicine: *Provided,*  
5 That any license heretofore issued under the laws of this  
6 state, authorizing its holder to practice osteopathy and  
7 surgery, shall in no way be affected by the enactment of this  
8 article; except that the holder of every such license shall be  
9 subject to all of the provisions of this article respecting the  
10 requirements and obligations herein prescribed for the  
11 continuance in force of such license.

**§30-14-2. Definitions.**

1 (a) "Accredited osteopathic college" means a college of  
2 osteopathy and surgery which requires as a minimum  
3 prerequisite for admission preprofessional training of at least  
4 two years of academic work in specified scientific subjects,  
5 as prescribed by the board or by the college accrediting  
6 agency of the American Osteopathic Association, in an  
7 accredited college of arts and sciences and which requires for  
8 graduation a course of study approved by the board in  
9 accordance with the minimum standards established by the  
10 American Osteopathic Association;

11 (b) "Approved program of post-graduate clinical  
12 training" means a program of clinical training approved by,  
13 or subject of approval by, the American Osteopathic  
14 Association or approved by the Accreditation Council for  
15 Graduate Medical Education for the purposes of intern or  
16 resident training;

17 (c) "Board" means the West Virginia Board of  
18 Osteopathic Medicine: *Provided*, That where used elsewhere  
19 in the Code, the West Virginia Board of Osteopathy and  
20 Board of Osteopathy shall also mean the West Virginia Board  
21 of Osteopathic Medicine;

22 (d) "License" means legal authorization issued by the  
23 board to a fully qualified osteopathic physician to engage in  
24 the regular practice of osteopathic medicine and surgery;

25 (e) "Osteopathy" means that system of the healing art  
26 which places the chief emphasis on the structural integrity of  
27 the body mechanism as being the most important single factor  
28 in maintaining the well-being of the organism in health and  
29 disease;

30 (f) "Permit" means a limited, legal authorization issued  
31 by the board to an osteopathic physician to practice  
32 osteopathic medicine and surgery in this state while serving  
33 under special circumstances of public need or while  
34 undergoing post-graduate clinical training as a prerequisite to  
35 licensure;

36 (g) "Reciprocal endorsement" means a duly authenticated  
37 verification of the board, addressed to a board or agency of  
38 another country, state, territory, province or the District of  
39 Columbia, vouching that a license issued to an osteopathic  
40 physician and surgeon pursuant to the laws of this state is  
41 currently valid and not suspended or revoked for any cause  
42 or causes specified in this article.

### §30-14-3. Board of Osteopathic Medicine.

1 (a) The West Virginia Board of Osteopathy is continued  
2 and effective July 1, 2012 shall be known as the West  
3 Virginia Board of Osteopathic Medicine. The members of

4 the board shall continue to serve until a successor is  
5 appointed and may be reappointed.

6 (b) The Governor shall appoint, by and with advice and  
7 consent of the Senate, two additional members and stagger  
8 their initial terms:

9 (1) One person who is a licensed osteopathic physician or  
10 surgeon; and

11 (2) One person who is a licensed osteopathic physician  
12 assistant.

13 (c) The board consists of the following seven members,  
14 who are appointed to staggered terms by the Governor with  
15 the advice and consent of the Senate:

16 (1) Four licensed osteopathic physicians and surgeons;

17 (2) One licensed osteopathic physician assistant; and

18 (3) Two citizen members, who are not associated with the  
19 practice of osteopathic medicine.

20 (d) After the initial appointment, a board member's term  
21 shall be for 5 years.

22 (e) The West Virginia Osteopathic Medical Association  
23 may submit recommendations to the Governor for the  
24 appointment of an osteopathic physician board member, and  
25 the West Virginia Association of Physician Assistants may  
26 submit recommendations to the Governor for the appointment  
27 of an osteopathic physician assistant board member.

28 (f) Each licensed member of the board, at the time of his  
29 or her appointment, must have held a license in this state for

30 a period of not less than five years immediately preceding the  
31 appointment.

32 (g) Each member of the board must be a U.S. citizen and  
33 a resident of this state for a period of not less than five years  
34 immediately preceding the appointment and while serving as  
35 a member of the board.

36 (h) A member may not serve more than two consecutive  
37 full terms. A member having served two consecutive full  
38 terms may not be appointed for one year after completion of  
39 his or her second full term. A member may continue to serve  
40 until a successor has been appointed and has qualified.

41 (i) A vacancy on the board shall be filled by appointment  
42 by the Governor for the unexpired term of the member whose  
43 office is vacant and the appointment shall be made within  
44 sixty days of the vacancy.

45 (j) The Governor may remove any member from the  
46 board for neglect of duty, incompetency or official  
47 misconduct.

48 (k) A member of the board immediately and  
49 automatically forfeits membership to the board if his or her  
50 license to practice is suspended or revoked, he or she is  
51 convicted of a felony under the laws of any jurisdiction, or he  
52 or she becomes a nonresident of this state.

53 (l) The board shall elect annually one of its members as  
54 a chairperson and one of its members as a secretary who shall  
55 serve at the will of the board.

56 (m) Each member of the board is entitled to compensation  
57 and expense reimbursement in accordance with article one of  
58 this chapter.

59 (n) A simple majority of the membership serving on the  
60 board at a given time constitutes a quorum.

61 (o) The board shall hold at least two meetings each year.  
62 Other meetings may be held at the call of the chairperson or  
63 upon the written request of two members, at the time and  
64 place as designated in the call or request.

65 (p) Prior to commencing his or her duties as a member of  
66 the board, each member shall take and subscribe to the oath  
67 required by section five, article four of the Constitution of  
68 this state.

69 (q) The members of the board when acting in good faith,  
70 without malice and within the scope of their duties as board  
71 members shall enjoy immunity from individual civil liability.

**§30-14-12b. Special volunteer medical license; civil immunity  
for voluntary services rendered to indigents.**

1 (a) There is hereby established a special volunteer  
2 medical license for physicians retired or retiring from the  
3 active practice of osteopathy who wish to donate their  
4 expertise for the medical care and treatment of indigent and  
5 needy patients in the clinic setting of clinics organized, in  
6 whole or in part, for the delivery of health care services  
7 without charge. The special volunteer medical license shall  
8 be issued by the West Virginia Board of Osteopathic  
9 Medicine to physicians licensed or otherwise eligible for  
10 licensure under this article and the rules promulgated  
11 hereunder without the payment of any application fee, license  
12 fee or renewal fee, shall be issued for a fiscal year or part  
13 thereof, and shall be renewable annually. The board shall  
14 develop application forms for the special license provided for  
15 in this subsection which shall contain the physician's  
16 acknowledgment that: (1) The physician's practice under the

17 special volunteer medical license will be exclusively and  
18 totally devoted to providing medical care to needy and  
19 indigent persons in West Virginia; (2) the physician will not  
20 receive any payment or compensation, either direct or  
21 indirect, or have the expectation of any payment or  
22 compensation, for any medical services rendered under the  
23 special volunteer medical license; (3) the physician will  
24 supply any supporting documentation that the board may  
25 reasonably require; and (4) the physician agrees to continue  
26 to participate in continuing medical education as required of  
27 physicians in active practice.

28 (b) Any physician who renders any medical service to  
29 indigent and needy patients of clinics organized, in whole or  
30 in part, for the delivery of health care services without charge  
31 under a special volunteer medical license authorized under  
32 subsection (a) of this section without payment or  
33 compensation or the expectation or promise of payment or  
34 compensation is immune from liability for any civil action  
35 arising out of any act or omission resulting from the  
36 rendering of the medical service at the clinic unless the act or  
37 omission was the result of the physician's gross negligence  
38 or willful misconduct. In order for the immunity under this  
39 subsection to apply, there must be a written agreement  
40 between the physician and the clinic pursuant to which the  
41 physician will provide voluntary noncompensated medical  
42 services under the control of the clinic to patients of the clinic  
43 before the rendering of any services by the physician at the  
44 clinic: *Provided*, That any clinic entering into such written  
45 agreement shall be required to maintain liability coverage of  
46 not less than one million dollars per occurrence.

47 (c) Notwithstanding the provisions of subsection (a) of  
48 this section, a clinic organized, in whole or in part, for the  
49 delivery of health care services without charge shall not be  
50 relieved from imputed liability for the negligent acts of a

51 physician rendering voluntary medical services at or for the  
52 clinic under a special volunteer medical license authorized  
53 under subsection (a) of this section.

54 (d) For purposes of this section, "otherwise eligible for  
55 licensure" means the satisfaction of all the requirements for  
56 licensure as listed in section ten of this article and in the  
57 legislative rules promulgated hereunder, except the fee  
58 requirements of subsections (b) and (d) of said section and of  
59 the legislative rule promulgated by the board relating to fees.

60 (e) Nothing in this section may be construed as requiring  
61 the board to issue a special volunteer medical license to any  
62 physician whose medical license is or has been subject to any  
63 disciplinary action or to any physician who has surrendered  
64 a medical license or caused such license to lapse, expire and  
65 become invalid in lieu of having a complaint initiated or other  
66 action taken against his or her medical license, or who has  
67 elected to place a medical license in inactive status in lieu of  
68 having a complaint initiated or other action taken against his  
69 or her medical license, or who have been denied a medical  
70 license.

71 (f) Any policy or contract of liability insurance providing  
72 coverage for liability sold, issued or delivered in this state to  
73 any physician covered under the provisions of this article  
74 shall be read so as to contain a provision or endorsement  
75 whereby the company issuing such policy waives or agrees  
76 not to assert as a defense on behalf of the policyholder or any  
77 beneficiary thereof, to any claim covered by the terms of such  
78 policy within the policy limits, the immunity from liability of  
79 the insured by reason of the care and treatment of needy and  
80 indigent patients by a physician who holds a special volunteer  
81 medical license.

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

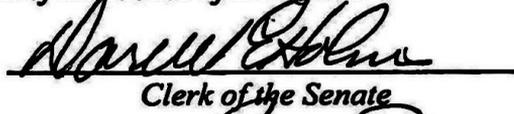
  
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Chairman, House Committee

  
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Chairman, Senate Committee

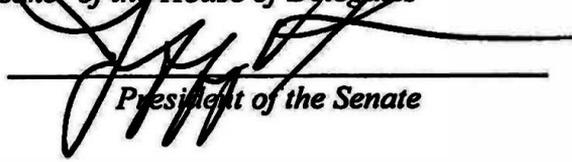
Originating in the House.

To take effect from passage.

  
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Clerk of the House of Delegates

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

The within is approved this the 2nd  
day of April, 2012.

  
\_\_\_\_\_  
Governor

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SECRETARY OF STATE

**PRESENTED TO THE GOVERNOR**

MAR 29 2012

Time 1:35 pm