

Chapter 16. Public Health

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§ 1265. [1] **Composition of Department.**—There shall be a state department of health, which shall consist of a board of health, a director of health; directors of divisions, and other employees as hereinafter provided.

§ 1266. [2] **Board of Health—Body Corporate, etc.; Membership.** — There shall be a state board of health, to be known as the West Virginia board of health, which shall be a corporation and as such may contract and be contracted with, plead and be impleaded, sue and be sued, and have and use a common seal. The state board of health shall consist of nine members who shall be appointed by the governor, by and with the advice and consent of the senate. Three members of the board shall be physicians or surgeons holding the degree of doctor of medicine, one shall be a dentist, one shall be an osteopathic physician, one shall be a pharmacist, one shall be chosen as the representative of the hospitals licensed in the State of West Virginia and two shall be representative citizens, neither of which said representative citizens shall be an employee of, or connected in any way with, any hospital licensed in this State, and neither of whom shall be a member of any of the professions named above.

All persons appointed to membership on the state board of health shall be citizens of this State and shall have been such citizens and residents of the State for at least five years prior to the date of their appointment. Every professional member of the said board shall be duly licensed to practice his profession in this State on the date of his appointment and shall have been so licensed and have been actively practicing his profession for at least five years immediately preceding the date of such appointment. Before appointing any professional member, the governor shall request the State professional society of the profession practiced by any proposed appointee to furnish to the governor a full and complete report concerning the qualifications and suitability of the proposed appointee. All members of the board shall be appointed for terms of nine years each, except that the persons originally appointed, shall be appointed to serve for designated terms beginning on the first day of July, one thousand nine hundred forty-nine, and continuing for one, two, three, four, five, six, seven, eight, and nine years respectively. Upon the expiration of such initial appointments the term of each new appointee shall be nine years. Any vacancy on the board shall be filled by the governor by appointment for the unexpired term.

No more than five of the members of the board shall belong to the same political party. Not less than one nor more than two members shall be appointed from the same congressional district. No person shall be eligible for appointment to membership on the state board who is a member of any

political party executive committee, or who holds any public office or public employment under the Federal government or under the government of this State or any of its political subdivisions, or who is an appointee or employee of the board. All members shall be eligible for re-appointment.

No member may be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal by the governor of state elective officers: Provided, however, that the expiration or revocation of the professional license of any professional member of the board shall be cause for his removal.

The members of the board shall be paid the sum of twenty-five dollars for each day actually served in attendance at official meetings of the board. The total of such compensation paid to each member during any one fiscal year shall not exceed three hundred dollars. Each member shall also be paid mileage at the rate of ten cents per mile in the performance of his duties as a member of the board.

§ 1267. [3] Board of Health; Powers and Duties.—The state board of health shall assume, carry on, and succeed to, all the duties, rights, powers, obligations and liabilities heretofore belonging to, exercised by, or assumed by the state department of health, the public health council, and the commissioner of health pursuant to statutory authority heretofore existing and as changed or modified by the provisions of this article: Provided, however, that the said board shall not succeed to, or exercise any of the powers heretofore exercised by the public health council with regard to the licensure of physicians, surgeons, chiroprodists, and chiropractors.

The state board of health shall have the power to acquire by condemnation or otherwise land or buildings and to hold title thereto, for the use and benefit of any state institution subject to its control and management, and, by and with the consent of the governor, to sell, exchange or otherwise convey any property title to which is acquired or held by it. Any condemnation proceeding instituted by the said board shall be conducted pursuant to the provisions of chapter fifty-four [§ 5361 et seq.] of this Code.

The state board shall have supervision and control of the business, fiscal, administrative and medical affairs of the department of health and shall have advisory medical supervision of all of the state institutions set forth in section ten [§ 1274] of this article. It shall have authority to employ, fix the compensation of, and discharge all persons necessary for the proper execution and enforcement of the laws of this State pertaining to public health, and the efficient and proper discharge of the duties imposed upon, and execution of the powers vested in, the said board by law. It may place any or all of its employees under the merit system, provided that the same may be done in conformity with the applicable laws of this State and of the federal government.

The state board shall have the authority to enforce all of the laws of this State concerning the public health, and shall take care to protect the life and health of all of the inhabitants of the State, and to that end shall make or cause to be made sanitary investigations and inquiries respecting the cause of disease, especially of epidemics and endemic conditons, and the means of prevention, suppression or control of such conditions; the source of mortality, and

the effects of localities, employment, habits and circumstances of life on the public health. It shall gather information in respect to the said and kindred subjects for diffusion among the people of the State. It shall inspect and examine food, drink and drugs offered for sale, or for public consumption, in such manner as it shall deem necessary to protect the public health, and shall report all violations of the laws of this State and the regulations adopted thereunder relating to pure food, drink and drugs to the prosecuting attorney of the county in which such violations occur, and lay before such prosecuting attorney the evidence in its knowledge of such violations. The board or its duly designated employees may make complaint or cause proceedings to be instituted against any person or persons, or corporation, for the violation of any of the health laws of this State. Such action may be taken by the board without the sanction of the prosecuting attorney of the county in which proceedings are instituted, if said officer fail or refuse to discharge his duty. In no such case shall the board or any person acting under its direction be required to give security for costs.

The state board of health shall provide for the efficient and accurate registration of births and deaths, and the recordation of cases of such diseases as may be required to be recorded by statute or regulation. It shall have the power to inspect, and to make and enforce, for the protection of the public health, reasonable rules and regulations to control the sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, creameries, slaughter houses, work shops, factories, labor camps, places of entertainment, hotels, tourist camps, all other places open to the general public and inviting public patronage or public assembly, or tending to the public any item for human consumption, and places where offensive trades or industries are conducted. It shall have the power to make and enforce reasonable rules and regulations to control occupational and industrial health hazards, and to make inspections and conduct hearings respecting the cause and control of such hazards. It shall have the power to inspect and to make reasonable rules and regulations to control the sanitary condition of streams, sources of water supply, and sewerage facilities.

The state board is empowered and directed to encourage and foster the cooperation of all physicians, volunteer health organizations and other interested persons and organizations in the improvement of public health, and to disseminate information to the general public in all matters pertaining to public health.

The state board shall promulgate and enforce regulations governing the design of all public water systems, plumbing systems, sewerage systems and sewage treatment plants, swimming pools and excreta disposal methods in this State, whether publicly or privately owned; the operation of all public chlorination and filtration plants, and the qualifications of operators, chemists, bacteriologists and superintendents of filtration, or others, who are in actual charge of the plant operation of all public water systems, sewage treatment plants and swimming pools.

The state board shall have the power and authority to make and promulgate, and from time to time amend such rules and regulations as it may deem necessary and advisable to properly put into effect the public health laws of this State, and for the administration of the powers granted to it by this article.

Every general regulation adopted by the state board of health shall state the day on which it takes effect. A copy of any such regulation, duly signed by the director of health, shall be filed in the office of the secretary of state, and a copy thereof shall be sent by the director of health to each health officer within the State and shall be published in such manner as the board may determine.

Provided, however, that nothing herein contained shall be construed to give the state department of health or the state board of health power to regulate or interfere with the drainage from any mine or manufacturing plant unless the drainage from said mine or manufacturing plant shall contain disease producing bacteria in sufficient numbers to endanger health, or organic or inorganic wastes of such nature as to cause the water intended for public or private water supplies to be unfit for use.

§ 1268. [4] Board of Health; Organization, Reports, and Offices.—The state board of health shall adopt a seal. It shall organize by electing from among its members a chairman who shall serve as such for a period of two years. Such chairman shall have the power to sign documents, execute contracts and otherwise act for and in the name of the board in all matters within its lawful powers and duly authorized by a majority of its members.

The board shall determine the number, date and place of its regular meetings, but at least one such meeting shall be held annually at the board's established offices in the city of Charleston. Whenever the convenience of the public or of interested persons may be promoted, or delay or expense may be prevented, the board may, in its discretion, hold meetings, hearings or proceedings at any other time or place designated by it.

The board shall report in writing to the governor on or before the thirty-first day of August of each year. The report shall contain a summary of the board's proceedings during the preceding fiscal year, a detailed and itemized statement of all revenue received and all expenditures made by or on behalf of the board, such other information as it may deem necessary or useful, and any additional information which may be requested by the governor. The fiscal year of the board and of the department of health shall conform to the fiscal year of the State.

An office shall be established and maintained by the board in the city of Charleston. In addition, the board may establish and maintain such other offices within the State as it may deem necessary and expedient.

§ 1269. [5] Director of Health; Appointment, Qualifications, Compensation.—A state director of health shall be appointed by the state board of health, to serve for an indefinite term at the pleasure of the board. The director of health so appointed shall be a physician holding the degree of doctor of medicine, a graduate of a reputable medical college, and eligible for licensure as a physician in this State, and shall have had at least five years experience in the practice of medicine. He shall be skilled in sanitary science and experienced in public health administration. He shall devote his entire time to the duties of his office as required and prescribed by this article, and shall not be actively engaged or employed in any other business, vocation or employment. He shall receive such compensation as the board may determine. He shall be reimbursed for all necessary traveling and other expenses incurred by him in the discharge of his official duties.

§ 1270. [6] **Director of Health; Duties and Powers.**—The director of health shall be the executive officer of the state board of health. Under its supervision, he shall administer the provisions of this article, all other laws of this State relating to public health and within the authority of the department of health, and the rules, regulations and orders established, promulgated or issued by the board of health. The director shall attend but not vote at all meetings of the state board of health. He shall act as secretary of the board and as such shall be in charge of its offices and responsible to the board for the preparation of reports and the collection and dissemination of data and other public information relating to public health. At the direction of the board of health, he shall, together with the chairman of the board, execute all contracts entered into by the board which are legally authorized. He shall be the administrative head and chief executive officer of the state department of health and as such shall organize and supervise all of the activities of the department of health.

§ 1271. [7] **Divisions of Department; Directors of Divisions.**—There shall be included in the state department of health the following divisions:

- Division of communicable diseases,
- Division of cancer control,
- Division of vital statistics,
- Division of sanitary engineering,
- Division of maternal and child health,
- Division of barbers and beauticians,
- Division of dental health.

The state board of health shall appoint, with the advice of the director of health, a director for each division, and shall prescribe, with the advice of the director of health, the qualifications of each such division director, the duties pertaining to each division, and the arrangement of the sub-divisions, if any, thereof.

The state board shall have authority to establish such additional administrative sections or groupings within the department of health as it may consider necessary or advisable for the efficient administration of its powers and duties.

§ 1272. [8] **Administrative and Other Employees of the Department of Health.**—The state board of health may at such time or times as it may deem necessary, employ, with the advice of the director of health, such administrative employees, inspectors, examiners, or other persons as may be necessary to properly carry out the provisions of the public health laws of this State. Such inspectors, examiners and other employees as may be duly designated by the board of health shall act as its representatives and, under the direction of the director of health, shall enforce the provisions of the public health laws and all duly promulgated rules and regulations of the board of health, and in the discharge of official duties, shall have the right of entry into any institution or school, whether public or private, public conveyance, dairy, creamery, slaughter house, work shop, factory, labor camp, place of entertainment, hotel, tourist camp, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption, and places where offensive trades or industries are conducted.

Any person interfering with or attempting to interfere with any inspector, examiner or other duly authorized employee of the board of health in the discharge of his duties under this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars, nor more than one hundred dollars.

§ 1273. [9] Supervision over Local Sanitation.—No county or municipal government, public or private institution, firm, corporation or company, person or persons, shall install or establish any system or method of drainage, water supply, excreta disposal or system of garbage and refuse disposal insofar as each affects the public health in this State unless the same is installed or established in accordance with plans, specifications, and instructions issued by the state department of health or which have been approved in writing by the director of health or his authorized representative.

Whenever the director of health or his authorized representative finds upon investigation that any system or method of drainage, water supply, excreta disposal or garbage or refuse disposal, whether publicly or privately owned, is such as to endanger the public health or is creating a nuisance that is detrimental to health, the director of health or his duly authorized representative shall be empowered to issue an order requiring the owner of such system or method to make such alterations, within a reasonable time, as may be necessary to correct the improper condition.

The personnel of the state department of health shall be at the disposal of any county, municipality, firm, corporation, company, person or persons to consult and advise with them as to the most appropriate design, method of operation or alteration of the systems or methods above mentioned.

Any county, municipality, public or private institution, firm, corporation, company, person or persons who shall violate any provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars.

§ 1274. [10] Supervision of State Health Institutions.—The state department of health shall have the advisory medical supervision of Denmark, Berkeley Springs, Pinecrest, Hopemont and all other state sanitoriums for the treatment of tuberculosis or chronic diseases; and Fairmont and Welch emergency hospitals; and the state board of control shall have the control of the business and fiscal affairs thereof.

The director of the bureau of tuberculosis of the state department of health, under the supervision of the state board of health, shall encourage measures for the suppression of tuberculosis, such as clinics, camps, open air schools, sanitariums, district nursing, anti-tuberculosis societies, diffusion of knowledge and other means.

§ 1274 (1) [10-a] Promotion of Mental Health.—The state board of health, and county, municipal, and combined local boards of health, in cooperation and coordination with the state department of mental health, may promote mental health by providing and making available personnel and facilities, and conducting mental health programs and activities, to prevent, detect and control mental defects and diseases, and to provide, outside of state mental

institutions and mental health clinics, for care, supervision and treatment of persons with mental defects or afflicted with mental diseases.

For the purpose of promoting mental health, the state board of health, and county, municipal, and combined local boards of health may train, or provide for the training of, their employees in the problems, maintenance and treatment of mental health. With the consent of the state department of mental health, the state board of health, and county, municipal, and combined local boards of health, may train their employees in mental health by using such professional services and facilities as may be available at the state mental hospitals and state mental health clinics for such training. Any facilities or personnel of the state department of mental health used or employed in such training shall be so used or employed only under the supervision and control of the state department of mental health.

The state board of health, in cooperation with the state department of mental health, may also promote mental health by conducting and carrying on mental health programs in the public schools, or elsewhere in this state, in cooperation with state and local boards of education, or in cooperation with other public or private institutions and agencies.

§ 1275. [11] State Laboratory; Branches.—The state board of health may establish and maintain a state hygienic laboratory as an aid in performing the duties imposed upon the said board, or the department of health, by law, and may employ any chemists, bacteriologists, and other employees that may be necessary to properly operate such laboratory. The board of health may establish branches of the state laboratory at such points within the State as it may deem necessary in the interest of the public health.

§ 1276. [12] Expenditures of State Department of Health.—The state department of health shall have power to expend annually, for the purpose of performing the duties imposed on it, or authorized by law, such sum as may be appropriated by the legislature for the department of health. The director of health shall audit all bills, which shall be made out in due form and verified by the members of the board of health, directors of divisions, employees, or agents rendering services or incurring traveling or other expense in the performance of the duties of their offices or employments. Such bills, when approved by the auditor, shall be paid out of the state treasury.

§ 1277. [13] Disposition of Moneys Received by State Director of Health; Report to Auditor.—The state director of health, as secretary of the board of health, shall receive and account for all moneys required to be paid to the board of health as fees for permits, licenses, or registrations, pursuant to the provisions of this Code, and shall pay such moneys into the state treasury monthly, on or before the tenth day of the month succeeding the month in which such moneys were received. The director of health shall, on the first day of January and the first day of July in each year, or within five days thereafter, certify to the state auditor a detailed statement of all such moneys received by him during the preceding six months. If the director of health shall fail or refuse to comply with the provisions of this section, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined for each offense not less than fifty dollars, nor more than two hundred dollars.

§ 1277 (1). [14] Board of Health Authorized to Cooperate with Federal Government in Hospital and other Health Facility Programs; Advisory Council.—The state board of health is hereby designated as the sole state agency to cooperate with the federal government in its programs for construction of public or private hospitals, diagnostic or treatment centers, chronic disease hospitals, rehabilitation facilities, nursing homes, and similar or related facilities and institutions; and is hereby designated as the sole state agency authorized to make such inventories of existing public health centers, public and private hospitals, diagnostic or treatment centers, chronic disease hospitals, rehabilitation facilities, nursing homes, and similar or related facilities and institutions, and the laboratory and other facilities thereof, to make surveys of the need for construction of such health facilities, and to adopt, develop, and supervise the administration of such state wide plans or programs for the construction of additional public and private hospitals, public health centers, public or private diagnostic or treatment centers, chronic disease hospitals, rehabilitation facilities, nursing homes, and similar or related facilities and institutions, as may be necessary to comply with the requirements and conditions of federal law in respect to the granting of federal aid for such purposes under all acts of Congress now in force and all subsequent acts of Congress amending or supplementing those acts of Congress now in force.

The governor shall have authority to appoint such an advisory council to consult with the state board of health as may be necessary under federal law to effectuate the purposes of this section. The members of any such advisory council shall serve without compensation, but shall be paid the amount of their traveling and other expenses necessarily incurred in the performance of their duties.

§ 1277 (2). [15] Federal Aid.—The state board of health is authorized to accept, receive and receipt for federal moneys and other moneys, either public or private, for and in behalf of this State or any county or municipality thereof, for public health purposes, or for the establishment or construction of public health facilities, whether such work is to be done by the State, or by such county or municipality, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are, or may be, prescribed by the laws of the United States and any rules or regulations made thereunder. The state board is authorized to, and may, act as the agent of the State or any of its agencies, or of any county or municipality of this State, upon the request of any agency of the State or of any such county or municipality, in accepting, receiving and receipting for such moneys in its behalf, for public health facilities financed either in whole or in part by federal moneys.

The State, or any agency thereof, or any county or municipality is authorized to, and may designate the state board of health as its agent for the purposes above set forth, and any such agency, county or municipality may enter into an agreement with the board prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations, and with the laws of this State. Such moneys as are paid over by the United States government shall be retained by the State or paid over to said counties or municipalities under such terms and conditions as may be imposed by the United States government in making such grants.

All moneys accepted for disbursement by the board pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purpose for which the moneys were made available, and held by the State in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available and shall be expended in accordance with federal laws and regulations and with the laws of this State. The board is authorized, whether acting for the State or one of its agencies, or as the agency for any county or municipality, when requested by the United States government or any agency or department thereof, or when requested by the State, a state agency, or any county or municipality for which the moneys have been made available, to disburse such moneys for the designated purposes, but this shall not include any other authorized method of disbursement.

§ 1277 (3). [16] Investigations, Hearings, Power to Subpoena Witnesses; Self Crimination.—The state board of health, any member thereof, the director of health, or any officer or employee of the department of health designated by the board of health, shall have the power to hold investigations, inquiries and hearings concerning matters covered by the laws of this State pertaining to public health and within the authority of the state board of health, and the rules, regulations and orders of the board. Hearings shall be open to the public and shall be held upon such call or notice as the board shall deem advisable.

Each member of the board, the director and every officer or employee of the department of health designated to hold any inquiry, investigation or hearing shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas and order the attendance and testimony of witnesses in the production of papers, books and documents. In case of the failure of any person to comply with any subpoena or order issued under the authority of this section, the board or its authorized representative may invoke the aid of any circuit court of this State. The court may thereupon order such person to comply with the requirements of the subpoena order or to give evidence touching the matter in question. Failure to obey the order of the court may be punished by the court as a contempt thereof.

Subject to the foregoing provision the board may in its discretion make available to appropriate federal, state and municipal agencies information and material developed in the course of its investigation and hearings: Provided, however, that information obtained from studies or from any investigation made or hearing held pursuant to the provisions of this article shall not be admissible in evidence in any action at law to recover damages for personal injury or in any action under the workmen's compensation act, but such information, if available, shall be furnished upon request to the West Virginia compensation commissioner for the sole purpose of adjusting claims presented to the said commissioner.

§ 1277 (4). [17] State Board of Health; Orders, Notices and Opportunity for Hearing.—Every order of the state board of health requiring performance of certain acts or compliance with certain requirements and any denial or revocation of an approval, certificate or license shall set forth the reasons and shall state the acts to be done or requirements to be met before approval by the board will be given or the approval, license, or certificate granted or

restored or the order modified or changed. Orders issued by the board pursuant to the provisions of this article shall be served upon the persons affected either by registered mail or in the manner provided by chapter fifty-six, article two, section one [§ 5519] of this Code. In every case where notice and opportunity for hearing are required under the provisions of this article, the order of the board shall, on not less than ten days notice, specify the time when and place where the person affected may be heard, or the time within which he may request hearing, and such order shall become effective upon the expiration of the time for exercising such opportunity for hearing unless a hearing is held or requested within the time provided, in which case the order shall be suspended until the board shall affirm, disaffirm or modify such order after hearing held or default by the person affected.

§ 1277 (5). [18] Judicial Review of Action by State Board of Health.—Any person aggrieved by any final order of the state board of health shall have the right to a judicial review of the action of the board upon certiorari by the circuit court of the county in which the cause of action arose. The granting of such review, upon certiorari, shall be within the sound discretion of the judge of the said circuit court. A petition for such review must be filed with the said court, or with the judge thereof in vacation, within a period of thirty days from the date of entry of the final order complained of.

An appeal from any final order entered by the said circuit court upon granting such writ of certiorari may be had by application to the supreme court of appeals of West Virginia for a writ of error and supersedeas. Such application to the supreme court of appeals shall be made within thirty days of the entry of the order appealed from by the said circuit court.

Provided, however, that when either the circuit court or the supreme court of appeals has taken jurisdiction of any such case, such court may, in its sound discretion, refuse a stay of execution or supersedeas to the order or any portion of the order, of the board, during the time that the case is pending before the said court, if the court is of the opinion that the order of the board or a part of such order is reasonable and has been issued for the protection of the public health.

§ 1277 (6). [19] Meaning of Words "Public Health Council" and "Commissioner of Health."—Wherever in this Code the words "public health council" or "state public health council" appear, they shall mean, and be construed as meaning the "West Virginia board of health."

Wherever in this Code the words "commissioner of health," "health commissioner," or "state commissioner of health" appear, they shall mean, and be construed as meaning "state director of health."

§ 1277 (7). [20] Penalties for Violating Provisions of Article.—Any person violating any of the provisions of this article, for which the penalty is not otherwise provided, or any of the rules, regulations or orders issued pursuant thereto, shall be punishable by a fine of not more than two hundred dollars or by imprisonment for not more than thirty days, or both.

§ 1277 (8). [21] Severability.—If any provision of this article, or the application thereof to any person or circumstance, shall be held invalid, such invalidity shall not affect the provisions or applications of this article which can be given effect without the invalid provisions or application, and to this end the provisions of this article are declared to be severable.

N. H. DYER, M.D., M.P.H.
STATE DIRECTOR OF HEALTH



State of West Virginia

DEPARTMENT OF HEALTH

CHARLESTON 25305

November 28, 1967

Honorable Robert D. Bailey
Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Mr. Bailey:

Enclosed are two copies of a Reference Page and two copies of Index Pages for The Public Health Laws of West Virginia and a Manual of Regulations of the West Virginia Board of Health. These Laws and Regulations are filed in the Odd Size File as item number 3.

Sincerely yours,

A handwritten signature in cursive script that reads "N. H. Dyer".

N. H. Dyer, M. D., M. P. H.
State Director of Health

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 11/28/67