

1 **Senate Bill No. 40**

2 (By Senators Stollings, Jenkins and Miller)

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4 [Introduced February 13, 2013; referred to the Committee on
5 Health and Human Resources; and then to the Committee on the
6 Judiciary.]
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11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new article, designated §16-4F-1, §16-4F-2,
13 §16-4F-3, §16-4F-4 and §16-4F-5; to amend and reenact §30-3-14
14 and §30-3-16 of said code; to amend and reenact §30-7-15a of
15 said code; to amend and reenact §30-14-11 of said code; and to
16 amend and reenact §30-14A-1 of said code, all relating to
17 treatment for a sexually transmitted disease; defining terms;
18 permitting prescribing of antibiotics to sexual partners of a
19 patient without a prior examination of the partner; requiring
20 patient counseling; establishing counseling criteria;
21 requiring information materials be prepared by the Department
22 of Health and Human Resources; providing limited liability for
23 providing expedited partnership therapy; requiring legislative

1 rules regarding what is considered a sexually transmitted
2 disease; and providing that physicians, physician assistants
3 and advanced nurse practitioners are not subject to
4 disciplinary action for providing treatment in an expedited
5 partnership setting.

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

7 That the Code of West Virginia, 1931, as amended, be amended
8 by adding thereto a new article, designated §16-4F-1, §16-4F-2,
9 §16-4F-3, §16-4F-4 and §16-4F-5; that §30-3-14 and §30-3-16 of said
10 code be amended and reenacted; that §30-7-15a of said code be
11 amended and reenacted; that §30-14-11 of said code be amended and
12 reenacted; and that §30-14A-1 of said code be amended and
13 reenacted, all to read as follows:

14 **CHAPTER 16. PUBLIC HEALTH.**

15 **ARTICLE 4F. EXPEDITED PARTNER THERAPY.**

16 **§16-4F-1. Definitions.**

17 As used in this article, unless the context otherwise
18 indicates, the following terms have the following meanings.

19 (1) "Department" means the West Virginia Department of Health
20 and Human Resources.

21 (2) "Expedited partner therapy" means prescribing, dispensing,
22 furnishing or otherwise providing prescription antibiotic drugs to
23 the sexual partner or partners of a person clinically diagnosed as

1 infected with a sexually transmitted disease without physical
2 examination of the partner or partners.

3 (3) "Health care professional" means:

4 (A) An allopathic physician licensed pursuant to the
5 provisions of chapter thirty, article three of this code;

6 (B) An osteopathic physician licensed pursuant to article
7 fourteen, chapter thirty of this code;

8 (C) A physician assistant pursuant to the provisions of
9 section sixteen, article three, chapter thirty of this code or
10 article fourteen-a, chapter thirty of this code; or

11 (D) An advanced nurse practitioner pursuant to the provisions
12 of section fifteen-a, article seven, chapter thirty of this code.

13 (4) "Sexually transmitted disease" means a bacterial, viral,
14 fungal or parasitic disease determined by rule of the department to
15 be sexually transmitted, to be a threat to the public health and
16 welfare and to be a disease for which a legitimate public interest
17 will be served by providing for its regulation and treatment.

18 **§16-4F-2. Expedited partner therapy.**

19 (a) Notwithstanding any other provision of law to the
20 contrary, a health care professional who makes a clinical diagnosis
21 of a sexually transmitted disease may provide expedited partner
22 therapy for the treatment of the sexually transmitted disease if in
23 the judgment of the health care professional the sexual partner is

1 unlikely or unable to present for comprehensive health care,
2 including evaluation, testing and treatment for sexually
3 transmitted diseases. Expedited partner therapy is limited to a
4 sexual partner who may have been exposed to a sexually transmitted
5 disease within the previous sixty days and who is able to be
6 contacted by the patient.

7 (b) Any health care professional who provides expedited
8 partner therapy shall comply with all necessary provisions of
9 article four of this chapter.

10 (c) A health care professional who provides expedited partner
11 therapy shall provide counseling for the patient, including advice
12 that all women and symptomatic persons, and in particular women
13 with symptoms suggestive of pelvic inflammatory disease, are
14 encouraged to seek medical attention. The health care professional
15 shall also provide written materials provided by the department to
16 be given by the patient to the sexual partner that include at a
17 minimum the following:

18 (1) A warning that a woman who is pregnant or might be
19 pregnant should not take certain antibiotics and should immediately
20 contact a health care professional for an examination;

21 (2) Information about the antibiotic and dosage provided or
22 prescribed; clear and explicit allergy and side effect warnings,
23 including a warning that a sexual partner who has a history of

1 allergy to the antibiotic or the pharmaceutical class of antibiotic
2 should not take the antibiotic and should be immediately examined
3 by a health care professional;

4 (3) Information about the treatment and prevention of sexually
5 transmitted diseases;

6 (4) The requirement of abstinence until a period of time after
7 treatment to prevent infecting others;

8 (5) Notification of the importance of the sexual partner's
9 receiving examination and testing for the human immunodeficiency
10 virus and other sexually transmitted diseases and information
11 regarding available resources;

12 (6) Notification of the risk to the sexual partner, others and
13 the public health if the sexually transmitted disease is not
14 completely and successfully treated;

15 (7) The responsibility of the sexual partner to inform that
16 person's sexual partners of the risk of sexually transmitted
17 disease and the importance of prompt examination and treatment;

18 (8) Advice to all women and symptomatic persons, and in
19 particular women with symptoms suggestive of pelvic inflammatory
20 disease, to seek medical attention; and

21 (9) Other information found to be necessary and informative by
22 the department.

23 **§16-4F-3. Informational materials.**

1 (a) The department shall provide information and technical
2 assistance as appropriate to health care professionals who provide
3 expedited partner therapy. The department shall develop and
4 disseminate in electronic and other formats the following written
5 materials:

6 (1) Informational materials for sexual partners, as described
7 in subsection (c) of section two of this article;

8 (2) Informational materials for persons who are repeatedly
9 diagnosed with sexually transmitted diseases; and

10 (3) Guidance for health care professionals on the safe and
11 effective provision of expedited partner therapy.

12 (b) The department may offer educational programs about
13 expedited partner therapy for health care professionals and
14 pharmacists licensed under the provisions of article five, chapter
15 thirty of this code.

16 **§16-4F-4. Limitation of liability.**

17 (a) A health care professional who provides expedited partner
18 therapy in good faith without fee or compensation under this
19 article and provides counseling and written materials as required
20 in subsection (c), section two of this article, is not subject to
21 civil or professional liability in connection with the provision of
22 the therapy, counseling and materials, except in the case of gross
23 negligence or willful and wanton misconduct. A health care

1 professional is not subject to civil or professional liability for
2 choosing not to provide expedited partner therapy.

3 (b) A pharmacist or pharmacy is not subject to civil or
4 professional liability for choosing not to fill a prescription that
5 would cause that pharmacist or pharmacy to violate any provision of
6 the provisions of article five, chapter thirty of this code.

7 **§16-4F-5. Rulemaking.**

8 The Secretary of the Department of Health and Human Resources
9 shall propose rules for legislative approval in accordance with the
10 provisions of article three, chapter twenty-nine-a of this code to
11 designate certain diseases as sexually transmitted diseases. These
12 shall include, at a minimum, chancroid, gonorrhea, granuloma
13 inguinale, lymphogranuloma venereum, genital herpes simplex,
14 chlamydia, nongonococcal urethritis, pelvic inflammatory disease,
15 acute salpingitis, syphilis, Acquired Immune Deficiency Syndrome
16 and human immunodeficiency virus. The department shall consider
17 the recommendations and classifications of the federal Department
18 of Health and Human Services, Centers for Disease Control and
19 Prevention and other nationally recognized medical authorities in
20 making these designations.

21 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

23 **§30-3-14. Professional discipline of physicians and podiatrists;**

1 **reporting of information to board pertaining to**
2 **medical professional liability and professional**
3 **incompetence required; penalties; grounds for license**
4 **denial and discipline of physicians and podiatrists;**
5 **investigations; physical and mental examinations;**
6 **hearings; sanctions; summary sanctions; reporting by**
7 **the board; reapplication; civil and criminal**
8 **immunity; voluntary limitation of license; probable**
9 **cause determinations.**

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

15 The board may initiate investigations as to professional
16 incompetence or other reasons for which a licensed physician or
17 podiatrist may be adjudged unqualified based upon criminal
18 convictions; complaints by citizens, pharmacists, physicians,
19 podiatrists, peer review committees, hospital administrators,
20 professional societies or others; or unfavorable outcomes arising
21 out of medical professional liability. The board shall initiate an
22 investigation if it receives notice that three or more judgments,

1 or any combination of judgments and settlements resulting in five
2 or more unfavorable outcomes arising from medical professional
3 liability have been rendered or made against the physician or
4 podiatrist within a five-year period. The board may not consider
5 any judgments or settlements as conclusive evidence of professional
6 incompetence or conclusive lack of qualification to practice.

7 (b) Upon request of the board, any medical peer review
8 committee in this state shall report any information that may
9 relate to the practice or performance of any physician or
10 podiatrist known to that medical peer review committee. Copies of
11 the requests for information from a medical peer review committee
12 may be provided to the subject physician or podiatrist if, in the
13 discretion of the board, the provision of such copies will not
14 jeopardize the board's investigation. In the event that copies are
15 provided, the subject physician or podiatrist is allowed fifteen
16 days to comment on the requested information and such comments must
17 be considered by the board.

18 The chief executive officer of every hospital shall, within
19 sixty days after the completion of the hospital's formal
20 disciplinary procedure and also within sixty days after the
21 commencement of and again after the conclusion of any resulting
22 legal action, report in writing to the board the name of any member
23 of the medical staff or any other physician or podiatrist

1 practicing in the hospital whose hospital privileges have been
2 revoked, restricted, reduced or terminated for any cause, including
3 resignation, together with all pertinent information relating to
4 such action. The chief executive officer shall also report any
5 other formal disciplinary action taken against any physician or
6 podiatrist by the hospital upon the recommendation of its medical
7 staff relating to professional ethics, medical incompetence,
8 medical professional liability, moral turpitude or drug or alcohol
9 abuse. Temporary suspension for failure to maintain records on a
10 timely basis or failure to attend staff or section meetings need
11 not be reported. Voluntary cessation of hospital privileges for
12 reasons unrelated to professional competence or ethics need not be
13 reported.

14 Any managed care organization operating in this state which
15 provides a formal peer review process shall report in writing to
16 the board, within sixty days after the completion of any formal
17 peer review process and also within sixty days after the
18 commencement of and again after the conclusion of any resulting
19 legal action, the name of any physician or podiatrist whose
20 credentialing has been revoked or not renewed by the managed care
21 organization. The managed care organization shall also report in
22 writing to the board any other disciplinary action taken against a
23 physician or podiatrist relating to professional ethics,

1 professional liability, moral turpitude or drug or alcohol abuse
2 within sixty days after completion of a formal peer review process
3 which results in the action taken by the managed care organization.
4 For purposes of this subsection, "managed care organization" means
5 a plan that establishes, operates or maintains a network of health
6 care providers who have entered into agreements with and been
7 credentialed by the plan to provide health care services to
8 enrollees or insureds to whom the plan has the ultimate obligation
9 to arrange for the provision of or payment for health care services
10 through organizational arrangements for ongoing quality assurance,
11 utilization review programs or dispute resolutions.

12 Any professional society in this state comprised primarily of
13 physicians or podiatrists which takes formal disciplinary action
14 against a member relating to professional ethics, professional
15 incompetence, medical professional liability, moral turpitude or
16 drug or alcohol abuse shall report in writing to the board within
17 sixty days of a final decision the name of the member, together
18 with all pertinent information relating to the action.

19 Every person, partnership, corporation, association, insurance
20 company, professional society or other organization providing
21 professional liability insurance to a physician or podiatrist in
22 this state, including the State Board of Risk and Insurance
23 Management, shall submit to the board the following information

1 within thirty days from any judgment or settlement of a civil or
2 medical professional liability action excepting product liability
3 actions: The name of the insured; the date of any judgment or
4 settlement; whether any appeal has been taken on the judgment and,
5 if so, by which party; the amount of any settlement or judgment
6 against the insured; and other information required by the board.

7 Within thirty days from the entry of an order by a court in a
8 medical professional liability action or other civil action in
9 which a physician or podiatrist licensed by the board is determined
10 to have rendered health care services below the applicable standard
11 of care, the clerk of the court in which the order was entered
12 shall forward a certified copy of the order to the board.

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

1 of the court.

2 Upon a determination of the board that there is probable cause
3 to believe that any person, partnership, corporation, association,
4 insurance company, professional society or other organization has
5 failed or refused to make a report required by this subsection, the
6 board shall provide written notice to the alleged violator stating
7 the nature of the alleged violation and the time and place at which
8 the alleged violator shall appear to show good cause why a civil
9 penalty should not be imposed. The hearing shall be conducted in
10 accordance with the provisions of article five, chapter
11 twenty-nine-a of this code. After reviewing the record of the
12 hearing, if the board determines that a violation of this
13 subsection has occurred, the board shall assess a civil penalty of
14 not less than \$1,000 nor more than \$10,000 against the violator.
15 The board shall notify any person so assessed of the assessment in
16 writing and the notice shall specify the reasons for the
17 assessment. If the violator fails to pay the amount of the
18 assessment to the board within thirty days, the Attorney General
19 may institute a civil action in the circuit court of Kanawha County
20 to recover the amount of the assessment. In any civil action, the
21 court's review of the board's action shall be conducted in
22 accordance with the provisions of section four, article five,
23 chapter twenty-nine-a of this code. Notwithstanding any other

1 provision of this article to the contrary, when there are
2 conflicting views by recognized experts as to whether any alleged
3 conduct breaches an applicable standard of care, the evidence must
4 be clear and convincing before the board may find that the
5 physician or podiatrist has demonstrated a lack of professional
6 competence to practice with a reasonable degree of skill and safety
7 for patients.

8 Any person may report to the board relevant facts about the
9 conduct of any physician or podiatrist in this state which in the
10 opinion of that person amounts to medical professional liability or
11 professional incompetence.

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

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

22 (c) The board may deny an application for license or other
23 authorization to practice medicine and surgery or podiatry in this

1 state and may discipline a physician or podiatrist licensed or
2 otherwise lawfully practicing in this state who, after a hearing,
3 has been adjudged by the board as unqualified due to any of the
4 following reasons:

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

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

13 (3) False or deceptive advertising;

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

17 (5) Making or filing a report that the person knows to be
18 false; intentionally or negligently failing to file a report or
19 record required by state or federal law; willfully impeding or
20 obstructing the filing of a report or record required by state or
21 federal law; or inducing another person to do any of the foregoing.

22 The reports and records covered in this subdivision mean only those
23 that are signed in the capacity as a licensed physician or

1 podiatrist;

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

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

20 As used in this subdivision, "proprietary interest" does not
21 include an ownership interest in a building in which space is
22 leased to a clinical laboratory or pharmacy at the prevailing rate
23 under a lease arrangement that is not conditional upon the income

1 or gross receipts of the clinical laboratory or pharmacy;

2 (8) Exercising influence within a patient-physician
3 relationship for the purpose of engaging a patient in sexual
4 activity;

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

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

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

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

18 (13) Prescribing, dispensing, administering, mixing or
19 otherwise preparing a prescription drug, including any controlled
20 substance under state or federal law, other than in good faith and
21 in a therapeutic manner in accordance with accepted medical
22 standards and in the course of the physician's or podiatrist's
23 professional practice. ~~Provided, That~~ A physician who discharges

1 his or her professional obligation to relieve the pain and
2 suffering and promote the dignity and autonomy of dying patients in
3 his or her care and, in so doing, exceeds the average dosage of a
4 pain relieving controlled substance, as defined in Schedules II and
5 III of the Uniform Controlled Substance Act, does not violate this
6 article. A physician licensed under this chapter may not be
7 disciplined for providing expedited partner therapy in accordance
8 with the provisions of article four-f, chapter sixteen of this
9 code;

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

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

18 (16) Delegating professional responsibilities to a person when
19 the physician or podiatrist delegating the responsibilities knows
20 or has reason to know that the person is not qualified by training,
21 experience or licensure to perform them;

22 (17) Violating any provision of this article or a rule or
23 order of the board or failing to comply with a subpoena or subpoena

1 duces tecum issued by the board;

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

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

8 (20) Professional incompetence; or

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

20 (d) The board shall deny any application for a license or
21 other authorization to practice medicine and surgery or podiatry in
22 this state to any applicant who, and shall revoke the license of
23 any physician or podiatrist licensed or otherwise lawfully

1 practicing within this state who, is found guilty by any court of
2 competent jurisdiction of any felony involving prescribing,
3 selling, administering, dispensing, mixing or otherwise preparing
4 any prescription drug, including any controlled substance under
5 state or federal law, for other than generally accepted therapeutic
6 purposes. Presentation to the board of a certified copy of the
7 guilty verdict or plea rendered in the court is sufficient proof
8 thereof for the purposes of this article. A plea of nolo
9 contendere has the same effect as a verdict or plea of guilt. Upon
10 application of a physician that has had his or her license revoked
11 because of a drug related felony conviction, upon completion of any
12 sentence of confinement, parole, probation or other court-ordered
13 supervision and full satisfaction of any fines, judgments or other
14 fees imposed by the sentencing court, the board may issue the
15 applicant a new license upon a finding that the physician is,
16 except for the underlying conviction, otherwise qualified to
17 practice medicine: *Provided*, That the board may place whatever
18 terms, conditions or limitations it deems appropriate upon a
19 physician licensed pursuant to this subsection.

20 (e) The board may refer any cases coming to its attention to
21 an appropriate committee of an appropriate professional
22 organization for investigation and report. Except for complaints
23 related to obtaining initial licensure to practice medicine and

1 surgery or podiatry in this state by bribery or fraudulent
2 misrepresentation, any complaint filed more than two years after
3 the complainant knew, or in the exercise of reasonable diligence
4 should have known, of the existence of grounds for the complaint
5 shall be dismissed: *Provided*, That in cases of conduct alleged to
6 be part of a pattern of similar misconduct or professional
7 incapacity that, if continued, would pose risks of a serious or
8 substantial nature to the physician's or podiatrist's current
9 patients, the investigating body may conduct a limited
10 investigation related to the physician's or podiatrist's current
11 capacity and qualification to practice and may recommend
12 conditions, restrictions or limitations on the physician's or
13 podiatrist's license to practice that it considers necessary for
14 the protection of the public. Any report shall contain
15 recommendations for any necessary disciplinary measures and shall
16 be filed with the board within ninety days of any referral. The
17 recommendations shall be considered by the board and the case may
18 be further investigated by the board. The board after full
19 investigation shall take whatever action it considers appropriate,
20 as provided in this section.

21 (f) The investigating body, as provided in subsection (e) of
22 this section, may request and the board under any circumstances may
23 require a physician or podiatrist or person applying for licensure

1 or other authorization to practice medicine and surgery or podiatry
2 in this state to submit to a physical or mental examination by a
3 physician or physicians approved by the board. A physician or
4 podiatrist submitting to an examination has the right, at his or
5 her expense, to designate another physician to be present at the
6 examination and make an independent report to the investigating
7 body or the board. The expense of the examination shall be paid by
8 the board. Any individual who applies for or accepts the privilege
9 of practicing medicine and surgery or podiatry in this state is
10 considered to have given his or her consent to submit to all
11 examinations when requested to do so in writing by the board and to
12 have waived all objections to the admissibility of the testimony or
13 examination report of any examining physician on the ground that
14 the testimony or report is privileged communication. If a person
15 fails or refuses to submit to an examination under circumstances
16 which the board finds are not beyond his or her control, failure or
17 refusal is prima facie evidence of his or her inability to practice
18 medicine and surgery or podiatry competently and in compliance with
19 the standards of acceptable and prevailing medical practice.

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

23 (h) In every disciplinary or licensure denial action, the

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

18 (i) In disciplinary actions in which probable cause has been
19 found by the board, the board shall, within twenty days of the date
20 of service of the written notice of charges or sixty days prior to
21 the date of the scheduled hearing, whichever is sooner, provide the
22 respondent with the complete identity, address and telephone number
23 of any person known to the board with knowledge about the facts of

1 any of the charges; provide a copy of any statements in the
2 possession of or under the control of the board; provide a list of
3 proposed witnesses with addresses and telephone numbers, with a
4 brief summary of his or her anticipated testimony; provide
5 disclosure of any trial expert pursuant to the requirements of Rule
6 26(b)(4) of the West Virginia Rules of Civil Procedure; provide
7 inspection and copying of the results of any reports of physical
8 and mental examinations or scientific tests or experiments; and
9 provide a list and copy of any proposed exhibit to be used at the
10 hearing: *Provided*, That the board shall not be required to furnish
11 or produce any materials which contain opinion work product
12 information or would be a violation of the attorney-client
13 privilege. Within twenty days of the date of service of the
14 written notice of charges, the board shall disclose any exculpatory
15 evidence with a continuing duty to do so throughout the
16 disciplinary process. Within thirty days of receipt of the board's
17 mandatory discovery, the respondent shall provide the board with
18 the complete identity, address and telephone number of any person
19 known to the respondent with knowledge about the facts of any of
20 the charges; provide a list of proposed witnesses with addresses
21 and telephone numbers, to be called at hearing, with a brief
22 summary of his or her anticipated testimony; provide disclosure of
23 any trial expert pursuant to the requirements of Rule 26(b)(4) of

1 the West Virginia Rules of Civil Procedure; provide inspection and
2 copying of the results of any reports of physical and mental
3 examinations or scientific tests or experiments; and provide a list
4 and copy of any proposed exhibit to be used at the hearing.

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

8 (1) Deny his or her application for a license or other
9 authorization to practice medicine and surgery or podiatry;

10 (2) Administer a public reprimand;

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

16 (4) Revoke his or her license or other authorization to
17 practice medicine and surgery or podiatry or to prescribe or
18 dispense controlled substances for a period not to exceed ten
19 years;

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

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

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

6 (8) Assess a civil fine of not less than \$1,000 nor more than
7 \$10,000.

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

19 (l) Any person against whom disciplinary action is taken
20 pursuant to the provisions of this article has the right to
21 judicial review as provided in articles five and six, chapter
22 twenty-nine-a of this code: *Provided*, That a circuit judge may
23 also remand the matter to the board if it appears from competent

1 evidence presented to it in support of a motion for remand that
2 there is newly discovered evidence of such a character as ought to
3 produce an opposite result at a second hearing on the merits before
4 the board and:

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

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

10 A person may not practice medicine and surgery or podiatry or
11 deliver health care services in violation of any disciplinary order
12 revoking, suspending or limiting his or her license while any
13 appeal is pending. Within sixty days, the board shall report its
14 final action regarding restriction, limitation, suspension or
15 revocation of the license of a physician or podiatrist, limitation
16 on practice privileges or other disciplinary action against any
17 physician or podiatrist to all appropriate state agencies,
18 appropriate licensed health facilities and hospitals, insurance
19 companies or associations writing medical malpractice insurance in
20 this state, the American Medical Association, the American Podiatry
21 Association, professional societies of physicians or podiatrists in
22 the state and any entity responsible for the fiscal administration
23 of Medicare and Medicaid.

1 (m) Any person against whom disciplinary action has been taken
2 under the provisions of this article shall, at reasonable
3 intervals, be afforded an opportunity to demonstrate that he or she
4 can resume the practice of medicine and surgery or podiatry on a
5 general or limited basis. At the conclusion of a suspension,
6 limitation or restriction period the physician or podiatrist may
7 resume practice if the board has so ordered.

8 (n) Any entity, organization or person, including the board,
9 any member of the board, its agents or employees and any entity or
10 organization or its members referred to in this article, any
11 insurer, its agents or employees, a medical peer review committee
12 and a hospital governing board, its members or any committee
13 appointed by it acting without malice and without gross negligence
14 in making any report or other information available to the board or
15 a medical peer review committee pursuant to law and any person
16 acting without malice and without gross negligence who assists in
17 the organization, investigation or preparation of any such report
18 or information or assists the board or a hospital governing body or
19 any committee in carrying out any of its duties or functions
20 provided by law is immune from civil or criminal liability, except
21 that the unlawful disclosure of confidential information possessed
22 by the board is a misdemeanor as provided in this article.

23 (o) A physician or podiatrist may request in writing to the

1 board a limitation on or the surrendering of his or her license to
2 practice medicine and surgery or podiatry or other appropriate
3 sanction as provided in this section. The board may grant the
4 request and, if it considers it appropriate, may waive the
5 commencement or continuation of other proceedings under this
6 section. A physician or podiatrist whose license is limited or
7 surrendered or against whom other action is taken under this
8 subsection may, at reasonable intervals, petition for removal of
9 any restriction or limitation on or for reinstatement of his or her
10 license to practice medicine and surgery or podiatry.

11 (p) In every case considered by the board under this article
12 regarding discipline or licensure, whether initiated by the board
13 or upon complaint or information from any person or organization,
14 the board shall make a preliminary determination as to whether
15 probable cause exists to substantiate charges of disqualification
16 due to any reason set forth in subsection (c) of this section. If
17 probable cause is found to exist, all proceedings on the charges
18 shall be open to the public who are entitled to all reports,
19 records and nondeliberative materials introduced at the hearing,
20 including the record of the final action taken: *Provided*, That any
21 medical records, which were introduced at the hearing and which
22 pertain to a person who has not expressly waived his or her right
23 to the confidentiality of the records, may not be open to the

1 public nor is the public entitled to the records.

2 (q) If the board receives notice that a physician or
3 podiatrist has been subjected to disciplinary action or has had his
4 or her credentials suspended or revoked by the board, a hospital or
5 a professional society, as defined in subsection (b) of this
6 section, for three or more incidents during a five-year period, the
7 board shall require the physician or podiatrist to practice under
8 the direction of a physician or podiatrist designated by the board
9 for a specified period of time to be established by the board.

10 (r) Notwithstanding any other provisions of this article, the
11 board may, at any time, on its own motion, or upon motion by the
12 complainant, or upon motion by the physician or podiatrist, or by
13 stipulation of the parties, refer the matter to mediation. The
14 board shall obtain a list from the West Virginia State Bar's
15 mediator referral service of certified mediators with expertise in
16 professional disciplinary matters. The board and the physician or
17 podiatrist may choose a mediator from that list. If the board and
18 the physician or podiatrist are unable to agree on a mediator, the
19 board shall designate a mediator from the list by neutral rotation.
20 The mediation shall not be considered a proceeding open to the
21 public and any reports and records introduced at the mediation
22 shall not become part of the public record. The mediator and all
23 participants in the mediation shall maintain and preserve the

1 confidentiality of all mediation proceedings and records. The
2 mediator may not be subpoenaed or called to testify or otherwise be
3 subject to process requiring disclosure of confidential information
4 in any proceeding relating to or arising out of the disciplinary or
5 licensure matter mediated: *Provided*, That any confidentiality
6 agreement and any written agreement made and signed by the parties
7 as a result of mediation may be used in any proceedings
8 subsequently instituted to enforce the written agreement. The
9 agreements may be used in other proceedings if the parties agree in
10 writing.

11 **§30-3-16. Physician assistants; definitions; Board of Medicine**
12 **rules; annual report; licensure; temporary license;**
13 **relicensure; job description required; revocation or**
14 **suspension of licensure; responsibilities of**
15 **supervising physician; legal responsibility for**
16 **physician assistants; reporting by health care**
17 **facilities; identification; limitations on employment**
18 **and duties; fees; continuing education; unlawful**
19 **representation of physician assistant as a physician;**
20 **criminal penalties.**

21 (a) As used in this section:

22 (1) "Approved program" means an educational program for

1 physician assistants approved and accredited by the Committee on
2 Accreditation of Allied Health Education Programs or its successor;

3 (2) "Health care facility" means any licensed hospital,
4 nursing home, extended care facility, state health or mental
5 institution, clinic or physician's office;

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

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

18 (5) "Supervising physician" means a doctor or doctors of
19 medicine or podiatry permanently and fully licensed in this state
20 without restriction or limitation who assume legal and supervisory
21 responsibility for the work or training of any physician assistant
22 under his or her supervision.

23 (b) The board shall promulgate rules pursuant to the

1 provisions of article three, chapter twenty-nine-a of this code
2 governing the extent to which physician assistants may function in
3 this state. The rules shall provide that the physician assistant
4 is limited to the performance of those services for which he or she
5 is trained and that he or she performs only under the supervision
6 and control of a physician permanently licensed in this state but
7 that supervision and control does not require the personal presence
8 of the supervising physician at the place or places where services
9 are rendered if the physician assistant's normal place of
10 employment is on the premises of the supervising physician. The
11 supervising physician may send the physician assistant off the
12 premises to perform duties under his or her direction but a
13 separate place of work for the physician assistant may not be
14 established. In promulgating the rules, the board shall allow the
15 physician assistant to perform those procedures and examinations
16 and, in the case of certain authorized physician assistants, to
17 prescribe at the direction of his or her supervising physician, in
18 accordance with subsection (r) of this section, those categories of
19 drugs submitted to it in the job description required by this
20 section. Certain authorized physician assistants may pronounce
21 death in accordance with the rules proposed by the board which
22 receive legislative approval. The board shall compile and publish
23 an annual report that includes a list of currently licensed

1 physician assistants and their supervising physician(s) and
2 location in the state.

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

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

9 (2) Has passed the certifying examination for a primary care
10 physician assistant administered by the National Commission on
11 Certification of Physician Assistants and has maintained
12 certification by that commission so as to be currently certified;

13 (3) Is of good moral character; and

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

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

18 (1) Is a graduate of a school of midwifery accredited by the
19 American College of Nurse-Midwives;

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

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

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

5 (1) He or she is a graduate of an approved program of
6 instruction in primary health care or surgery prior to July 1,
7 1994, and has passed the certifying examination for a physician
8 assistant administered by the National Commission on Certification
9 of Physician Assistants and has maintained certification by that
10 commission so as to be currently certified; or

11 (2) He or she had been certified by the board as a physician
12 assistant then classified as Type B prior to July 1, 1983.

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

17 (g) When a graduate of an approved program who has
18 successfully passed the National Commission on Certification of
19 Physician Assistants' certifying examination submits an application
20 to the board for a physician assistant license, accompanied by a
21 job description as referenced by this section, and a \$50 temporary
22 license fee, and the application is complete, the board shall issue
23 to that applicant a temporary license allowing that applicant to

1 function as a physician assistant.

2 (h) When a graduate of an approved program submits an
3 application to the board for a physician assistant license,
4 accompanied by a job description as referenced by this section, and
5 a \$50 temporary license fee, and the application is complete, the
6 board shall issue to the applicant a temporary license allowing the
7 applicant to function as a physician assistant until the applicant
8 successfully passes the National Commission on Certification of
9 Physician Assistants' certifying examination so long as the
10 applicant sits for and obtains a passing score on the examination
11 next offered following graduation from the approved program.

12 (i) No applicant may receive a temporary license who,
13 following graduation from an approved program, has not obtained a
14 passing score on the examination.

15 (j) A physician assistant who has not been certified by the
16 National Commission on Certification of Physician Assistants will
17 be restricted to work under the direct supervision of the
18 supervising physician.

19 (k) A physician assistant who has been issued a temporary
20 license shall, within thirty days of receipt of written notice from
21 the National Commission on Certification of Physician Assistants of
22 his or her performance on the certifying examination, notify the
23 board in writing of his or her results. In the event of failure of

1 that examination, the temporary license shall terminate
2 automatically and the board shall so notify the physician assistant
3 in writing.

4 (1) In the event a physician assistant fails a recertification
5 examination of the National Commission on Certification of
6 Physician Assistants and is no longer certified, the physician
7 assistant shall immediately notify his or her supervising physician
8 or physicians and the board in writing. The physician assistant
9 shall immediately cease practicing, the license shall terminate
10 automatically and the physician assistant is not eligible for
11 reinstatement until he or she has obtained a passing score on the
12 examination.

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

1 adopted by the board.

2 (n) The supervising physician is responsible for observing,
3 directing and evaluating the work, records and practices of each
4 physician assistant performing under his or her supervision. He or
5 she shall notify the board in writing of any termination of his or
6 her supervisory relationship with a physician assistant within ten
7 days of the termination. The legal responsibility for any
8 physician assistant remains with the supervising physician at all
9 times including occasions when the assistant under his or her
10 direction and supervision aids in the care and treatment of a
11 patient in a health care facility. In his or her absence, a
12 supervising physician must designate an alternate supervising
13 physician but the legal responsibility remains with the supervising
14 physician at all times. A health care facility is not legally
15 responsible for the actions or omissions of the physician assistant
16 unless the physician assistant is an employee of the facility.

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

22 (p) A health care facility shall report in writing to the
23 board within sixty days after the completion of the facility's

1 formal disciplinary procedure and after the commencement and
2 conclusion of any resulting legal action, the name of any physician
3 assistant practicing in the facility whose privileges at the
4 facility have been revoked, restricted, reduced or terminated for
5 any cause including resignation, together with all pertinent
6 information relating to the action. The health care facility shall
7 also report any other formal disciplinary action taken against any
8 physician assistant by the facility relating to professional
9 ethics, medical incompetence, medical malpractice, moral turpitude
10 or drug or alcohol abuse. Temporary suspension for failure to
11 maintain records on a timely basis or failure to attend staff or
12 section meetings need not be reported.

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

18 (r) A physician assistant may write or sign prescriptions or
19 transmit prescriptions by word of mouth, telephone or other means
20 of communication at the direction of his or her supervising
21 physician. A fee of \$50 will be charged for prescription-writing
22 privileges. The board shall promulgate rules pursuant to the
23 provisions of article three, chapter twenty-nine-a of this code

1 governing the eligibility and extent to which a physician assistant
2 may prescribe at the direction of the supervising physician. The
3 rules shall include, but not be limited to, the following:

4 (1) Provisions and restrictions for approving a state
5 formulary classifying pharmacologic categories of drugs that may be
6 prescribed by a physician assistant are as follows:

7 (A) Schedules I and II of the Uniform Controlled Substances
8 Act, antineoplastic, radiopharmaceuticals, general anesthetics and
9 radiographic contrast materials shall be excluded from the
10 formulary;

11 (B) Drugs listed under Schedule III shall be limited to a
12 seventy-two hour supply without refill;

13 (C) In addition to the above referenced provisions and
14 restrictions and at the direction of a supervising physician, the
15 rules shall permit the prescribing of an annual supply of any drug,
16 with the exception of controlled substances, which is prescribed
17 for the treatment of a chronic condition, other than chronic pain
18 management. For the purposes of this section, a "chronic
19 condition" is a condition which lasts three months or more,
20 generally cannot be prevented by vaccines, can be controlled but
21 not cured by medication and does not generally disappear. These
22 conditions, with the exception of chronic pain, include, but are
23 not limited to, arthritis, asthma, cardiovascular disease, cancer,

1 diabetes, epilepsy and seizures and obesity. The prescriber
2 authorized in this section shall note on the prescription the
3 chronic disease being treated.

4 (D) Categories of other drugs may be excluded as determined by
5 the board.

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

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

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

18 (5) A requirement that to maintain prescription privileges, a
19 physician assistant shall continue to maintain national
20 certification as a physician assistant and, in meeting the national
21 certification requirements, shall complete a minimum of ten hours
22 of continuing education in rational drug therapy in each
23 certification period. Nothing in this subsection permits a

1 physician assistant to independently prescribe or dispense drugs;
2 and

3 (6) A provision that a physician assistant licensed under this
4 chapter may not be disciplined for providing expedited partner
5 therapy in accordance with the provisions of article four-f,
6 chapter sixteen of this code.

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

12 (t) A physician assistant may not sign any prescription,
13 except in the case of an authorized physician assistant at the
14 direction of his or her supervising physician in accordance with
15 the provisions of subsection (r) of this section. A physician
16 assistant may not perform any service that his or her supervising
17 physician is not qualified to perform. A physician assistant may
18 not perform any service that is not included in his or her job
19 description and approved by the board as provided ~~for~~ in this
20 section.

21 (u) The provisions of this section do not authorize a
22 physician assistant to perform any specific function or duty
23 delegated by this code to those persons licensed as chiropractors,

1 dentists, dental hygienists, optometrists or pharmacists or
2 certified as nurse anesthetists.

3 (v) Each application for licensure submitted by a licensed
4 supervising physician under this section is to be accompanied by a
5 fee of \$200. A fee of \$100 is to be charged for the biennial
6 renewal of the license. A fee of \$50 is to be charged for any
7 change or addition of supervising physician or change or addition
8 of job location. A fee of \$50 will be charged for prescriptive
9 writing privileges.

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

19 (x) Notwithstanding any provision of this chapter to the
20 contrary, failure to timely submit the required written
21 documentation results in the automatic expiration of any license as
22 a physician assistant until the written documentation is submitted
23 to and approved by the board.

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

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

7 (2) Pay a renewal fee; and

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

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

13 (1) Apply for a new license;

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

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

18 (aa) It is unlawful for any physician assistant to represent
19 to any person that he or she is a physician, surgeon or podiatrist.

20 A person who violates the provisions of this subsection is guilty
21 of a felony and, upon conviction thereof, shall be imprisoned in a
22 state correctional facility for not less than one nor more than two
23 years, or be fined not more than \$2,000, or both fined and

1 imprisoned.

2 (bb) All physician assistants holding valid certificates
3 issued by the board prior to July 1, 1992, are licensed under this
4 section.

5 **ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**

6 **§30-7-15a. Prescriptive authority for prescription drugs;
7 coordination with Board of Pharmacy.**

8 (a) The board may, in its discretion, authorize an advanced
9 practice registered nurse to prescribe prescription drugs in a
10 collaborative relationship with a physician licensed to practice in
11 West Virginia and in accordance with applicable state and federal
12 laws. An authorized advanced practice registered nurse may write
13 or sign prescriptions or transmit prescriptions verbally or by
14 other means of communication.

15 (b) For purposes of this section an agreement to a
16 collaborative relationship for prescriptive practice between a
17 physician and an advanced practice registered nurse shall be set
18 forth in writing. Verification of the agreement shall be filed
19 with the board by the advanced practice registered nurse. The
20 board shall forward a copy of the verification to the Board of
21 Medicine and the Board of Osteopathic Medicine. Collaborative
22 agreements shall include, but are not limited to, the following:

23 (1) Mutually agreed upon written guidelines or protocols for

1 prescriptive authority as it applies to the advanced practice
2 registered nurse's clinical practice;

3 (2) Statements describing the individual and shared
4 responsibilities of the advanced practice registered nurse and the
5 physician pursuant to the collaborative agreement between them;

6 (3) Periodic and joint evaluation of prescriptive practice;
7 and

8 (4) Periodic and joint review and updating of the written
9 guidelines or protocols.

10 (c) The board shall promulgate legislative rules in accordance
11 with the provisions of chapter twenty-nine-a of this code governing
12 the eligibility and extent to which an advanced practice registered
13 nurse may prescribe drugs. Such rules shall provide, at a minimum,
14 a state formulary classifying those categories of drugs which shall
15 not be prescribed by advanced practice registered nurse including,
16 but not limited to, Schedules I and II of the Uniform Controlled
17 Substances Act, antineoplastics, radiopharmaceuticals and general
18 anesthetics. Drugs listed under Schedule III shall be limited to
19 a seventy-two hour supply without refill. The rules shall also
20 include a provision that advanced nurse practitioners licensed
21 under this chapter may not be disciplined for providing expedited
22 partner therapy in accordance with the provisions of article four-
23 f, chapter sixteen of this code. In addition to the above

1 referenced provisions and restrictions and pursuant to a
2 collaborative agreement as set forth in subsections (a) and (b) of
3 this section, the rules shall permit the prescribing of an annual
4 supply of any drug, with the exception of controlled substances,
5 which is prescribed for the treatment of a chronic condition, other
6 than chronic pain management. For the purposes of this section, a
7 "chronic condition" is a condition which lasts three months or
8 more, generally cannot be prevented by vaccines, can be controlled
9 but not cured by medication and does not generally disappear.
10 These conditions, with the exception of chronic pain, include, but
11 are not limited to, arthritis, asthma, cardiovascular disease,
12 cancer, diabetes, epilepsy and seizures, and obesity. The
13 prescriber authorized in this section shall note on the
14 prescription the chronic disease being treated.

15 (d) The board shall consult with other appropriate boards for
16 the development of the formulary.

17 (e) The board shall transmit to the Board of Pharmacy a list
18 of all advanced practice registered nurse with prescriptive
19 authority. The list shall include:

20 (1) The name of the authorized advanced practice registered
21 nurse;

22 (2) The prescriber's identification number assigned by the
23 board; and

1 (3) The effective date of prescriptive authority.

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

3 **§30-14-11. Refusal, suspension or revocation of license;**
4 **suspension or revocation of certificate of**
5 **authorization.**

6 (a) The board may either refuse to issue or may suspend or
7 revoke any license for any one or more of the following causes:

8 (1) Conviction of a felony, as shown by a certified copy of
9 the record of the trial court;

10 (2) Conviction of a misdemeanor involving moral turpitude;

11 (3) Violation of any provision of this article regulating the
12 practice of osteopathic physicians and surgeons;

13 (4) Fraud, misrepresentation or deceit in procuring or
14 attempting to procure admission to practice;

15 (5) Gross malpractice;

16 (6) Advertising by means of knowingly false or deceptive
17 statements;

18 (7) Advertising, practicing or attempting to practice under a
19 name other than one's own;

20 (8) Habitual drunkenness, or habitual addiction to the use of
21 morphine, cocaine or other habit-forming drugs.

22 (b) The board shall also have the power to suspend or revoke

1 for cause any certificate of authorization issued by it. It shall
2 have the power to reinstate any certificate of authorization
3 suspended or revoked by it.

4 (c) An osteopathic physician licensed under this chapter may
5 not be disciplined for providing expedited partner therapy in
6 accordance with the provisions of article four-f, chapter sixteen
7 of this code.

8 **ARTICLE 14A. ASSISTANTS TO OSTEOPATHIC PHYSICIANS AND SURGEONS.**

9 **§30-14A-1. Osteopathic physician assistant to osteopathic**

10 **physicians and surgeons; definitions; board of**
11 **osteopathy rules; licensure; temporary licensure;**
12 **renewal of license; job description required;**
13 **revocation or suspension of license;**
14 **responsibilities of the supervising physician; legal**
15 **responsibility for osteopathic physician assistants;**
16 **reporting of disciplinary procedures;**
17 **identification; limitation on employment and duties;**
18 **fees; unlawful use of the title of "osteopathic**
19 **physician assistant"; unlawful representation of an**
20 **osteopathic physician assistant as a physician;**
21 **criminal penalties.**

22 (a) As used in this section:

1 (1) "Approved program" means an educational program for
2 osteopathic physician assistants approved and accredited by the
3 Committee on Allied Health Education and Accreditation or its
4 successor.

5 (2) "Board" means the Board of Osteopathy established under
6 the provisions of article fourteen, chapter thirty of this code.

7 (3) "Direct supervision" means the presence of the supervising
8 physician at the site where the osteopathic physician assistant
9 performs medical duties.

10 (4) "Health care facility" means any licensed hospital,
11 nursing home, extended care facility, state health or mental
12 institution, clinic or physician's office.

13 (5) "License" means a certificate issued to an osteopathic
14 physician assistant who has passed the examination for a primary
15 care or surgery physician assistant administered by the National
16 Board of Medical Examiners on behalf of the National Commission on
17 Certification of Physician Assistants. All osteopathic physician
18 assistants holding valid certificates issued by the board prior to
19 March 31, 2010, are licensed under the provisions of this article,
20 but must renew the license pursuant to the provisions of this
21 article.

22 (6) "Osteopathic physician assistant" means an assistant to an
23 osteopathic physician who is a graduate of an approved program of

1 instruction in primary care or surgery, has passed the National
2 Certification Examination and is qualified to perform direct
3 patient care services under the supervision of an osteopathic
4 physician.

5 (7) "Supervising physician" means a doctor of osteopathy
6 permanently licensed in this state who assumes legal and
7 supervising responsibility for the work or training of an
8 osteopathic physician assistant under his or her supervision.

9 (b) The board shall propose emergency and legislative rules
10 for legislative approval pursuant to the provisions of article
11 three, chapter twenty-nine-a of this code, governing the extent to
12 which osteopathic physician assistants may function in this state.
13 The rules shall provide that:

14 (1) The osteopathic physician assistant is limited to the
15 performance of those services for which he or she is trained;

16 (2) The osteopathic physician assistant performs only under
17 the supervision and control of an osteopathic physician permanently
18 licensed in this state but such supervision and control does not
19 require the personal presence of the supervising physician at the
20 place or places where services are rendered if the osteopathic
21 physician assistant's normal place of employment is on the premises
22 of the supervising physician. The supervising physician may send
23 the osteopathic physician assistant off the premises to perform

1 duties under his or her direction, but a separate place of work for
2 the osteopathic physician assistant may not be established; ~~and~~

3 (3) The board may allow the osteopathic physician assistant to
4 perform those procedures and examinations and, in the case of
5 authorized osteopathic physician assistants, to prescribe at the
6 direction of his or her supervising physician in accordance with
7 subsections (p) and (q) of this section those categories of drugs
8 submitted to it in the job description required by subsection (f)
9 of this section; and

10 (4) An osteopathic physician assistant may not be disciplined
11 for providing expedited partner therapy in accordance with the
12 provisions of article four-f, chapter sixteen of this code.

13 (c) The board shall compile and publish an annual report that
14 includes a list of currently licensed osteopathic physician
15 assistants and their employers and location in the state.

16 (d) The board shall license as an osteopathic physician
17 assistant a person who files an application together with a
18 proposed job description and furnishes satisfactory evidence that
19 he or she has met the following standards:

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

22 (2) Has passed the examination for a primary care or surgery
23 physician assistant administered by the National Board of Medical

1 Examiners on behalf of the National Commission on Certification of
2 Physician Assistants; and

3 (3) Is of good moral character.

4 (e) When a graduate of an approved program submits an
5 application to the board, accompanied by a job description in
6 conformity with this section, for an osteopathic physician
7 assistant license, the board may issue to the applicant a temporary
8 license allowing the applicant to function as an osteopathic
9 physician assistant for the period of one year. The temporary
10 license may be renewed for one additional year upon the request of
11 the supervising physician. An osteopathic physician assistant who
12 has not been certified as such by the National Board of Medical
13 Examiners on behalf of the National Commission on Certification of
14 Physician Assistants will be restricted to work under the direct
15 supervision of the supervising physician.

16 (f) An osteopathic physician applying to the board to
17 supervise an osteopathic physician assistant shall provide a job
18 description that sets forth the range of medical services to be
19 provided by the assistant. Before an osteopathic physician
20 assistant can be employed or otherwise use his or her skills, the
21 supervising physician must obtain approval of the job description
22 from the board. The board may revoke or suspend a license of an
23 assistant to a physician for cause, after giving the person an

1 opportunity to be heard in the manner provided by sections eight
2 and nine, article one of this chapter.

3 (g) The supervising physician is responsible for observing,
4 directing and evaluating the work records and practices of each
5 osteopathic physician assistant performing under his or her
6 supervision. He or she shall notify the board in writing of any
7 termination of his or her supervisory relationship with an
8 osteopathic physician assistant within ten days of his or her
9 termination. The legal responsibility for any osteopathic
10 physician assistant remains with the supervising physician at all
11 times, including occasions when the assistant, under his or her
12 direction and supervision, aids in the care and treatment of a
13 patient in a health care facility. In his or her absence, a
14 supervising physician must designate an alternate supervising
15 physician but the legal responsibility remains with the supervising
16 physician at all times. A health care facility is not legally
17 responsible for the actions or omissions of an osteopathic
18 physician assistant unless the osteopathic physician assistant is
19 an employee of the facility.

20 (h) The acts or omissions of an osteopathic physician
21 assistant employed by health care facilities providing in-patient
22 services are the legal responsibility of the facilities.
23 Osteopathic physician assistants employed by such facilities in

1 staff positions shall be supervised by a permanently licensed
2 physician.

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

17 (j) When functioning as an osteopathic physician assistant,
18 the osteopathic physician assistant shall wear a name tag that
19 identifies him or her as a physician assistant.

20 (k) (1) A supervising physician shall not supervise at any
21 time more than three osteopathic physician assistants except that
22 a physician may supervise up to four hospital-employed osteopathic
23 physician assistants: *Provided*, That an alternative supervisor has

1 been designated for each.

2 (2) An osteopathic physician assistant shall not perform any
3 service that his or her supervising physician is not qualified to
4 perform.

5 (3) An osteopathic physician assistant shall not perform any
6 service that is not included in his or her job description and
7 approved by the board as provided in this section.

8 (4) The provisions of this section do not authorize an
9 osteopathic physician assistant to perform any specific function or
10 duty delegated by this code to those persons licensed as
11 chiropractors, dentists, registered nurses, licensed practical
12 nurses, dental hygienists, optometrists or pharmacists or certified
13 as nurse anesthetists.

14 (1) An application for license or renewal of license shall be
15 accompanied by payment of a fee established by legislative rule of
16 the Board of Osteopathy pursuant to the provisions of article
17 three, chapter twenty-nine-a of this code.

18 (m) As a condition of renewal of an osteopathic physician
19 assistant license, each osteopathic physician assistant shall
20 provide written documentation satisfactory to the board of
21 participation in and successful completion of continuing education
22 in courses approved by the Board of Osteopathy for the purposes of
23 continuing education of osteopathic physician assistants. The

1 osteopathy board shall propose legislative rules for minimum
2 continuing hours necessary for the renewal of a license. These
3 rules shall provide for minimum hours equal to or more than the
4 hours necessary for national certification. Notwithstanding any
5 provision of this chapter to the contrary, failure to timely submit
6 the required written documentation results in the automatic
7 suspension of a license as an osteopathic physician assistant until
8 the written documentation is submitted to and approved by the
9 board.

10 (n) It is unlawful for any person who is not licensed by the
11 board as an osteopathic physician assistant to use the title of
12 osteopathic physician assistant or to represent to any other person
13 that he or she is an osteopathic physician assistant. A person who
14 violates the provisions of this subsection is guilty of a
15 misdemeanor and, upon conviction thereof, shall be fined not more
16 than \$2,000.

17 (o) It is unlawful for an osteopathic physician assistant to
18 represent to any person that he or she is a physician. A person
19 who violates the provisions of this subsection is guilty of a
20 felony, and, upon conviction thereof, shall be imprisoned in a
21 state correctional facility for not less than one, nor more than
22 two years, or be fined not more than \$2,000, or both fined and
23 imprisoned.

1 (p) An osteopathic physician assistant may write or sign
2 prescriptions or transmit prescriptions by word of mouth, telephone
3 or other means of communication at the direction of his or her
4 supervising physician. The board shall propose rules for
5 legislative approval in accordance with the provisions of article
6 three, chapter twenty-nine-a of this code governing the eligibility
7 and extent to which an osteopathic physician assistant may
8 prescribe at the direction of the supervising physician. The rules
9 shall provide for a state formulary classifying pharmacologic
10 categories of drugs which may be prescribed by such an osteopathic
11 physician assistant. In classifying such pharmacologic categories,
12 those categories of drugs which shall be excluded include, but are
13 not limited to, Schedules I and II of the Uniform Controlled
14 Substances Act, antineoplastics, radiopharmaceuticals, general
15 anesthetics and radiographic contrast materials. Drugs listed
16 under Schedule III are limited to a seventy-two hour supply without
17 refill. In addition to the above referenced provisions and
18 restrictions and at the direction of a supervising physician, the
19 rules shall permit the prescribing an annual supply of any drug
20 other than controlled substances which is prescribed for the
21 treatment of a chronic condition other than chronic pain
22 management. For the purposes of this section, a "chronic
23 condition" is a condition which last three months or more,

1 generally cannot be prevented by vaccines, can be controlled but
2 not cured by medication and does not generally disappear. These
3 conditions include, but are not limited to, arthritis, asthma,
4 cardiovascular disease, cancer, diabetes, epilepsy and seizures and
5 obesity. The prescriber authorized in this section shall note on
6 the prescription the condition for which the patient is being
7 treated. The rules shall provide that all pharmacological
8 categories of drugs to be prescribed by an osteopathic physician
9 assistant be listed in each job description submitted to the board
10 as required in this section. The rules shall provide the maximum
11 dosage an osteopathic physician assistant may prescribe.

12 (q) (1) The rules shall provide that to be eligible for such
13 prescription privileges, an osteopathic physician assistant must:

14 (A) Submit an application to the board for prescription
15 privileges;

16 (B) Have performed patient care services for a minimum of two
17 years immediately preceding the application; and

18 (C) Have successfully completed an accredited course of
19 instruction in clinical pharmacology approved by the board.

20 (2) The rules shall provide that to maintain prescription
21 privileges, an osteopathic physician assistant shall:

22 (A) Continue to maintain national certification as an
23 osteopathic physician assistant; and

1 (B) Complete a minimum of ten hours of continuing education in
2 rational drug therapy in each licensing period.

(3) Nothing in this subsection permits an osteopathic physician assistant to independently prescribe or dispense drugs.

NOTE: The purpose of this bill is to allow for expedited partner therapy. It would permit prescribing antibiotics for the partner of a patient without first examining the partner. It requires counseling by the physician. The bill also requires the Department of Health and Human Resources to develop outreach materials. The bill has limited liability for physician, physician assistants and advance nurse practitioners who prescribe in an expedited partner therapy setting. The bill makes changes to the licensing portions of the code to make it permissible for the various disciplines to prescribe without disciplinary actions from their respective licensing boards.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§16-4F-1, §16-4F-2, §16-4F-3, §16-4F-4 and §16-4F-5; are new; therefore, they have been completely underscored.