

**Senate Bill No. 12**

(By Senator Stollings)

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[Introduced January 8, 2014; referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §16-4F-1, §16-4F-2,  
12 §16-4F-3, §16-4F-4 and §16-4F-5; to amend and reenact §30-3-14  
13 and §30-3-16 of said code; to amend and reenact §30-7-15a of  
14 said code; to amend and reenact §30-14-11 of said code; and to  
15 amend and reenact §30-14A-1 of said code, all relating to  
16 treatment for a sexually transmitted disease; defining terms;  
17 permitting prescribing of antibiotics to sexual partners of a  
18 patient without a prior examination of the partner; requiring  
19 patient counseling; establishing counseling criteria;  
20 requiring information materials be prepared by the Department  
21 of Health and Human Resources; providing limited liability for  
22 providing expedited partnership therapy; providing that health  
23 care professionals and pharmacists are not liable for not  
24 providing expedited partner therapy or filling certain

1 prescriptions; requiring legislative rules regarding what is  
 2 considered a sexually transmitted disease; and providing that  
 3 physicians, physician assistants and advanced nurse  
 4 practitioners are not subject to disciplinary action for  
 5 providing expedited partner therapy.

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  
 24 infected with a sexually transmitted disease without physical

1 examination of the partner or partners.

2 (3) "Health care professional" means:

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

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

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

10 (D) An advanced nurse practitioner who may prescribe drugs  
11 pursuant to section fifteen-a, article seven, chapter thirty of  
12 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  
24 unlikely or unable to be present for comprehensive health care,

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

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

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

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

20 (2) Information about the antibiotic and dosage provided or  
21 prescribed; clear and explicit allergy and side effect warnings,  
22 including a warning that a sexual partner who has a history of  
23 allergy to the antibiotic or the pharmaceutical class of antibiotic  
24 should not take the antibiotic and should be immediately examined

1 by a health care professional;

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

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

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

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

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

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

19 (9) Other information found to be necessary and informative by  
20 the department.

21 **§16-4F-3. Informational materials.**

22 (a) The department shall provide information and technical  
23 assistance as appropriate to health care professionals who provide  
24 expedited partner therapy. The department shall develop and

1 disseminate in electronic and other formats the following written  
2 materials:

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

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

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

9       (b) The department may offer educational programs about  
10 expedited partner therapy for health care professionals and  
11 pharmacists licensed pursuant to article five, chapter thirty of  
12 this code.

13 **§16-4F-4. Limitation of liability.**

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

23       (b) A pharmacist or pharmacy is not subject to civil or  
24 professional liability for choosing not to fill a prescription that

1 would cause that pharmacist or pharmacy to violate any provision of  
2 article five, chapter thirty of this code.

3 **§16-4F-5. Rulemaking.**

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

17                   **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

19 **§30-3-14. Professional discipline of physicians and podiatrists;**  
20                   **reporting of information to board pertaining to**  
21                   **medical professional liability and professional**  
22                   **incompetence required; penalties; grounds for license**  
23                   **denial and discipline of physicians and podiatrists;**  
24                   **investigations; physical and mental examinations;**

1           **hearings; sanctions; summary sanctions; reporting by**  
2           **the board; reapplication; civil and criminal**  
3           **immunity; voluntary limitation of license; probable**  
4           **cause determinations.**

5           (a) The board may independently initiate disciplinary  
6 proceedings as well as initiate disciplinary proceedings based on  
7 information received from medical peer review committees,  
8 physicians, podiatrists, hospital administrators, professional  
9 societies and others.

10           The board may initiate investigations as to professional  
11 incompetence or other reasons for which a licensed physician or  
12 podiatrist may be adjudged unqualified based upon criminal  
13 convictions; complaints by citizens, pharmacists, physicians,  
14 podiatrists, peer review committees, hospital administrators,  
15 professional societies or others; or unfavorable outcomes arising  
16 out of medical professional liability. The board shall initiate an  
17 investigation if it receives notice that three or more judgments,  
18 or any combination of judgments and settlements resulting in five  
19 or more unfavorable outcomes arising from medical professional  
20 liability have been rendered or made against the physician or  
21 podiatrist within a five-year period. The board may not consider  
22 any judgments or settlements as conclusive evidence of professional  
23 incompetence or conclusive lack of qualification to practice.

24           (b) Upon request of the board, any medical peer review



1 committee in this state shall report any information that may  
2 relate to the practice or performance of any physician or  
3 podiatrist known to that medical peer review committee. Copies of  
4 the requests for information from a medical peer review committee  
5 may be provided to the subject physician or podiatrist if, in the  
6 discretion of the board, the provision of such copies will not  
7 jeopardize the board's investigation. In the event that copies are  
8 provided, the subject physician or podiatrist is allowed fifteen  
9 days to comment on the requested information and such comments must  
10 be considered by the board.

11       The chief executive officer of every hospital shall, within  
12 sixty days after the completion of the hospital's formal  
13 disciplinary procedure and also within sixty days after the  
14 commencement of and again after the conclusion of any resulting  
15 legal action, report in writing to the board the name of any member  
16 of the medical staff or any other physician or podiatrist  
17 practicing in the hospital whose hospital privileges have been  
18 revoked, restricted, reduced or terminated for any cause, including  
19 resignation, together with all pertinent information relating to  
20 such action. The chief executive officer shall also report any  
21 other formal disciplinary action taken against any physician or  
22 podiatrist by the hospital upon the recommendation of its medical  
23 staff relating to professional ethics, medical incompetence,  
24 medical professional liability, moral turpitude or drug or alcohol

1 abuse. Temporary suspension for failure to maintain records on a  
2 timely basis or failure to attend staff or section meetings need  
3 not be reported. Voluntary cessation of hospital privileges for  
4 reasons unrelated to professional competence or ethics need not be  
5 reported.

6 Any managed care organization operating in this state which  
7 provides a formal peer review process shall report in writing to  
8 the board, within sixty days after the completion of any formal  
9 peer review process and also within sixty days after the  
10 commencement of and again after the conclusion of any resulting  
11 legal action, the name of any physician or podiatrist whose  
12 credentialing has been revoked or not renewed by the managed care  
13 organization. The managed care organization shall also report in  
14 writing to the board any other disciplinary action taken against a  
15 physician or podiatrist relating to professional ethics,  
16 professional liability, moral turpitude or drug or alcohol abuse  
17 within sixty days after completion of a formal peer review process  
18 which results in the action taken by the managed care organization.  
19 For purposes of this subsection, "managed care organization" means  
20 a plan that establishes, operates or maintains a network of health  
21 care providers who have entered into agreements with and been  
22 credentialed by the plan to provide health care services to  
23 enrollees or insureds to whom the plan has the ultimate obligation  
24 to arrange for the provision of or payment for health care services

1 through organizational arrangements for ongoing quality assurance,  
2 utilization review programs or dispute resolutions.

3 Any professional society in this state comprised primarily of  
4 physicians or podiatrists which takes formal disciplinary action  
5 against a member relating to professional ethics, professional  
6 incompetence, medical professional liability, moral turpitude or  
7 drug or alcohol abuse shall report in writing to the board within  
8 sixty days of a final decision the name of the member, together  
9 with all pertinent information relating to the action.

10 Every person, partnership, corporation, association, insurance  
11 company, professional society or other organization providing  
12 professional liability insurance to a physician or podiatrist in  
13 this state, including the state Board of Risk and Insurance  
14 Management, shall submit to the board the following information  
15 within thirty days from any judgment or settlement of a civil or  
16 medical professional liability action excepting product liability  
17 actions: The name of the insured; the date of any judgment or  
18 settlement; whether any appeal has been taken on the judgment and,  
19 if so, by which party; the amount of any settlement or judgment  
20 against the insured; and other information required by the board.

21 Within thirty days from the entry of an order by a court in a  
22 medical professional liability action or other civil action in  
23 which a physician or podiatrist licensed by the board is determined  
24 to have rendered health care services below the applicable standard

1 of care, the clerk of the court in which the order was entered  
2 shall forward a certified copy of the order to the board.

3       Within thirty days after a person known to be a physician or  
4 podiatrist licensed or otherwise lawfully practicing medicine and  
5 surgery or podiatry in this state or applying to be licensed is  
6 convicted of a felony under the laws of this state or of any crime  
7 under the laws of this state involving alcohol or drugs in any way,  
8 including any controlled substance under state or federal law, the  
9 clerk of the court of record in which the conviction was entered  
10 shall forward to the board a certified true and correct abstract of  
11 record of the convicting court. The abstract shall include the  
12 name and address of the physician or podiatrist or applicant, the  
13 nature of the offense committed and the final judgment and sentence  
14 of the court.

15       Upon a determination of the board that there is probable cause  
16 to believe that any person, partnership, corporation, association,  
17 insurance company, professional society or other organization has  
18 failed or refused to make a report required by this subsection, the  
19 board shall provide written notice to the alleged violator stating  
20 the nature of the alleged violation and the time and place at which  
21 the alleged violator shall appear to show good cause why a civil  
22 penalty should not be imposed. The hearing shall be conducted in  
23 accordance with ~~the provisions of~~ article five, chapter  
24 twenty-nine-a of this code. After reviewing the record of the

1 hearing, if the board determines that a violation of this  
2 subsection has occurred, the board shall assess a civil penalty of  
3 not less than \$1,000 nor more than \$10,000 against the violator.  
4 The board shall notify any person so assessed of the assessment in  
5 writing and the notice shall specify the reasons for the  
6 assessment. If the violator fails to pay the amount of the  
7 assessment to the board within thirty days, the Attorney General  
8 may institute a civil action in the circuit court of Kanawha County  
9 to recover the amount of the assessment. In any civil action, the  
10 court's review of the board's action shall be conducted in  
11 accordance with ~~the provisions of~~ section four, article five,  
12 chapter twenty-nine-a of this code. Notwithstanding any other  
13 provision of this article to the contrary, when there are  
14 conflicting views by recognized experts as to whether any alleged  
15 conduct breaches an applicable standard of care, the evidence must  
16 be clear and convincing before the board may find that the  
17 physician or podiatrist has demonstrated a lack of professional  
18 competence to practice with a reasonable degree of skill and safety  
19 for patients.

20 Any person may report to the board relevant facts about the  
21 conduct of any physician or podiatrist in this state which in the  
22 opinion of that person amounts to medical professional liability or  
23 professional incompetence.

24 The board shall provide forms for filing reports pursuant to

1 this section. Reports submitted in other forms shall be accepted  
2 by the board.

3 The filing of a report with the board pursuant to ~~any~~  
4 ~~provision of~~ this article, any investigation by the board or any  
5 disposition of a case by the board does not preclude any action by  
6 a hospital, other health care facility or professional society  
7 comprised primarily of physicians or podiatrists to suspend,  
8 restrict or revoke the privileges or membership of the physician or  
9 podiatrist.

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

16 (1) Attempting to obtain, obtaining, renewing or attempting to  
17 renew a license to practice medicine and surgery or podiatry by  
18 bribery, fraudulent misrepresentation or through known error of the  
19 board;

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

24 (3) False or deceptive advertising;

1           (4) Aiding, assisting, procuring or advising any unauthorized  
2 person to practice medicine and surgery or podiatry contrary to  
3 law;

4           (5) Making or filing a report that the person knows to be  
5 false; intentionally or negligently failing to file a report or  
6 record required by state or federal law; willfully impeding or  
7 obstructing the filing of a report or record required by state or  
8 federal law; or inducing another person to do any of the foregoing.  
9 The reports and records covered in this subdivision mean only those  
10 that are signed in the capacity as a licensed physician or  
11 podiatrist;

12           (6) Requesting, receiving or paying directly or indirectly a  
13 payment, rebate, refund, commission, credit or other form of profit  
14 or valuable consideration for the referral of patients to any  
15 person or entity in connection with providing medical or other  
16 health care services or clinical laboratory services, supplies of  
17 any kind, drugs, medication or any other medical goods, services or  
18 devices used in connection with medical or other health care  
19 services;

20           (7) Unprofessional conduct by any physician or podiatrist in  
21 referring a patient to any clinical laboratory or pharmacy in which  
22 the physician or podiatrist has a proprietary interest unless the  
23 physician or podiatrist discloses in writing such interest to the  
24 patient. The written disclosure shall indicate that the patient

1 may choose any clinical laboratory for purposes of having any  
2 laboratory work or assignment performed or any pharmacy for  
3 purposes of purchasing any prescribed drug or any other medical  
4 goods or devices used in connection with medical or other health  
5 care services;

6       As used in this subdivision, "proprietary interest" does not  
7 include an ownership interest in a building in which space is  
8 leased to a clinical laboratory or pharmacy at the prevailing rate  
9 under a lease arrangement that is not conditional upon the income  
10 or gross receipts of the clinical laboratory or pharmacy;

11       (8) Exercising influence within a patient-physician  
12 relationship for the purpose of engaging a patient in sexual  
13 activity;

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

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

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

22       (12) Exercising influence on a patient in such a way as to  
23 exploit the patient for financial gain of the physician or  
24 podiatrist or of a third party. Any influence includes, but is not



1 limited to, the promotion or sale of services, goods, appliances or  
2 drugs;

3       (13) Prescribing, dispensing, administering, mixing or  
4 otherwise preparing a prescription drug, including any controlled  
5 substance under state or federal law, other than in good faith and  
6 in a therapeutic manner in accordance with accepted medical  
7 standards and in the course of the physician's or podiatrist's  
8 professional practice. ~~Provided, That~~ A physician who discharges  
9 his or her professional obligation to relieve the pain and  
10 suffering and promote the dignity and autonomy of dying patients in  
11 his or her care and, in so doing, exceeds the average dosage of a  
12 pain relieving controlled substance, as defined in Schedules II and  
13 III of the Uniform Controlled Substance Act, does not violate this  
14 article. A physician licensed under this chapter may not be  
15 disciplined for providing expedited partner therapy in accordance  
16 with article four-f, chapter sixteen of this code;

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

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

1           (16) Delegating professional responsibilities to a person when  
2 the physician or podiatrist delegating the responsibilities knows  
3 or has reason to know that the person is not qualified by training,  
4 experience or licensure to perform them;

5           (17) Violating ~~any provision of~~ this article or a rule or  
6 order of the board or failing to comply with a subpoena or subpoena  
7 duces tecum issued by the board;

8           (18) Conspiring with any other person to commit an act or  
9 committing an act that would tend to coerce, intimidate or preclude  
10 another physician or podiatrist from lawfully advertising his or  
11 her services;

12           (19) Gross negligence in the use and control of prescription  
13 forms;

14           (20) Professional incompetence; or

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

1 against the physician or podiatrist in any other proceeding.

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

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

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

23           (g) In addition to any other investigators it employs, the  
24 board may appoint one or more licensed physicians to act for it in

1 investigating the conduct or competence of a physician.

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

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

1 of any person known to the board with knowledge about the facts of  
2 any of the charges; provide a copy of any statements in the  
3 possession of or under the control of the board; provide a list of  
4 proposed witnesses with addresses and telephone numbers, with a  
5 brief summary of his or her anticipated testimony; provide  
6 disclosure of any trial expert pursuant to the requirements of Rule  
7 26(b)(4) of the West Virginia Rules of Civil Procedure; provide  
8 inspection and copying of the results of any reports of physical  
9 and mental examinations or scientific tests or experiments; and  
10 provide a list and copy of any proposed exhibit to be used at the  
11 hearing: *Provided*, That the board shall not be required to furnish  
12 or produce any materials which contain opinion work product  
13 information or would be a violation of the attorney-client  
14 privilege. Within twenty days of the date of service of the  
15 written notice of charges, the board shall disclose any exculpatory  
16 evidence with a continuing duty to do so throughout the  
17 disciplinary process. Within thirty days of receipt of the board's  
18 mandatory discovery, the respondent shall provide the board with  
19 the complete identity, address and telephone number of any person  
20 known to the respondent with knowledge about the facts of any of  
21 the charges; provide a list of proposed witnesses with addresses  
22 and telephone numbers, to be called at hearing, with a brief  
23 summary of his or her anticipated testimony; provide disclosure of  
24 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;

24 (6) Require him or her to participate in a program of



1 education prescribed by the board;

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

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

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

18       (l) Any person against whom disciplinary action is taken  
19 pursuant to ~~the provisions of~~ this article has the right to  
20 judicial review as provided in articles five and six, chapter  
21 twenty-nine-a of this code: *Provided*, That a circuit judge may  
22 also remand the matter to the board if it appears from competent  
23 evidence presented to it in support of a motion for remand that  
24 there is newly discovered evidence of such a character as ought to

1 produce an opposite result at a second hearing on the merits before  
2 the board and:

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

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

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

22 (m) Any person against whom disciplinary action has been taken  
23 under ~~the provisions of~~ this article shall, at reasonable  
24 intervals, be afforded an opportunity to demonstrate that he or she

1 can resume the practice of medicine and surgery or podiatry on a  
2 general or limited basis. At the conclusion of a suspension,  
3 limitation or restriction period the physician or podiatrist may  
4 resume practice if the board has so ordered.

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

20 (o) A physician or podiatrist may request in writing to the  
21 board a limitation on or the surrendering of his or her license to  
22 practice medicine and surgery or podiatry or other appropriate  
23 sanction as provided in this section. The board may grant the  
24 request and, if it considers it appropriate, may waive the

1 commencement or continuation of other proceedings under this  
2 section. A physician or podiatrist whose license is limited or  
3 surrendered or against whom other action is taken under this  
4 subsection may, at reasonable intervals, petition for removal of  
5 any restriction or limitation on or for reinstatement of his or her  
6 license to practice medicine and surgery or podiatry.

7 (p) In every case considered by the board under this article  
8 regarding discipline or licensure, whether initiated by the board  
9 or upon complaint or information from any person or organization,  
10 the board shall make a preliminary determination as to whether  
11 probable cause exists to substantiate charges of disqualification  
12 due to any reason set forth in subsection (c) of this section. If  
13 probable cause is found to exist, all proceedings on the charges  
14 shall be open to the public who are entitled to all reports,  
15 records and nondeliberative materials introduced at the hearing,  
16 including the record of the final action taken: *Provided*, That any  
17 medical records, which were introduced at the hearing and which  
18 pertain to a person who has not expressly waived his or her right  
19 to the confidentiality of the records, may not be open to the  
20 public nor is the public entitled to the records.

21 (q) If the board receives notice that a physician or  
22 podiatrist has been subjected to disciplinary action or has had his  
23 or her credentials suspended or revoked by the board, a hospital or  
24 a professional society, as defined in subsection (b) of this

1 section, for three or more incidents during a five-year period, the  
2 board shall require the physician or podiatrist to practice under  
3 the direction of a physician or podiatrist designated by the board  
4 for a specified period of time to be established by the board.

5 (r) Notwithstanding any other provisions of this article, the  
6 board may, at any time, on its own motion, or upon motion by the  
7 complainant, or upon motion by the physician or podiatrist, or by  
8 stipulation of the parties, refer the matter to mediation. The  
9 board shall obtain a list from the West Virginia State Bar's  
10 mediator referral service of certified mediators with expertise in  
11 professional disciplinary matters. The board and the physician or  
12 podiatrist may choose a mediator from that list. If the board and  
13 the physician or podiatrist are unable to agree on a mediator, the  
14 board shall designate a mediator from the list by neutral rotation.  
15 The mediation shall not be considered a proceeding open to the  
16 public and any reports and records introduced at the mediation  
17 shall not become part of the public record. The mediator and all  
18 participants in the mediation shall maintain and preserve the  
19 confidentiality of all mediation proceedings and records. The  
20 mediator may not be subpoenaed or called to testify or otherwise be  
21 subject to process requiring disclosure of confidential information  
22 in any proceeding relating to or arising out of the disciplinary or  
23 licensure matter mediated: *Provided*, That any confidentiality  
24 agreement and any written agreement made and signed by the parties

1 as a result of mediation may be used in any proceedings  
2 subsequently instituted to enforce the written agreement. The  
3 agreements may be used in other proceedings if the parties agree in  
4 writing.

5 **§30-3-16. Physician assistants; definitions; Board of Medicine**  
6 **rules; annual report; licensure; temporary license;**  
7 **relicensure; job description required; revocation or**  
8 **suspension of licensure; responsibilities of**  
9 **supervising physician; legal responsibility for**  
10 **physician assistants; reporting by health care**  
11 **facilities; identification; limitations on**  
12 **employment and duties; fees; continuing education;**  
13 **unlawful representation of physician assistant as a**  
14 **physician; criminal penalties.**

15 (a) As used in this section:

16 (1) "Approved program" means an educational program for  
17 physician assistants approved and accredited by the Committee on  
18 Accreditation of Allied Health Education Programs or its successor;

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

22 (3) "Physician assistant" means an assistant to a physician  
23 who is a graduate of an approved program of instruction in primary  
24 health care or surgery, has attained a baccalaureate or master's

1 degree, has passed the national certification examination and is  
2 qualified to perform direct patient care services under the  
3 supervision of a physician;

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

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

15 (b) The board shall promulgate rules pursuant to ~~the~~  
16 ~~provisions of~~ article three, chapter twenty-nine-a of this code  
17 governing the extent to which physician assistants may function in  
18 this state. The rules shall provide that the physician assistant  
19 is limited to the performance of those services for which he or she  
20 is trained and that he or she performs only under the supervision  
21 and control of a physician permanently licensed in this state but  
22 that supervision and control does not require the personal presence  
23 of the supervising physician at the place or places where services  
24 are rendered if the physician assistant's normal place of

1 employment is on the premises of the supervising physician. The  
2 supervising physician may send the physician assistant off the  
3 premises to perform duties under his or her direction but a  
4 separate place of work for the physician assistant may not be  
5 established. In promulgating the rules, the board shall allow the  
6 physician assistant to perform those procedures and examinations  
7 and, in the case of certain authorized physician assistants, to  
8 prescribe at the direction of his or her supervising physician, in  
9 accordance with subsection (r) of this section, those categories of  
10 drugs submitted to it in the job description required by this  
11 section. Certain authorized physician assistants may pronounce  
12 death in accordance with the rules proposed by the board which  
13 receive legislative approval. The board shall compile and publish  
14 an annual report that includes a list of currently licensed  
15 physician assistants and their supervising physician(s) and  
16 location in the state.

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

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

23 (2) Has passed the certifying examination for a primary care  
24 physician assistant administered by the National Commission on



1 Certification of Physician Assistants and has maintained  
2 certification by that commission so as to be currently certified;

3 (3) Is of good moral character; and

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

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

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

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

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

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

18 (1) He or she is a graduate of an approved program of  
19 instruction in primary health care or surgery prior to July 1,  
20 1994, and has passed the certifying examination for a physician  
21 assistant administered by the National Commission on Certification  
22 of Physician Assistants and has maintained certification by that  
23 commission so as to be currently certified; or

24 (2) He or she had been certified by the board as a physician

1 assistant then classified as Type B prior to July 1, 1983.

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

6 (g) When a graduate of an approved program who has  
7 successfully passed the National Commission on Certification of  
8 Physician Assistants' certifying examination submits an application  
9 to the board for a physician assistant license, accompanied by a  
10 job description as referenced by this section, and a \$50 temporary  
11 license fee, and the application is complete, the board shall issue  
12 to that applicant a temporary license allowing that applicant to  
13 function as a physician assistant.

14 (h) When a graduate of an approved program submits an  
15 application to the board for a physician assistant license,  
16 accompanied by a job description as referenced by this section, and  
17 a \$50 temporary license fee, and the application is complete, the  
18 board shall issue to the applicant a temporary license allowing the  
19 applicant to function as a physician assistant until the applicant  
20 successfully passes the National Commission on Certification of  
21 Physician Assistants' certifying examination so long as the  
22 applicant sits for and obtains a passing score on the examination  
23 next offered following graduation from the approved program.

24 (i) No applicant may receive a temporary license who,

1 following graduation from an approved program, has not obtained a  
2 passing score on the examination.

3 (j) A physician assistant who has not been certified by the  
4 National Commission on Certification of Physician Assistants will  
5 be restricted to work under the direct supervision of the  
6 supervising physician.

7 (k) A physician assistant who has been issued a temporary  
8 license shall, within thirty days of receipt of written notice from  
9 the National Commission on Certification of Physician Assistants of  
10 his or her performance on the certifying examination, notify the  
11 board in writing of his or her results. In the event of failure of  
12 that examination, the temporary license shall terminate  
13 automatically and the board shall so notify the physician assistant  
14 in writing.

15 (l) In the event a physician assistant fails a recertification  
16 examination of the National Commission on Certification of  
17 Physician Assistants and is no longer certified, the physician  
18 assistant shall immediately notify his or her supervising physician  
19 or physicians and the board in writing. The physician assistant  
20 shall immediately cease practicing, the license shall terminate  
21 automatically and the physician assistant is not eligible for  
22 reinstatement until he or she has obtained a passing score on the  
23 examination.

24 (m) A physician applying to the board to supervise a physician

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

12 (n) The supervising physician is responsible for observing,  
13 directing and evaluating the work, records and practices of each  
14 physician assistant performing under his or her supervision. He or  
15 she shall notify the board in writing of any termination of his or  
16 her supervisory relationship with a physician assistant within ten  
17 days of the termination. The legal responsibility for any  
18 physician assistant remains with the supervising physician at all  
19 times including occasions when the assistant under his or her  
20 direction and supervision aids in the care and treatment of a  
21 patient in a health care facility. In his or her absence, a  
22 supervising physician must designate an alternate supervising  
23 physician but the legal responsibility remains with the supervising  
24 physician at all times. A health care facility is not legally

1 responsible for the actions or omissions of the physician assistant  
2 unless the physician assistant is an employee of the facility.

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

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

22 (q) When functioning as a physician assistant, the physician  
23 assistant shall wear a name tag that identifies him or her as a  
24 physician assistant. A two and one-half by three and one-half inch

1 card of identification shall be furnished by the board upon  
2 licensure of the physician assistant.

3 (r) A physician assistant may write or sign prescriptions or  
4 transmit prescriptions by word of mouth, telephone or other means  
5 of communication at the direction of his or her supervising  
6 physician. A fee of \$50 will be charged for prescription-writing  
7 privileges. The board shall promulgate rules pursuant to ~~the~~  
8 ~~provisions of~~ article three, chapter twenty-nine-a of this code  
9 governing the eligibility and extent to which a physician assistant  
10 may prescribe at the direction of the supervising physician. The  
11 rules shall include, but not be limited to, the following:

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

15 (A) Schedules I and II of the Uniform Controlled Substances  
16 Act, antineoplastic, radiopharmaceuticals, general anesthetics and  
17 radiographic contrast materials shall be excluded from the  
18 formulary;

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

21 (C) In addition to the above referenced provisions and  
22 restrictions and at the direction of a supervising physician, the  
23 rules shall permit the prescribing of an annual supply of any drug,  
24 with the exception of controlled substances, which is prescribed

1 for the treatment of a chronic condition, other than chronic pain  
2 management. For the purposes of this section, a "chronic  
3 condition" is a condition which lasts three months or more,  
4 generally cannot be prevented by vaccines, can be controlled but  
5 not cured by medication and does not generally disappear. These  
6 conditions, with the exception of chronic pain, include, but are  
7 not limited to, arthritis, asthma, cardiovascular disease, cancer,  
8 diabetes, epilepsy and seizures and obesity. The prescriber  
9 authorized in this section shall note on the prescription the  
10 chronic disease being treated.

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

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

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

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

1           (5) A requirement that to maintain prescription privileges, a  
2 physician assistant shall continue to maintain national  
3 certification as a physician assistant and, in meeting the national  
4 certification requirements, shall complete a minimum of ten hours  
5 of continuing education in rational drug therapy in each  
6 certification period. Nothing in this subsection permits a  
7 physician assistant to independently prescribe or dispense drugs;  
8 and

9           (6) A provision that a physician assistant licensed under this  
10 chapter may not be disciplined for providing expedited partner  
11 therapy in accordance with article four-f, chapter sixteen of this  
12 code.

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

18           (t) A physician assistant may not sign any prescription,  
19 except in the case of an authorized physician assistant at the  
20 direction of his or her supervising physician in accordance with  
21 ~~the provisions of~~ subsection (r) of this section. A physician  
22 assistant may not perform any service that his or her supervising  
23 physician is not qualified to perform. A physician assistant may  
24 not perform any service that is not included in his or her job



1 description and approved by the board as provided ~~for~~ in this  
2 section.

3 (u) ~~The provisions of this~~ This section ~~do~~ does not authorize  
4 a physician assistant to perform any specific function or duty  
5 delegated by this code to those persons licensed as chiropractors,  
6 dentists, dental hygienists, optometrists or pharmacists or  
7 certified as nurse anesthetists.

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

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

24 (x) Notwithstanding any provision of this chapter to the

1 contrary, failure to timely submit the required written  
2 documentation results in the automatic expiration of any license as  
3 a physician assistant until the written documentation is submitted  
4 to and approved by the board.

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

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

11 (2) Pay a renewal fee; and

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

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

17 (1) Apply for a new license;

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

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

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

24 A person who violates ~~the provisions of~~ this subsection is guilty

1 of a felony and, upon conviction thereof, shall be imprisoned in a  
2 state correctional facility for not less than one nor more than two  
3 years, or be fined not more than \$2,000, or both fined and  
4 imprisoned.

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

8 **ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**

9 **§30-7-15a. Prescriptive authority for prescription drugs;**  
10 **coordination with Board of Pharmacy.**

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

18 (b) For purposes of this section an agreement to a  
19 collaborative relationship for prescriptive practice between a  
20 physician and an advanced practice registered nurse shall be set  
21 forth in writing. Verification of the agreement shall be filed  
22 with the board by the advanced practice registered nurse. The  
23 board shall forward a copy of the verification to the Board of  
24 Medicine and the Board of Osteopathic Medicine. Collaborative

1 agreements shall include, but are not limited to, the following:

2 (1) Mutually agreed upon written guidelines or protocols for  
3 prescriptive authority as it applies to the advanced practice  
4 registered nurse's clinical practice;

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

8 (3) Periodic and joint evaluation of prescriptive practice;  
9 and

10 (4) Periodic and joint review and updating of the written  
11 guidelines or protocols.

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

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

24 (3) The effective date of prescriptive authority.

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

2 **§30-14-11. Refusal, suspension or revocation of license;**  
3 **suspension or revocation of certificate of**  
4 **authorization.**

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

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

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

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

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

14 (5) Gross malpractice;

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

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

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

21 (b) The board shall also have the power to suspend or revoke  
22 for cause any certificate of authorization issued by it. It shall  
23 have the power to reinstate any certificate of authorization  
24 suspended or revoked by it.

1       (c) An osteopathic physician licensed under this chapter may  
2 not be disciplined for providing expedited partner therapy in  
3 accordance with article four-f, chapter sixteen of this code.

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

5 **§30-14A-1. Osteopathic physician assistant to osteopathic**

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

18       (a) As used in this section:

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

23       (2) "Board" means the Board of Osteopathy established under

1 ~~the provisions of~~ article fourteen, chapter thirty of this code.

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

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

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

17 (6) "Osteopathic physician assistant" means an assistant to an  
18 osteopathic physician who is a graduate of an approved program of  
19 instruction in primary care or surgery, has passed the National  
20 Certification Examination and is qualified to perform direct  
21 patient care services under the supervision of an osteopathic  
22 physician.

23 (7) "Supervising physician" means a doctor of osteopathy  
24 permanently licensed in this state who assumes legal and



1 supervising responsibility for the work or training of an  
2 osteopathic physician assistant under his or her supervision.

3 (b) The board shall propose emergency and legislative rules  
4 for legislative approval pursuant to ~~the provisions of~~ article  
5 three, chapter twenty-nine-a of this code, governing the extent to  
6 which osteopathic physician assistants may function in this state.  
7 The rules shall provide that:

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

10 (2) The osteopathic physician assistant performs only under  
11 the supervision and control of an osteopathic physician permanently  
12 licensed in this state but such supervision and control does not  
13 require the personal presence of the supervising physician at the  
14 place or places where services are rendered if the osteopathic  
15 physician assistant's normal place of employment is on the premises  
16 of the supervising physician. The supervising physician may send  
17 the osteopathic physician assistant off the premises to perform  
18 duties under his or her direction, but a separate place of work for  
19 the osteopathic physician assistant may not be established; ~~and~~

20 (3) The board may allow the osteopathic physician assistant to  
21 perform those procedures and examinations and, in the case of  
22 authorized osteopathic physician assistants, to prescribe at the  
23 direction of his or her supervising physician in accordance with  
24 subsections (p) and (q) of this section those categories of drugs

1 submitted to it in the job description required by subsection (f)  
2 of this section; and

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

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

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

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

15 (2) Has passed the examination for a primary care or surgery  
16 physician assistant administered by the National Board of Medical  
17 Examiners on behalf of the National Commission on Certification of  
18 Physician Assistants; and

19 (3) Is of good moral character.

20 (e) When a graduate of an approved program submits an  
21 application to the board, accompanied by a job description in  
22 conformity with this section, for an osteopathic physician  
23 assistant license, the board may issue to the applicant a temporary  
24 license allowing the applicant to function as an osteopathic

1 physician assistant for the period of one year. The temporary  
2 license may be renewed for one additional year upon the request of  
3 the supervising physician. An osteopathic physician assistant who  
4 has not been certified as such by the National Board of Medical  
5 Examiners on behalf of the National Commission on Certification of  
6 Physician Assistants will be restricted to work under the direct  
7 supervision of the supervising physician.

8 (f) An osteopathic physician applying to the board to  
9 supervise an osteopathic physician assistant shall provide a job  
10 description that sets forth the range of medical services to be  
11 provided by the assistant. Before an osteopathic physician  
12 assistant can be employed or otherwise use his or her skills, the  
13 supervising physician must obtain approval of the job description  
14 from the board. The board may revoke or suspend a license of an  
15 assistant to a physician for cause, after giving the person an  
16 opportunity to be heard in the manner provided by sections eight  
17 and nine, article one of this chapter.

18 (g) The supervising physician is responsible for observing,  
19 directing and evaluating the work records and practices of each  
20 osteopathic physician assistant performing under his or her  
21 supervision. He or she shall notify the board in writing of any  
22 termination of his or her supervisory relationship with an  
23 osteopathic physician assistant within ten days of his or her  
24 termination. The legal responsibility for any osteopathic

1 physician assistant remains with the supervising physician at all  
2 times, including occasions when the assistant, under his or her  
3 direction and supervision, aids in the care and treatment of a  
4 patient in a health care facility. In his or her absence, a  
5 supervising physician must designate an alternate supervising  
6 physician but the legal responsibility remains with the supervising  
7 physician at all times. A health care facility is not legally  
8 responsible for the actions or omissions of an osteopathic  
9 physician assistant unless the osteopathic physician assistant is  
10 an employee of the facility.

11 (h) The acts or omissions of an osteopathic physician  
12 assistant employed by health care facilities providing in-patient  
13 services are the legal responsibility of the facilities.  
14 Osteopathic physician assistants employed by such facilities in  
15 staff positions shall be supervised by a permanently licensed  
16 physician.

17 (i) A health care facility shall report in writing to the  
18 board within sixty days after the completion of the facility's  
19 formal disciplinary procedure, and after the commencement and the  
20 conclusion of any resulting legal action, the name of an  
21 osteopathic physician assistant practicing in the facility whose  
22 privileges at the facility have been revoked, restricted, reduced  
23 or terminated for any cause including resignation, together with  
24 all pertinent information relating to such action. The health care

1 facility shall also report any other formal disciplinary action  
2 taken against an osteopathic physician assistant by the facility  
3 relating to professional ethics, medical incompetence, medical  
4 malpractice, moral turpitude or drug or alcohol abuse. Temporary  
5 suspension for failure to maintain records on a timely basis or  
6 failure to attend staff or section meetings need not be reported.

7 (j) When functioning as an osteopathic physician assistant,  
8 the osteopathic physician assistant shall wear a name tag that  
9 identifies him or her as a physician assistant.

10 (k) (1) A supervising physician shall not supervise at any  
11 time more than three osteopathic physician assistants except that  
12 a physician may supervise up to four hospital-employed osteopathic  
13 physician assistants: *Provided*, That an alternative supervisor has  
14 been designated for each.

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

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

21 (4) ~~The provisions of this~~ This section ~~do~~ does not authorize  
22 an osteopathic physician assistant to perform any specific function  
23 or duty delegated by this code to those persons licensed as  
24 chiropractors, dentists, registered nurses, licensed practical

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

3 (l) An application for license or renewal of license shall be  
4 accompanied by payment of a fee established by legislative rule of  
5 the Board of Osteopathy pursuant to ~~the provisions of~~ article  
6 three, chapter twenty-nine-a of this code.

7 (m) As a condition of renewal of an osteopathic physician  
8 assistant license, each osteopathic physician assistant shall  
9 provide written documentation satisfactory to the board of  
10 participation in and successful completion of continuing education  
11 in courses approved by the Board of Osteopathy for the purposes of  
12 continuing education of osteopathic physician assistants. The  
13 osteopathy board shall propose legislative rules for minimum  
14 continuing hours necessary for the renewal of a license. These  
15 rules shall provide for minimum hours equal to or more than the  
16 hours necessary for national certification. Notwithstanding any  
17 provision of this chapter to the contrary, failure to timely submit  
18 the required written documentation results in the automatic  
19 suspension of a license as an osteopathic physician assistant until  
20 the written documentation is submitted to and approved by the  
21 board.

22 (n) It is unlawful for any person who is not licensed by the  
23 board as an osteopathic physician assistant to use the title of  
24 osteopathic physician assistant or to represent to any other person

1 that he or she is an osteopathic physician assistant. A person who  
2 violates ~~the provisions of~~ this subsection is guilty of a  
3 misdemeanor and, upon conviction thereof, shall be fined not more  
4 than \$2,000.

5 (o) It is unlawful for an osteopathic physician assistant to  
6 represent to any person that he or she is a physician. A person  
7 who violates ~~the provisions of~~ this subsection is guilty of a  
8 felony and, upon conviction thereof, shall be imprisoned in a state  
9 correctional facility for not less than one, nor more than two  
10 years, or be fined not more than \$2,000, or both fined and  
11 imprisoned.

12 (p) An osteopathic physician assistant may write or sign  
13 prescriptions or transmit prescriptions by word of mouth, telephone  
14 or other means of communication at the direction of his or her  
15 supervising physician. The board shall propose rules for  
16 legislative approval in accordance ~~with the provisions of~~ article  
17 three, chapter twenty-nine-a of this code governing the eligibility  
18 and extent to which an osteopathic physician assistant may  
19 prescribe at the direction of the supervising physician. The rules  
20 shall provide for a state formulary classifying pharmacologic  
21 categories of drugs which may be prescribed by such an osteopathic  
22 physician assistant. In classifying such pharmacologic categories,  
23 those categories of drugs which shall be excluded include, but are  
24 not limited to, Schedules I and II of the Uniform Controlled

1 Substances Act, antineoplastics, radiopharmaceuticals, general  
2 anesthetics and radiographic contrast materials. Drugs listed  
3 under Schedule III are limited to a seventy-two hour supply without  
4 refill. In addition to the above referenced provisions and  
5 restrictions and at the direction of a supervising physician, the  
6 rules shall permit the prescribing an annual supply of any drug  
7 other than controlled substances which is prescribed for the  
8 treatment of a chronic condition other than chronic pain  
9 management. For the purposes of this section, a "chronic  
10 condition" is a condition which last three months or more,  
11 generally cannot be prevented by vaccines, can be controlled but  
12 not cured by medication and does not generally disappear. These  
13 conditions include, but are not limited to, arthritis, asthma,  
14 cardiovascular disease, cancer, diabetes, epilepsy and seizures and  
15 obesity. The prescriber authorized in this section shall note on  
16 the prescription the condition for which the patient is being  
17 treated. The rules shall provide that all pharmacological  
18 categories of drugs to be prescribed by an osteopathic physician  
19 assistant be listed in each job description submitted to the board  
20 as required in this section. The rules shall provide the maximum  
21 dosage an osteopathic physician assistant may prescribe.

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

24 (A) Submit an application to the board for prescription



1 privileges;

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

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

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

8 (A) Continue to maintain national certification as an  
9 osteopathic physician assistant; and

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

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

NOTE: The purpose of this bill is to allow for expedited partner therapy treatment for a sexually transmitted disease. It would permit prescribing antibiotics for the partner of a patient without first examining the partner under certain circumstances. The bill 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 provides that health care professionals and pharmacists are not liable for not providing expedited partner therapy or filling certain prescriptions. The bill makes changes to the licensing portions of the code to make it permissible for the various disciplines to provide expedited partner therapy without disciplinary actions from their respective licensing boards.

§16-4F-1, §16-4F-2, §16-4F-3, §16-4F-4 and §16-4F-5 are new; therefore, strike-throughs and underscoring have been omitted.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.