

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2014**



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 12**

(SENATOR STOLLINGS, *ORIGINAL SPONSOR*)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-4F-1, §16-4F-2, §16-4F-3, §16-4F-4 and §16-4F-5; to amend and reenact §30-3-14 and §30-3-16 of said code; to amend and reenact §30-5-3 of said code; to amend and reenact §30-7-15a of said code; to amend and reenact §30-14-11 of said code; and to amend and reenact §30-14A-1 of said code, all relating to treatment for a sexually transmitted disease; defining terms; permitting prescribing of antibiotics to sexual partners of a patient without a prior examination of the partner; requiring patient counseling; establishing counseling criteria; requiring information materials be prepared by the Department of Health and Human Resources; providing limited liability for providing expedited partnership therapy; requiring legislative rules regarding what is considered a sexually transmitted disease; and providing that physicians, physician assistants, pharmacists and advanced nurse practitioners are not subject to disciplinary action for providing certain treatment for sexually transmitted diseases for sexual partners of a patient.

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

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

## **CHAPTER 16. PUBLIC HEALTH.**

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

#### **§16-4F-1. Definitions.**

1       As used in this article, unless the context otherwise  
2       indicates, the following terms have the following meanings:

3       (1) “Department” means the West Virginia Department  
4       of Health and Human Resources.

5       (2) “Expedited partner therapy” means prescribing,  
6       dispensing, furnishing or otherwise providing prescription  
7       antibiotic drugs to the sexual partner or partners of a person  
8       clinically diagnosed as infected with a sexually transmitted  
9       disease without physical examination of the partner or partners.

10       (3) “Health care professional” means:

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

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

15 (C) A physician assistant licensed pursuant to the  
16 provisions of section sixteen, article three, chapter thirty of  
17 this code or article fourteen-a, chapter thirty of this code;

18 (D) An advanced practice registered nurse authorized  
19 with prescriptive authority pursuant to the provisions of  
20 section fifteen-a, article seven, chapter thirty of this code; or

21 (E) A pharmacist licensed pursuant to the provisions of  
22 article five, chapter thirty of this code.

23 (4) “Sexually transmitted disease” means a disease that  
24 may be treated by expedited partner therapy as determined by  
25 rule of the department.

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

1 (a) Notwithstanding any other provision of law to the  
2 contrary, a health care professional who makes a clinical  
3 diagnosis of a sexually transmitted disease may, but is not  
4 required to, provide expedited partner therapy for the  
5 treatment of the sexually transmitted disease if in the  
6 judgment of the health care professional the sexual partner is  
7 unlikely or unable to present for comprehensive health care,  
8 including evaluation, testing and treatment for sexually  
9 transmitted diseases. Expedited partner therapy is limited to  
10 a sexual partner who may have been exposed to a sexually  
11 transmitted disease within the previous sixty days and who is  
12 able to be contacted by the patient.

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

16 (c) A health care professional who provides expedited  
17 partner therapy shall provide counseling for the patient,

18 including advice that all women and symptomatic persons,  
19 and in particular women with symptoms suggestive of pelvic  
20 inflammatory disease, are encouraged to seek medical  
21 attention. The health care professional shall also provide in  
22 written or electronic format materials provided by the  
23 department to be given by the patient to his or her sexual  
24 partner.

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

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

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

8 (2) Informational materials for persons who are  
9 repeatedly 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.

**§16-4F-4. Limitation of liability; no requirement to fill  
improper prescriptions.**

1 (a) A health care professional who provides expedited  
2 partner therapy in good faith without fee or compensation  
3 under this article and provides counseling and written  
4 materials as required in subsection (c), section two of this  
5 article is not subject to civil or professional liability in

6 connection with the provision of the therapy, counseling and  
7 materials, except in the case of gross negligence or willful  
8 misconduct.

9 (b) A pharmacist or pharmacy is not required to fill a  
10 prescription that would cause that pharmacist or pharmacy to  
11 violate any provision of the provisions of article five, chapter  
12 thirty of this code.

#### **§16-4F-5. Rulemaking.**

1 The Secretary of the Department of Health and Human  
2 Resources shall propose rules for legislative approval in  
3 accordance with the provisions of article three, chapter  
4 twenty-nine-a of this code to designate certain diseases as  
5 sexually transmitted diseases which may be treated by  
6 expedited partner therapy. The department shall consider the  
7 recommendations and classifications of the federal  
8 Department of Health and Human Services, Centers for  
9 Disease Control and Prevention and other nationally  
10 recognized medical authorities in making these designations.

### **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

**§30-3-14. Professional discipline of physicians and podiatrists;  
reporting of information to board pertaining to  
medical professional liability and professional  
incompetence required; penalties; grounds for  
license denial and discipline of physicians and  
podiatrists; investigations; physical and mental  
examinations; hearings; sanctions; summary  
sanctions; reporting by the board; reapplication;  
civil and criminal immunity; voluntary limitation  
of license; probable cause determinations.**

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

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

22 (b) Upon request of the board, any medical peer review  
23 committee in this state shall report any information that may  
24 relate to the practice or performance of any physician or  
25 podiatrist known to that medical peer review committee.  
26 Copies of the requests for information from a medical peer  
27 review committee may be provided to the subject physician  
28 or podiatrist if, in the discretion of the board, the provision of  
29 such copies will not jeopardize the board's investigation. In  
30 the event that copies are provided, the subject physician or  
31 podiatrist is allowed fifteen days to comment on the  
32 requested information and such comments must be  
33 considered by the board.

34       The chief executive officer of every hospital shall, within  
35 sixty days after the completion of the hospital's formal  
36 disciplinary procedure and also within sixty days after the  
37 commencement of and again after the conclusion of any  
38 resulting legal action, report in writing to the board the name  
39 of any member of the medical staff or any other physician or  
40 podiatrist practicing in the hospital whose hospital privileges  
41 have been revoked, restricted, reduced or terminated for any  
42 cause, including resignation, together with all pertinent  
43 information relating to such action. The chief executive  
44 officer shall also report any other formal disciplinary action  
45 taken against any physician or podiatrist by the hospital upon  
46 the recommendation of its medical staff relating to  
47 professional ethics, medical incompetence, medical  
48 professional liability, moral turpitude or drug or alcohol  
49 abuse. Temporary suspension for failure to maintain records  
50 on a timely basis or failure to attend staff or section meetings  
51 need not be reported. Voluntary cessation of hospital  
52 privileges for reasons unrelated to professional competence  
53 or ethics need not be reported.

54       Any managed care organization operating in this state  
55 which provides a formal peer review process shall report in  
56 writing to the board, within sixty days after the completion of  
57 any formal peer review process and also within sixty days  
58 after the commencement of and again after the conclusion of  
59 any resulting legal action, the name of any physician or  
60 podiatrist whose credentialing has been revoked or not  
61 renewed by the managed care organization. The managed  
62 care organization shall also report in writing to the board any  
63 other disciplinary action taken against a physician or  
64 podiatrist relating to professional ethics, professional liability,  
65 moral turpitude or drug or alcohol abuse within sixty days  
66 after completion of a formal peer review process which  
67 results in the action taken by the managed care organization.  
68 For purposes of this subsection, "managed care organization"

69 means a plan that establishes, operates or maintains a network  
70 of health care providers who have entered into agreements  
71 with and been credentialed by the plan to provide health care  
72 services to enrollees or insureds to whom the plan has the  
73 ultimate obligation to arrange for the provision of or payment  
74 for health care services through organizational arrangements  
75 for ongoing quality assurance, utilization review programs or  
76 dispute resolutions.

77 Any professional society in this state comprised primarily  
78 of physicians or podiatrists which takes formal disciplinary  
79 action against a member relating to professional ethics,  
80 professional incompetence, medical professional liability,  
81 moral turpitude or drug or alcohol abuse shall report in  
82 writing to the board within sixty days of a final decision the  
83 name of the member, together with all pertinent information  
84 relating to the action.

85 Every person, partnership, corporation, association,  
86 insurance company, professional society or other  
87 organization providing professional liability insurance to a  
88 physician or podiatrist in this state, including the State Board  
89 of Risk and Insurance Management, shall submit to the board  
90 the following information within thirty days from any  
91 judgment or settlement of a civil or medical professional  
92 liability action excepting product liability actions: The name  
93 of the insured; the date of any judgment or settlement;  
94 whether any appeal has been taken on the judgment and, if  
95 so, by which party; the amount of any settlement or judgment  
96 against the insured; and other information required by the  
97 board.

98 Within thirty days from the entry of an order by a court  
99 in a medical professional liability action or other civil action  
100 in which a physician or podiatrist licensed by the board is  
101 determined to have rendered health care services below the

102 applicable standard of care, the clerk of the court in which the  
103 order was entered shall forward a certified copy of the order  
104 to the board.

105       Within thirty days after a person known to be a physician  
106 or podiatrist licensed or otherwise lawfully practicing  
107 medicine and surgery or podiatry in this state or applying to  
108 be licensed is convicted of a felony under the laws of this  
109 state or of any crime under the laws of this state involving  
110 alcohol or drugs in any way, including any controlled  
111 substance under state or federal law, the clerk of the court of  
112 record in which the conviction was entered shall forward to  
113 the board a certified true and correct abstract of record of the  
114 convicting court. The abstract shall include the name and  
115 address of the physician or podiatrist or applicant, the nature  
116 of the offense committed and the final judgment and sentence  
117 of the court.

118       Upon a determination of the board that there is probable  
119 cause to believe that any person, partnership, corporation,  
120 association, insurance company, professional society or other  
121 organization has failed or refused to make a report required  
122 by this subsection, the board shall provide written notice to  
123 the alleged violator stating the nature of the alleged violation  
124 and the time and place at which the alleged violator shall  
125 appear to show good cause why a civil penalty should not be  
126 imposed. The hearing shall be conducted in accordance with  
127 the provisions of article five, chapter twenty-nine-a of this  
128 code. After reviewing the record of the hearing, if the board  
129 determines that a violation of this subsection has occurred,  
130 the board shall assess a civil penalty of not less than \$1,000  
131 nor more than \$10,000 against the violator. The board shall  
132 notify any person so assessed of the assessment in writing  
133 and the notice shall specify the reasons for the assessment.  
134 If the violator fails to pay the amount of the assessment to the  
135 board within thirty days, the Attorney General may institute

136 a civil action in the circuit court of Kanawha County to  
137 recover the amount of the assessment. In any civil action, the  
138 court's review of the board's action shall be conducted in  
139 accordance with the provisions of section four, article five,  
140 chapter twenty-nine-a of this code. Notwithstanding any  
141 other provision of this article to the contrary, when there are  
142 conflicting views by recognized experts as to whether any  
143 alleged conduct breaches an applicable standard of care, the  
144 evidence must be clear and convincing before the board may  
145 find that the physician or podiatrist has demonstrated a lack  
146 of professional competence to practice with a reasonable  
147 degree of skill and safety for patients.

148 Any person may report to the board relevant facts about  
149 the conduct of any physician or podiatrist in this state which  
150 in the opinion of that person amounts to medical professional  
151 liability or professional incompetence.

152 The board shall provide forms for filing reports pursuant  
153 to this section. Reports submitted in other forms shall be  
154 accepted by the board.

155 The filing of a report with the board pursuant to any  
156 provision of this article, any investigation by the board or any  
157 disposition of a case by the board does not preclude any  
158 action by a hospital, other health care facility or professional  
159 society comprised primarily of physicians or podiatrists to  
160 suspend, restrict or revoke the privileges or membership of  
161 the physician or podiatrist.

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

168 (1) Attempting to obtain, obtaining, renewing or  
169 attempting to renew a license to practice medicine and  
170 surgery or podiatry by bribery, fraudulent misrepresentation  
171 or through known error of the board;

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

177 (3) False or deceptive advertising;

178 (4) Aiding, assisting, procuring or advising any  
179 unauthorized person to practice medicine and surgery or  
180 podiatry contrary to law;

181 (5) Making or filing a report that the person knows to be  
182 false; intentionally or negligently failing to file a report or  
183 record required by state or federal law; willfully impeding or  
184 obstructing the filing of a report or record required by state or  
185 federal law; or inducing another person to do any of the  
186 foregoing. The reports and records covered in this  
187 subdivision mean only those that are signed in the capacity as  
188 a licensed physician or podiatrist;

189 (6) Requesting, receiving or paying directly or indirectly  
190 a payment, rebate, refund, commission, credit or other form  
191 of profit or valuable consideration for the referral of patients  
192 to any person or entity in connection with providing medical  
193 or other health care services or clinical laboratory services,  
194 supplies of any kind, drugs, medication or any other medical  
195 goods, services or devices used in connection with medical or  
196 other health care services;

197 (7) Unprofessional conduct by any physician or podiatrist  
198 in referring a patient to any clinical laboratory or pharmacy in

199 which the physician or podiatrist has a proprietary interest  
200 unless the physician or podiatrist discloses in writing such  
201 interest to the patient. The written disclosure shall indicate that  
202 the patient may choose any clinical laboratory for purposes of  
203 having any laboratory work or assignment performed or any  
204 pharmacy for purposes of purchasing any prescribed drug or  
205 any other medical goods or devices used in connection with  
206 medical or other health care services;

207 As used in this subdivision, “proprietary interest” does not  
208 include an ownership interest in a building in which space is  
209 leased to a clinical laboratory or pharmacy at the prevailing rate  
210 under a lease arrangement that is not conditional upon the  
211 income or gross receipts of the clinical laboratory or pharmacy;

212 (8) Exercising influence within a patient-physician  
213 relationship for the purpose of engaging a patient in sexual  
214 activity;

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

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

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

223 (12) Exercising influence on a patient in such a way as to  
224 exploit the patient for financial gain of the physician or  
225 podiatrist or of a third party. Any influence includes, but is  
226 not limited to, the promotion or sale of services, goods,  
227 appliances or drugs;

228 (13) Prescribing, dispensing, administering, mixing or  
229 otherwise preparing a prescription drug, including any  
230 controlled substance under state or federal law, other than in  
231 good faith and in a therapeutic manner in accordance with  
232 accepted medical standards and in the course of the  
233 physician's or podiatrist's professional practice. A physician  
234 who discharges his or her professional obligation to relieve  
235 the pain and suffering and promote the dignity and autonomy  
236 of dying patients in his or her care and, in so doing, exceeds  
237 the average dosage of a pain relieving controlled substance,  
238 as defined in Schedules II and III of the Uniform Controlled  
239 Substance Act, does not violate this article. A physician  
240 licensed under this chapter may not be disciplined for  
241 providing expedited partner therapy in accordance with the  
242 provisions of article four-f, chapter sixteen of this code;

243 (14) Performing any procedure or prescribing any therapy  
244 that, by the accepted standards of medical practice in the  
245 community, would constitute experimentation on human  
246 subjects without first obtaining full, informed and written  
247 consent;

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

252 (16) Delegating professional responsibilities to a person  
253 when the physician or podiatrist delegating the  
254 responsibilities knows or has reason to know that the person  
255 is not qualified by training, experience or licensure to  
256 perform them;

257 (17) Violating any provision of this article or a rule or  
258 order of the board or failing to comply with a subpoena or  
259 subpoena duces tecum issued by the board;

260 (18) Conspiring with any other person to commit an act  
261 or committing an act that would tend to coerce, intimidate or  
262 preclude another physician or podiatrist from lawfully  
263 advertising his or her services;

264 (19) Gross negligence in the use and control of  
265 prescription forms;

266 (20) Professional incompetence; or

267 (21) The inability to practice medicine and surgery or  
268 podiatry with reasonable skill and safety due to physical or  
269 mental impairment, including deterioration through the aging  
270 process, loss of motor skill or abuse of drugs or alcohol. A  
271 physician or podiatrist adversely affected under this  
272 subdivision shall be afforded an opportunity at reasonable  
273 intervals to demonstrate that he or she may resume the  
274 competent practice of medicine and surgery or podiatry with  
275 reasonable skill and safety to patients. In any proceeding  
276 under this subdivision, neither the record of proceedings nor  
277 any orders entered by the board shall be used against the  
278 physician or podiatrist in any other proceeding.

279 (d) The board shall deny any application for a license or  
280 other authorization to practice medicine and surgery or  
281 podiatry in this state to any applicant who, and shall revoke  
282 the license of any physician or podiatrist licensed or  
283 otherwise lawfully practicing within this state who, is found  
284 guilty by any court of competent jurisdiction of any felony  
285 involving prescribing, selling, administering, dispensing,  
286 mixing or otherwise preparing any prescription drug,  
287 including any controlled substance under state or federal law,  
288 for other than generally accepted therapeutic purposes.  
289 Presentation to the board of a certified copy of the guilty  
290 verdict or plea rendered in the court is sufficient proof thereof  
291 for the purposes of this article. A plea of nolo contendere has

292 the same effect as a verdict or plea of guilt. Upon application  
293 of a physician that has had his or her license revoked because  
294 of a drug-related felony conviction, upon completion of any  
295 sentence of confinement, parole, probation or other court-  
296 ordered supervision and full satisfaction of any fines,  
297 judgments or other fees imposed by the sentencing court, the  
298 board may issue the applicant a new license upon a finding  
299 that the physician is, except for the underlying conviction,  
300 otherwise qualified to practice medicine: *Provided*, That the  
301 board may place whatever terms, conditions or limitations it  
302 deems appropriate upon a physician licensed pursuant to this  
303 subsection.

304 (e) The board may refer any cases coming to its attention  
305 to an appropriate committee of an appropriate professional  
306 organization for investigation and report. Except for  
307 complaints related to obtaining initial licensure to practice  
308 medicine and surgery or podiatry in this state by bribery or  
309 fraudulent misrepresentation, any complaint filed more than  
310 two years after the complainant knew, or in the exercise of  
311 reasonable diligence should have known, of the existence of  
312 grounds for the complaint shall be dismissed: *Provided*, That  
313 in cases of conduct alleged to be part of a pattern of similar  
314 misconduct or professional incapacity that, if continued,  
315 would pose risks of a serious or substantial nature to the  
316 physician's or podiatrist's current patients, the investigating  
317 body may conduct a limited investigation related to the  
318 physician's or podiatrist's current capacity and qualification  
319 to practice and may recommend conditions, restrictions or  
320 limitations on the physician's or podiatrist's license to  
321 practice that it considers necessary for the protection of the  
322 public. Any report shall contain recommendations for any  
323 necessary disciplinary measures and shall be filed with the  
324 board within ninety days of any referral. The  
325 recommendations shall be considered by the board and the  
326 case may be further investigated by the board. The board

327 after full investigation shall take whatever action it considers  
328 appropriate, as provided in this section.

329 (f) The investigating body, as provided in subsection (e)  
330 of this section, may request and the board under any  
331 circumstances may require a physician or podiatrist or person  
332 applying for licensure or other authorization to practice  
333 medicine and surgery or podiatry in this state to submit to a  
334 physical or mental examination by a physician or physicians  
335 approved by the board. A physician or podiatrist submitting  
336 to an examination has the right, at his or her expense, to  
337 designate another physician to be present at the examination  
338 and make an independent report to the investigating body or  
339 the board. The expense of the examination shall be paid by  
340 the board. Any individual who applies for or accepts the  
341 privilege of practicing medicine and surgery or podiatry in  
342 this state is considered to have given his or her consent to  
343 submit to all examinations when requested to do so in writing  
344 by the board and to have waived all objections to the  
345 admissibility of the testimony or examination report of any  
346 examining physician on the ground that the testimony or  
347 report is privileged communication. If a person fails or  
348 refuses to submit to an examination under circumstances  
349 which the board finds are not beyond his or her control,  
350 failure or refusal is prima facie evidence of his or her  
351 inability to practice medicine and surgery or podiatry  
352 competently and in compliance with the standards of  
353 acceptable and prevailing medical practice.

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

357 (h) In every disciplinary or licensure denial action, the  
358 board shall furnish the physician or podiatrist or applicant  
359 with written notice setting out with particularity the reasons

360 for its action. Disciplinary and licensure denial hearings shall  
361 be conducted in accordance with the provisions of article  
362 five, chapter twenty-nine-a of this code. However, hearings  
363 shall be heard upon sworn testimony and the rules of  
364 evidence for trial courts of record in this state shall apply to  
365 all hearings. A transcript of all hearings under this section  
366 shall be made, and the respondent may obtain a copy of the  
367 transcript at his or her expense. The physician or podiatrist  
368 has the right to defend against any charge by the introduction  
369 of evidence, the right to be represented by counsel, the right  
370 to present and cross examine witnesses and the right to have  
371 subpoenas and subpoenas duces tecum issued on his or her  
372 behalf for the attendance of witnesses and the production of  
373 documents. The board shall make all its final actions public.  
374 The order shall contain the terms of all action taken by the  
375 board.

376 (i) In disciplinary actions in which probable cause has  
377 been found by the board, the board shall, within twenty days  
378 of the date of service of the written notice of charges or sixty  
379 days prior to the date of the scheduled hearing, whichever is  
380 sooner, provide the respondent with the complete identity,  
381 address and telephone number of any person known to the  
382 board with knowledge about the facts of any of the charges;  
383 provide a copy of any statements in the possession of or  
384 under the control of the board; provide a list of proposed  
385 witnesses with addresses and telephone numbers, with a brief  
386 summary of his or her anticipated testimony; provide  
387 disclosure of any trial expert pursuant to the requirements of  
388 Rule 26(b)(4) of the West Virginia Rules of Civil Procedure;  
389 provide inspection and copying of the results of any reports  
390 of physical and mental examinations or scientific tests or  
391 experiments; and provide a list and copy of any proposed  
392 exhibit to be used at the hearing: *Provided*, That the board  
393 shall not be required to furnish or produce any materials  
394 which contain opinion work product information or would be

395 a violation of the attorney-client privilege. Within twenty  
396 days of the date of service of the written notice of charges,  
397 the board shall disclose any exculpatory evidence with a  
398 continuing duty to do so throughout the disciplinary process.  
399 Within thirty days of receipt of the board's mandatory  
400 discovery, the respondent shall provide the board with the  
401 complete identity, address and telephone number of any  
402 person known to the respondent with knowledge about the  
403 facts of any of the charges; provide a list of proposed  
404 witnesses with addresses and telephone numbers, to be called  
405 at hearing, with a brief summary of his or her anticipated  
406 testimony; provide disclosure of any trial expert pursuant to  
407 the requirements of Rule 26(b)(4) of the West Virginia Rules  
408 of Civil Procedure; provide inspection and copying of the  
409 results of any reports of physical and mental examinations or  
410 scientific tests or experiments; and provide a list and copy of  
411 any proposed exhibit to be used at the hearing.

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

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

418 (2) Administer a public reprimand;

419 (3) Suspend, limit or restrict his or her license or other  
420 authorization to practice medicine and surgery or podiatry for  
421 not more than five years, including limiting the practice of  
422 that person to, or by the exclusion of, one or more areas of  
423 practice, including limitations on practice privileges;

424 (4) Revoke his or her license or other authorization to  
425 practice medicine and surgery or podiatry or to prescribe or

426 dispense controlled substances for a period not to exceed ten  
427 years;

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

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

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

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

439 (k) Notwithstanding the provisions of section eight,  
440 article one, chapter thirty of this code, if the board determines  
441 the evidence in its possession indicates that a physician's or  
442 podiatrist's continuation in practice or unrestricted practice  
443 constitutes an immediate danger to the public, the board may  
444 take any of the actions provided in subsection (j) of this  
445 section on a temporary basis and without a hearing if  
446 institution of proceedings for a hearing before the board are  
447 initiated simultaneously with the temporary action and begin  
448 within fifteen days of the action. The board shall render its  
449 decision within five days of the conclusion of a hearing under  
450 this subsection.

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

456 competent evidence presented to it in support of a motion for  
457 remand that there is newly discovered evidence of such a  
458 character as ought to produce an opposite result at a second  
459 hearing on the merits before the board and:

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

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

465 A person may not practice medicine and surgery or  
466 podiatry or deliver health care services in violation of any  
467 disciplinary order revoking, suspending or limiting his or her  
468 license while any appeal is pending. Within sixty days, the  
469 board shall report its final action regarding restriction,  
470 limitation, suspension or revocation of the license of a  
471 physician or podiatrist, limitation on practice privileges or  
472 other disciplinary action against any physician or podiatrist  
473 to all appropriate state agencies, appropriate licensed health  
474 facilities and hospitals, insurance companies or associations  
475 writing medical malpractice insurance in this state, the  
476 American Medical Association, the American Podiatry  
477 Association, professional societies of physicians or  
478 podiatrists in the state and any entity responsible for the fiscal  
479 administration of Medicare and Medicaid.

480 (m) Any person against whom disciplinary action has  
481 been taken under the provisions of this article shall, at  
482 reasonable intervals, be afforded an opportunity to  
483 demonstrate that he or she can resume the practice of  
484 medicine and surgery or podiatry on a general or limited  
485 basis. At the conclusion of a suspension, limitation or  
486 restriction period the physician or podiatrist may resume  
487 practice if the board has so ordered.

488 (n) Any entity, organization or person, including the  
489 board, any member of the board, its agents or employees and  
490 any entity or organization or its members referred to in this  
491 article, any insurer, its agents or employees, a medical peer  
492 review committee and a hospital governing board, its  
493 members or any committee appointed by it acting without  
494 malice and without gross negligence in making any report or  
495 other information available to the board or a medical peer  
496 review committee pursuant to law and any person acting  
497 without malice and without gross negligence who assists in  
498 the organization, investigation or preparation of any such  
499 report or information or assists the board or a hospital  
500 governing body or any committee in carrying out any of its  
501 duties or functions provided by law is immune from civil or  
502 criminal liability, except that the unlawful disclosure of  
503 confidential information possessed by the board is a  
504 misdemeanor as provided in this article.

505 (o) A physician or podiatrist may request in writing to the  
506 board a limitation on or the surrendering of his or her license  
507 to practice medicine and surgery or podiatry or other  
508 appropriate sanction as provided in this section. The board  
509 may grant the request and, if it considers it appropriate, may  
510 waive the commencement or continuation of other  
511 proceedings under this section. A physician or podiatrist  
512 whose license is limited or surrendered or against whom  
513 other action is taken under this subsection may, at reasonable  
514 intervals, petition for removal of any restriction or limitation  
515 on or for reinstatement of his or her license to practice  
516 medicine and surgery or podiatry.

517 (p) In every case considered by the board under this  
518 article regarding discipline or licensure, whether initiated by  
519 the board or upon complaint or information from any person  
520 or organization, the board shall make a preliminary  
521 determination as to whether probable cause exists to

522 substantiate charges of disqualification due to any reason set  
523 forth in subsection (c) of this section. If probable cause is  
524 found to exist, all proceedings on the charges shall be open  
525 to the public who are entitled to all reports, records and  
526 nondeliberative materials introduced at the hearing, including  
527 the record of the final action taken: *Provided*, That any  
528 medical records, which were introduced at the hearing and  
529 which pertain to a person who has not expressly waived his  
530 or her right to the confidentiality of the records, may not be  
531 open to the public nor is the public entitled to the records.

532 (q) If the board receives notice that a physician or  
533 podiatrist has been subjected to disciplinary action or has had  
534 his or her credentials suspended or revoked by the board, a  
535 hospital or a professional society, as defined in subsection (b)  
536 of this section, for three or more incidents during a five-year  
537 period, the board shall require the physician or podiatrist to  
538 practice under the direction of a physician or podiatrist  
539 designated by the board for a specified period of time to be  
540 established by the board.

541 (r) Notwithstanding any other provisions of this article,  
542 the board may, at any time, on its own motion, or upon  
543 motion by the complainant, or upon motion by the physician  
544 or podiatrist, or by stipulation of the parties, refer the matter  
545 to mediation. The board shall obtain a list from the West  
546 Virginia State Bar's mediator referral service of certified  
547 mediators with expertise in professional disciplinary matters.  
548 The board and the physician or podiatrist may choose a  
549 mediator from that list. If the board and the physician or  
550 podiatrist are unable to agree on a mediator, the board shall  
551 designate a mediator from the list by neutral rotation. The  
552 mediation shall not be considered a proceeding open to the  
553 public and any reports and records introduced at the  
554 mediation shall not become part of the public record. The  
555 mediator and all participants in the mediation shall maintain

556 and preserve the confidentiality of all mediation proceedings  
557 and records. The mediator may not be subpoenaed or called  
558 to testify or otherwise be subject to process requiring  
559 disclosure of confidential information in any proceeding  
560 relating to or arising out of the disciplinary or licensure  
561 matter mediated: *Provided*, That any confidentiality  
562 agreement and any written agreement made and signed by the  
563 parties as a result of mediation may be used in any  
564 proceedings subsequently instituted to enforce the written  
565 agreement. The agreements may be used in other  
566 proceedings if the parties agree in writing.

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

1 (a) As used in this section:

2 (1) “Approved program” means an educational program  
3 for physician assistants approved and accredited by the  
4 Committee on Accreditation of Allied Health Education  
5 Programs or its successor;

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

9 (3) “Physician assistant” means an assistant to a physician  
10 who is a graduate of an approved program of instruction in

11 primary health care or surgery, has attained a baccalaureate  
12 or master's degree, has passed the national certification  
13 examination and is qualified to perform direct patient care  
14 services under the supervision of a physician;

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

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

27 (b) The board shall promulgate rules pursuant to the  
28 provisions of article three, chapter twenty-nine-a of this code  
29 governing the extent to which physician assistants may  
30 function in this state. The rules shall provide that the  
31 physician assistant is limited to the performance of those  
32 services for which he or she is trained and that he or she  
33 performs only under the supervision and control of a  
34 physician permanently licensed in this state but that  
35 supervision and control does not require the personal  
36 presence of the supervising physician at the place or places  
37 where services are rendered if the physician assistant's  
38 normal place of employment is on the premises of the  
39 supervising physician. The supervising physician may send  
40 the physician assistant off the premises to perform duties  
41 under his or her direction but a separate place of work for the  
42 physician assistant may not be established. In promulgating  
43 the rules, the board shall allow the physician assistant to

44 perform those procedures and examinations and, in the case  
45 of certain authorized physician assistants, to prescribe at the  
46 direction of his or her supervising physician, in accordance  
47 with subsection (r) of this section, those categories of drugs  
48 submitted to it in the job description required by this section.  
49 Certain authorized physician assistants may pronounce death  
50 in accordance with the rules proposed by the board which  
51 receive legislative approval. The board shall compile and  
52 publish an annual report that includes a list of currently  
53 licensed physician assistants and their supervising  
54 physician(s) and location in the state.

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

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

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

66 (3) Is of good moral character; and

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

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

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

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

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

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

84 (1) He or she is a graduate of an approved program of  
85 instruction in primary health care or surgery prior to July 1,  
86 1994, and has passed the certifying examination for a  
87 physician assistant administered by the National Commission  
88 on Certification of Physician Assistants and has maintained  
89 certification by that commission so as to be currently  
90 certified; or

91 (2) He or she had been certified by the board as a  
92 physician assistant then classified as Type B prior to July 1,  
93 1983.

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

98 (g) When a graduate of an approved program who has  
99 successfully passed the National Commission on Certification  
100 of Physician Assistants' certifying examination submits an  
101 application to the board for a physician assistant license,  
102 accompanied by a job description as referenced by this  
103 section, and a \$50 temporary license fee, and the application

104 is complete, the board shall issue to that applicant a  
105 temporary license allowing that applicant to function as a  
106 physician assistant.

107 (h) When a graduate of an approved program submits an  
108 application to the board for a physician assistant license,  
109 accompanied by a job description as referenced by this  
110 section, and a \$50 temporary license fee, and the application  
111 is complete, the board shall issue to the applicant a temporary  
112 license allowing the applicant to function as a physician  
113 assistant until the applicant successfully passes the National  
114 Commission on Certification of Physician Assistants'  
115 certifying examination so long as the applicant sits for and  
116 obtains a passing score on the examination next offered  
117 following graduation from the approved program.

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

121 (j) A physician assistant who has not been certified by the  
122 National Commission on Certification of Physician Assistants  
123 will be restricted to work under the direct supervision of the  
124 supervising physician.

125 (k) A physician assistant who has been issued a  
126 temporary license shall, within thirty days of receipt of  
127 written notice from the National Commission on Certification  
128 of Physician Assistants of his or her performance on the  
129 certifying examination, notify the board in writing of his or  
130 her results. In the event of failure of that examination, the  
131 temporary license shall terminate automatically and the board  
132 shall so notify the physician assistant in writing.

133 (l) In the event a physician assistant fails a recertification  
134 examination of the National Commission on Certification of

135 Physician Assistants and is no longer certified, the physician  
136 assistant shall immediately notify his or her supervising  
137 physician or physicians and the board in writing. The  
138 physician assistant shall immediately cease practicing, the  
139 license shall terminate automatically and the physician  
140 assistant is not eligible for reinstatement until he or she has  
141 obtained a passing score on the examination.

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

155 (n) The supervising physician is responsible for  
156 observing, directing and evaluating the work, records and  
157 practices of each physician assistant performing under his or  
158 her supervision. He or she shall notify the board in writing  
159 of any termination of his or her supervisory relationship with  
160 a physician assistant within ten days of the termination. The  
161 legal responsibility for any physician assistant remains with  
162 the supervising physician at all times including occasions  
163 when the assistant under his or her direction and supervision  
164 aids in the care and treatment of a patient in a health care  
165 facility. In his or her absence, a supervising physician must  
166 designate an alternate supervising physician but the legal  
167 responsibility remains with the supervising physician at all  
168 times. A health care facility is not legally responsible for the

169 actions or omissions of the physician assistant unless the  
170 physician assistant is an employee of the facility.

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

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

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

196 (r) A physician assistant may write or sign prescriptions  
197 or transmit prescriptions by word of mouth, telephone or  
198 other means of communication at the direction of his or her  
199 supervising physician. A fee of \$50 will be charged for  
200 prescription-writing privileges. The board shall promulgate

201 rules pursuant to the provisions of article three, chapter  
202 twenty-nine-a of this code governing the eligibility and extent  
203 to which a physician assistant may prescribe at the direction  
204 of the supervising physician. The rules shall include, but not  
205 be limited to, the following:

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

209 (A) Schedules I and II of the Uniform Controlled  
210 Substances Act, antineoplastic, radiopharmaceuticals, general  
211 anesthetics and radiographic contrast materials shall be  
212 excluded from the formulary;

213 (B) Drugs listed under Schedule III shall be limited to a  
214 72-hour supply without refill;

215 (C) In addition to the above referenced provisions and  
216 restrictions and at the direction of a supervising physician,  
217 the rules shall permit the prescribing of an annual supply of  
218 any drug, with the exception of controlled substances, which  
219 is prescribed for the treatment of a chronic condition, other  
220 than chronic pain management. For the purposes of this  
221 section, a “chronic condition” is a condition which lasts three  
222 months or more, generally cannot be prevented by vaccines,  
223 can be controlled but not cured by medication and does not  
224 generally disappear. These conditions, with the exception of  
225 chronic pain, include, but are not limited to, arthritis, asthma,  
226 cardiovascular disease, cancer, diabetes, epilepsy and  
227 seizures and obesity. The prescriber authorized in this  
228 section shall note on the prescription the chronic disease  
229 being treated.

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

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

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

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

245 (5) A requirement that to maintain prescription privileges,  
246 a physician assistant shall continue to maintain national  
247 certification as a physician assistant and, in meeting the  
248 national certification requirements, shall complete a  
249 minimum of ten hours of continuing education in rational  
250 drug therapy in each certification period. Nothing in this  
251 subsection permits a physician assistant to independently  
252 prescribe or dispense drugs; and

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

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

262 (t) A physician assistant may not sign any prescription,  
263 except in the case of an authorized physician assistant at the  
264 direction of his or her supervising physician in accordance  
265 with the provisions of subsection (r) of this section. A  
266 physician assistant may not perform any service that his or  
267 her supervising physician is not qualified to perform. A  
268 physician assistant may not perform any service that is not  
269 included in his or her job description and approved by the  
270 board as provided in this section.

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

276 (v) Each application for licensure submitted by a licensed  
277 supervising physician under this section is to be accompanied  
278 by a fee of \$200. A fee of \$100 is to be charged for the  
279 biennial renewal of the license. A fee of \$50 is to be charged  
280 for any change or addition of supervising physician or change  
281 or addition of job location. A fee of \$50 will be charged for  
282 prescriptive writing privileges.

283 (w) As a condition of renewal of physician assistant  
284 license, each physician assistant shall provide written  
285 documentation of participation in and successful completion  
286 during the preceding two-year period of continuing  
287 education, in the number of hours specified by the board by  
288 rule, designated as Category I by the American Medical  
289 Association, American Academy of Physician Assistants or  
290 the Academy of Family Physicians and continuing education,  
291 in the number of hours specified by the board by rule,  
292 designated as Category II by the Association or either  
293 Academy.

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294 (x) Notwithstanding any provision of this chapter to the  
295 contrary, failure to timely submit the required written  
296 documentation results in the automatic expiration of any  
297 license as a physician assistant until the written  
298 documentation is submitted to and approved by the board.

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

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

305 (2) Pay a renewal fee; and

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

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

311 (1) Apply for a new license;

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

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

316 (aa) It is unlawful for any physician assistant to represent  
317 to any person that he or she is a physician, surgeon or  
318 podiatrist. A person who violates the provisions of this  
319 subsection is guilty of a felony and, upon conviction thereof,  
320 shall be imprisoned in a state correctional facility for not less

321 than one nor more than two years, or be fined not more than  
322 \$2,000, or both fined and imprisoned.

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

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS,  
PHARMACY INTERNS AND PHARMACIES.**

**§30-5-3. When licensed pharmacist required; person not  
licensed pharmacist, pharmacy technician or  
licensed intern not to compound prescriptions or  
dispense poisons or narcotics; licensure of  
interns; prohibiting the dispensing of  
prescription orders in absence of  
practitioner-patient relationship.**

1 (a) It is unlawful for any person not a pharmacist, or who  
2 does not employ a pharmacist, to conduct any pharmacy or  
3 store for the purpose of retailing, compounding or dispensing  
4 prescription drugs or prescription devices.

5 (b) It is unlawful for the proprietor of any store or  
6 pharmacy, any “ambulatory health care facility”, as that term  
7 is defined in section one, article five-b, chapter sixteen of this  
8 code, that offers pharmaceutical care, or a facility operated to  
9 provide health care or mental health care services free of  
10 charge or at a reduced rate and that operates a charitable  
11 clinic pharmacy to permit any person not a pharmacist to  
12 compound or dispense prescriptions or prescription refills or  
13 to retail or dispense the poisons and narcotic drugs named in  
14 sections two, three and six, article eight, chapter sixteen of  
15 this code: *Provided*, That a licensed intern may compound  
16 and dispense prescriptions or prescription refills under the  
17 direct supervision of a pharmacist: *Provided, however*, That

18 registered pharmacy technicians may assist in the preparation  
19 and dispensing of prescriptions or prescription refills,  
20 including, but not limited to, reconstitution of liquid  
21 medications, typing and affixing labels under the direct  
22 supervision of a licensed pharmacist.

23 (c) It is the duty of a pharmacist or employer who  
24 employs an intern to license the intern with the board within  
25 ninety days after employment. The board shall furnish proper  
26 forms for this purpose and shall issue a certificate to the  
27 intern upon licensure.

28 (d) The experience requirement for licensure as a  
29 pharmacist shall be computed from the date certified by the  
30 supervising pharmacist as the date of entering the internship.  
31 If the internship is not registered with the Board of Pharmacy,  
32 then the intern shall receive no credit for the experience when  
33 he or she makes application for examination for licensure as  
34 a pharmacist: *Provided*, That credit may be given for the  
35 unregistered experience if an appeal is made and evidence  
36 produced showing experience was obtained but not registered  
37 and that failure to register the internship experience was not  
38 the fault of the intern.

39 (e) An intern having served part or all of his or her  
40 internship in a pharmacy in another state or foreign country  
41 shall be given credit for the same when the affidavit of his or  
42 her internship is signed by the pharmacist under whom he or  
43 she served, and it shows the dates and number of hours  
44 served in the internship and when the affidavit is attested by  
45 the secretary of the State Board of Pharmacy of the state or  
46 country where the internship was served.

47 (f) Up to one third of the experience requirement for  
48 licensure as a pharmacist may be fulfilled by an internship in  
49 a foreign country.

50 (g) No pharmacist may compound or dispense any  
51 prescription order when he or she has knowledge that the  
52 prescription was issued by a practitioner without establishing  
53 a valid practitioner-patient relationship. An online or  
54 telephonic evaluation by questionnaire, or an online or  
55 telephonic consultation, is inadequate to establish a valid  
56 practitioner-patient relationship: *Provided*, That this  
57 prohibition does not apply:

58 (1) In a documented emergency;

59 (2) In an on-call or cross-coverage situation;

60 (3) For the treatment of sexually transmitted diseases by  
61 expedited partner therapy as set forth in article four-f, chapter  
62 sixteen of this code; or

63 (4) Where patient care is rendered in consultation with  
64 another practitioner who has an ongoing relationship with the  
65 patient and who has agreed to supervise the patient's  
66 treatment, including the use of any prescribed medications.

## **ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**

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

1 (a) The board may, in its discretion, authorize an  
2 advanced practice registered nurse to prescribe prescription  
3 drugs in a collaborative relationship with a physician licensed  
4 to practice in West Virginia and in accordance with  
5 applicable state and federal laws. An authorized advanced  
6 practice registered nurse may write or sign prescriptions or  
7 transmit prescriptions verbally or by other means of  
8 communication.

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

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

21 (2) Statements describing the individual and shared  
22 responsibilities of the advanced practice registered nurse and  
23 the physician pursuant to the collaborative agreement  
24 between them;

25 (3) Periodic and joint evaluation of prescriptive practice;  
26 and

27 (4) Periodic and joint review and updating of the written  
28 guidelines or protocols.

29 (c) The board shall promulgate legislative rules in  
30 accordance with the provisions of chapter twenty-nine-a of  
31 this code governing the eligibility and extent to which an  
32 advanced practice registered nurse may prescribe drugs.  
33 Such rules shall provide, at a minimum, a state formulary  
34 classifying those categories of drugs which shall not be  
35 prescribed by advanced practice registered nurse including,  
36 but not limited to, Schedules I and II of the Uniform  
37 Controlled Substances Act, antineoplastics,  
38 radiopharmaceuticals and general anesthetics. Drugs listed  
39 under Schedule III shall be limited to a 72-hour supply

40 without refill. The rules shall also include a provision that  
41 advanced nurse practitioners licensed under this chapter may  
42 not be disciplined for providing expedited partner therapy in  
43 accordance with the provisions of article four-f, chapter  
44 sixteen of this code. In addition to the above-referenced  
45 provisions and restrictions and pursuant to a collaborative  
46 agreement as set forth in subsections (a) and (b) of this  
47 section, the rules shall permit the prescribing of an annual  
48 supply of any drug, with the exception of controlled  
49 substances, which is prescribed for the treatment of a chronic  
50 condition, other than chronic pain management. For the  
51 purposes of this section, a “chronic condition” is a condition  
52 which lasts three months or more, generally cannot be  
53 prevented by vaccines, can be controlled but not cured by  
54 medication and does not generally disappear. These  
55 conditions, with the exception of chronic pain, include, but  
56 are not limited to, arthritis, asthma, cardiovascular disease,  
57 cancer, diabetes, epilepsy and seizures and obesity. The  
58 prescriber authorized in this section shall note on the  
59 prescription the chronic disease being treated.

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

62 (e) The board shall transmit to the Board of Pharmacy a  
63 list of all advanced practice registered nurses with  
64 prescriptive authority. The list shall include:

65 (1) The name of the authorized advanced practice  
66 registered nurse;

67 (2) The prescriber’s identification number assigned by the  
68 board; and

69 (3) The effective date of prescriptive authority.

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

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

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

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

6 (2) Conviction of a misdemeanor involving moral  
7 turpitude;

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

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

12 (5) Gross malpractice;

13 (6) Advertising by means of knowingly false or deceptive  
14 statements;

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

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

19 (b) The board shall also have the power to suspend or  
20 revoke for cause any certificate of authorization issued by it.

21 It shall have the power to reinstate any certificate of  
22 authorization suspended or revoked by it.

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

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

**§30-14A-1. Osteopathic physician assistant to osteopathic  
physicians and surgeons; definitions; Board of  
Osteopathy rules; licensure; temporary  
licensure; renewal of license; job description  
required; revocation or suspension of license;  
responsibilities of the supervising physician;  
legal responsibility for osteopathic physician  
assistants; reporting of disciplinary  
procedures; identification; limitation on  
employment and duties; fees; unlawful use of  
the title of osteopathic physician assistant;  
unlawful representation of an osteopathic  
physician assistant as a physician; criminal  
penalties.**

1 (a) As used in this section:

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

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

9           (3) “Direct supervision” means the presence of the  
10 supervising physician at the site where the osteopathic  
11 physician assistant performs medical duties.

12           (4) “Health care facility” means any licensed hospital,  
13 nursing home, extended care facility, state health or mental  
14 institution, clinic or physician’s office.

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

24           (6) “Osteopathic physician assistant” means an assistant  
25 to an osteopathic physician who is a graduate of an approved  
26 program of instruction in primary care or surgery, has passed  
27 the National Certification Examination and is qualified to  
28 perform direct patient care services under the supervision of  
29 an osteopathic physician.

30           (7) “Supervising physician” means a doctor of osteopathy  
31 permanently licensed in this state who assumes legal and  
32 supervising responsibility for the work or training of an  
33 osteopathic physician assistant under his or her supervision.

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

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

41 (2) The osteopathic physician assistant performs only  
42 under the supervision and control of an osteopathic physician  
43 permanently licensed in this state but such supervision and  
44 control does not require the personal presence of the  
45 supervising physician at the place or places where services  
46 are rendered if the osteopathic physician assistant's normal  
47 place of employment is on the premises of the supervising  
48 physician. The supervising physician may send the  
49 osteopathic physician assistant off the premises to perform  
50 duties under his or her direction, but a separate place of work  
51 for the osteopathic physician assistant may not be established;

52 (3) The board may allow the osteopathic physician  
53 assistant to perform those procedures and examinations and,  
54 in the case of authorized osteopathic physician assistants, to  
55 prescribe at the direction of his or her supervising physician  
56 in accordance with subsections (p) and (q) of this section  
57 those categories of drugs submitted to it in the job description  
58 required by subsection (f) of this section; and

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

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

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

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

72 (2) Has passed the examination for a primary care or  
73 surgery physician assistant administered by the National  
74 Board of Medical Examiners on behalf of the National  
75 Commission on Certification of Physician Assistants; and

76 (3) Is of good moral character.

77 (e) When a graduate of an approved program submits an  
78 application to the board, accompanied by a job description in  
79 conformity with this section, for an osteopathic physician  
80 assistant license, the board may issue to the applicant a  
81 temporary license allowing the applicant to function as an  
82 osteopathic physician assistant for the period of one year.  
83 The temporary license may be renewed for one additional  
84 year upon the request of the supervising physician. An  
85 osteopathic physician assistant who has not been certified as  
86 such by the National Board of Medical Examiners on behalf  
87 of the National Commission on Certification of Physician  
88 Assistants will be restricted to work under the direct  
89 supervision of the supervising physician.

90 (f) An osteopathic physician applying to the board to  
91 supervise an osteopathic physician assistant shall provide a  
92 job description that sets forth the range of medical services to  
93 be provided by the assistant. Before an osteopathic physician  
94 assistant can be employed or otherwise use his or her skills,  
95 the supervising physician must obtain approval of the job  
96 description from the board. The board may revoke or  
97 suspend a license of an assistant to a physician for cause,  
98 after giving the person an opportunity to be heard in the  
99 manner provided by sections eight and nine, article one of  
100 this chapter.

101 (g) The supervising physician is responsible for  
102 observing, directing and evaluating the work records and  
103 practices of each osteopathic physician assistant performing  
104 under his or her supervision. He or she shall notify the board  
105 in writing of any termination of his or her supervisory  
106 relationship with an osteopathic physician assistant within ten  
107 days of his or her termination. The legal responsibility for  
108 any osteopathic physician assistant remains with the  
109 supervising physician at all times, including occasions when  
110 the assistant, under his or her direction and supervision, aids  
111 in the care and treatment of a patient in a health care facility.  
112 In his or her absence, a supervising physician must designate  
113 an alternate supervising physician but the legal responsibility  
114 remains with the supervising physician at all times. A health  
115 care facility is not legally responsible for the actions or  
116 omissions of an osteopathic physician assistant unless the  
117 osteopathic physician assistant is an employee of the facility.

118 (h) The acts or omissions of an osteopathic physician  
119 assistant employed by health care facilities providing in-  
120 patient services are the legal responsibility of the facilities.  
121 Osteopathic physician assistants employed by such facilities  
122 in staff positions shall be supervised by a permanently  
123 licensed physician.

124 (i) A health care facility shall report in writing to the  
125 board within sixty days after the completion of the facility's  
126 formal disciplinary procedure, and after the commencement  
127 and the conclusion of any resulting legal action, the name of  
128 an osteopathic physician assistant practicing in the facility  
129 whose privileges at the facility have been revoked, restricted,  
130 reduced or terminated for any cause including resignation,  
131 together with all pertinent information relating to such action.  
132 The health care facility shall also report any other formal  
133 disciplinary action taken against an osteopathic physician  
134 assistant by the facility relating to professional ethics,

135 medical incompetence, medical malpractice, moral turpitude  
136 or drug or alcohol abuse. Temporary suspension for failure  
137 to maintain records on a timely basis or failure to attend staff  
138 or section meetings need not be reported.

139 (j) When functioning as an osteopathic physician  
140 assistant, the osteopathic physician assistant shall wear a  
141 name tag that identifies him or her as a physician assistant.

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

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

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

153 (4) The provisions of this section do not authorize an  
154 osteopathic physician assistant to perform any specific  
155 function or duty delegated by this code to those persons  
156 licensed as chiropractors, dentists, registered nurses, licensed  
157 practical nurses, dental hygienists, optometrists or  
158 pharmacists or certified as nurse anesthetists.

159 (l) An application for license or renewal of license shall  
160 be accompanied by payment of a fee established by  
161 legislative rule of the Board of Osteopathy pursuant to the  
162 provisions of article three, chapter twenty-nine-a of this  
163 code.

164 (m) As a condition of renewal of an osteopathic physician  
165 assistant license, each osteopathic physician assistant shall  
166 provide written documentation satisfactory to the board of  
167 participation in and successful completion of continuing  
168 education in courses approved by the Board of Osteopathy  
169 for the purposes of continuing education of osteopathic  
170 physician assistants. The osteopathy board shall propose  
171 legislative rules for minimum continuing hours necessary for  
172 the renewal of a license. These rules shall provide for  
173 minimum hours equal to or more than the hours necessary for  
174 national certification. Notwithstanding any provision of this  
175 chapter to the contrary, failure to timely submit the required  
176 written documentation results in the automatic suspension of  
177 a license as an osteopathic physician assistant until the  
178 written documentation is submitted to and approved by the  
179 board.

180 (n) It is unlawful for any person who is not licensed by  
181 the board as an osteopathic physician assistant to use the title  
182 of osteopathic physician assistant or to represent to any other  
183 person that he or she is an osteopathic physician assistant. A  
184 person who violates the provisions of this subsection is guilty  
185 of a misdemeanor and, upon conviction thereof, shall be fined  
186 not more than \$2,000.

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

194 (p) An osteopathic physician assistant may write or sign  
195 prescriptions or transmit prescriptions by word of mouth,  
196 telephone or other means of communication at the direction of

197 his or her supervising physician. The board shall propose rules  
198 for legislative approval in accordance with the provisions of  
199 article three, chapter twenty-nine-a of this code governing the  
200 eligibility and extent to which an osteopathic physician assistant  
201 may prescribe at the direction of the supervising physician. The  
202 rules shall provide for a state formulary classifying  
203 pharmacologic categories of drugs which may be prescribed by  
204 such an osteopathic physician assistant. In classifying such  
205 pharmacologic categories, those categories of drugs which shall  
206 be excluded include, but are not limited to, Schedules I and II  
207 of the Uniform Controlled Substances Act, antineoplastics,  
208 radiopharmaceuticals, general anesthetics and radiographic  
209 contrast materials. Drugs listed under Schedule III are limited  
210 to a 72-hour supply without refill. In addition to the above-  
211 referenced provisions and restrictions and at the direction of a  
212 supervising physician, the rules shall permit the prescribing an  
213 annual supply of any drug other than controlled substances  
214 which is prescribed for the treatment of a chronic condition  
215 other than chronic pain management. For the purposes of this  
216 section, a “chronic condition” is a condition which last three  
217 months or more, generally cannot be prevented by vaccines, can  
218 be controlled but not cured by medication and does not  
219 generally disappear. These conditions include, but are not  
220 limited to, arthritis, asthma, cardiovascular disease, cancer,  
221 diabetes, epilepsy and seizures and obesity. The prescriber  
222 authorized in this section shall note on the prescription the  
223 condition for which the patient is being treated. The rules shall  
224 provide that all pharmacological categories of drugs to be  
225 prescribed by an osteopathic physician assistant be listed in  
226 each job description submitted to the board as required in this  
227 section. The rules shall provide the maximum dosage an  
228 osteopathic physician assistant may prescribe.

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

232 (A) Submit an application to the board for prescription  
233 privileges;

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

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

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

240 (A) Continue to maintain national certification as an  
241 osteopathic physician assistant; and

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

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

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

.....  
*Chairman Senate Committee*

.....  
*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

.....  
*Clerk of the Senate*

.....  
*Clerk of the House of Delegates*

.....  
*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this  
the ..... Day of ....., 2014.

.....  
*Governor*