

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 12**

5 (SENATOR STOLLINGS, *original sponsor*)

6 \_\_\_\_\_  
7 [Passed March 8, 2014; in effect ninety days from passage.]  
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9

10 AN ACT 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 §30-5-3 of  
14 said code; to amend and reenact §30-7-15a of said code; to  
15 amend and reenact §30-14-11 of said code; and to amend and  
16 reenact §30-14A-1 of said code, all relating to treatment for  
17 a sexually transmitted disease; defining terms; permitting  
18 prescribing of antibiotics to sexual partners of a patient  
19 without a prior examination of the partner; requiring patient  
20 counseling; establishing counseling criteria; requiring  
21 information materials be prepared by the Department of Health  
22 and Human Resources; providing limited liability for providing  
23 expedited partnership therapy; requiring legislative rules  
24 regarding what is considered a sexually transmitted disease;  
25 and providing that physicians, physician assistants,  
26 pharmacists and advanced nurse practitioners are not subject

1 to disciplinary action for providing certain treatment for  
2 sexually transmitted diseases for sexual partners of a  
3 patient.

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

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

13 **CHAPTER 16. PUBLIC HEALTH.**

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

15 **§16-4F-1. Definitions.**

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

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

20 (2) "Expedited partner therapy" means prescribing, dispensing,  
21 furnishing or otherwise providing prescription antibiotic drugs to  
22 the sexual partner or partners of a person clinically diagnosed as  
23 infected with a sexually transmitted disease without physical  
24 examination of the partner or partners.

25 (3) "Health care professional" means:

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

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

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

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

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

13 (4) "Sexually transmitted disease" means a disease that may be  
14 treated by expedited partner therapy as determined by rule of the  
15 department.

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

17 (a) Notwithstanding any other provision of law to the  
18 contrary, a health care professional who makes a clinical diagnosis  
19 of a sexually transmitted disease may, but is not required to,  
20 provide expedited partner therapy for the treatment of the sexually  
21 transmitted disease if in the judgment of the health care  
22 professional the sexual partner is unlikely or unable to present  
23 for comprehensive health care, including evaluation, testing and  
24 treatment for sexually transmitted diseases. Expedited partner  
25 therapy is limited to a sexual partner who may have been exposed to  
26 a sexually transmitted disease within the previous sixty days and

1 who is able to be contacted by the patient.

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

5 (c) A health care professional who provides expedited partner  
6 therapy shall provide counseling for the patient, including advice  
7 that all women and symptomatic persons, and in particular women  
8 with symptoms suggestive of pelvic inflammatory disease, are  
9 encouraged to seek medical attention. The health care professional  
10 shall also provide in written or electronic format materials  
11 provided by the department to be given by the patient to his or her  
12 sexual partner.

13 **§16-4F-3. Informational materials.**

14 (a) The department shall provide information and technical  
15 assistance as appropriate to health care professionals who provide  
16 expedited partner therapy. The department shall develop and  
17 disseminate in electronic and other formats the following written  
18 materials:

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

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

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

25 (b) The department may offer educational programs about  
26 expedited partner therapy for health care professionals.

1 **§16-4F-4. Limitation of liability; no requirement to fill improper**  
2 **prescriptions.**

3 (a) A health care professional who provides expedited partner  
4 therapy in good faith without fee or compensation under this  
5 article and provides counseling and written materials as required  
6 in subsection (c), section two of this article is not subject to  
7 civil or professional liability in connection with the provision of  
8 the therapy, counseling and materials, except in the case of gross  
9 negligence or willful misconduct.

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

14 **§16-4F-5. Rulemaking.**

15 The Secretary of the Department of Health and Human Resources  
16 shall propose rules for legislative approval in accordance with the  
17 provisions of article three, chapter twenty-nine-a of this code to  
18 designate certain diseases as sexually transmitted diseases which  
19 may be treated by expedited partner therapy. The department shall  
20 consider the recommendations and classifications of the federal  
21 Department of Health and Human Services, Centers for Disease  
22 Control and Prevention and other nationally recognized medical  
23 authorities in making these designations.

24 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

1 §30-3-14. Professional discipline of physicians and podiatrists;  
2 reporting of information to board pertaining to  
3 medical professional liability and professional  
4 incompetence required; penalties; grounds for  
5 license denial and discipline of physicians and  
6 podiatrists; investigations; physical and mental  
7 examinations; hearings; sanctions; summary  
8 sanctions; reporting by the board; reapplication;  
9 civil and criminal immunity; voluntary limitation of  
10 license; probable cause determinations.

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

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

1 liability, have been rendered or made against the physician or  
2 podiatrist within a five-year period. The board may not consider  
3 any judgments or settlements as conclusive evidence of professional  
4 incompetence or conclusive lack of qualification to practice.

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

16 The chief executive officer of every hospital shall, within  
17 sixty days after the completion of the hospital's formal  
18 disciplinary procedure and also within sixty days after the  
19 commencement of and again after the conclusion of any resulting  
20 legal action, report in writing to the board the name of any member  
21 of the medical staff or any other physician or podiatrist  
22 practicing in the hospital whose hospital privileges have been  
23 revoked, restricted, reduced or terminated for any cause, including  
24 resignation, together with all pertinent information relating to  
25 such action. The chief executive officer shall also report any  
26 other formal disciplinary action taken against any physician or

1 podiatrist by the hospital upon the recommendation of its medical  
2 staff relating to professional ethics, medical incompetence,  
3 medical professional liability, moral turpitude or drug or alcohol  
4 abuse. Temporary suspension for failure to maintain records on a  
5 timely basis or failure to attend staff or section meetings need  
6 not be reported. Voluntary cessation of hospital privileges for  
7 reasons unrelated to professional competence or ethics need not be  
8 reported.

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



1 to arrange for the provision of or payment for health care services  
2 through organizational arrangements for ongoing quality assurance,  
3 utilization review programs or dispute resolutions.

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

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

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

1 shall forward a certified copy of the order to the board.

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

14       Upon a determination of the board that there is probable cause  
15 to believe that any person, partnership, corporation, association,  
16 insurance company, professional society or other organization has  
17 failed or refused to make a report required by this subsection, the  
18 board shall provide written notice to the alleged violator stating  
19 the nature of the alleged violation and the time and place at which  
20 the alleged violator shall appear to show good cause why a civil  
21 penalty should not be imposed. The hearing shall be conducted in  
22 accordance with the provisions of article five, chapter twenty-  
23 nine-a of this code. After reviewing the record of the hearing, if  
24 the board determines that a violation of this subsection has  
25 occurred, the board shall assess a civil penalty of not less than  
26 \$1,000 nor more than \$10,000 against the violator. The board shall

1 notify any person so assessed of the assessment in writing and the  
2 notice shall specify the reasons for the assessment. If the  
3 violator fails to pay the amount of the assessment to the board  
4 within thirty days, the Attorney General may institute a civil  
5 action in the circuit court of Kanawha County to recover the amount  
6 of the assessment. In any civil action, the court's review of the  
7 board's action shall be conducted in accordance with the provisions  
8 of section four, article five, chapter twenty-nine-a of this code.  
9 Notwithstanding any other provision of this article to the  
10 contrary, when there are conflicting views by recognized experts as  
11 to whether any alleged conduct breaches an applicable standard of  
12 care, the evidence must be clear and convincing before the board  
13 may find that the physician or podiatrist has demonstrated a lack  
14 of professional competence to practice with a reasonable degree of  
15 skill and safety for patients.

16 Any person may report to the board relevant facts about the  
17 conduct of any physician or podiatrist in this state which in the  
18 opinion of that person amounts to medical professional liability or  
19 professional incompetence.

20 The board shall provide forms for filing reports pursuant to  
21 this section. Reports submitted in other forms shall be accepted  
22 by the board.

23 The filing of a report with the board pursuant to any  
24 provision of this article, any investigation by the board or any  
25 disposition of a case by the board does not preclude any action by  
26 a hospital, other health care facility or professional society

1 comprised primarily of physicians or podiatrists to suspend,  
2 restrict or revoke the privileges or membership of the physician or  
3 podiatrist.

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

10 (1) Attempting to obtain, obtaining, renewing or attempting to  
11 renew a license to practice medicine and surgery or podiatry by  
12 bribery, fraudulent misrepresentation or through known error of the  
13 board;

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

18 (3) False or deceptive advertising;

19 (4) Aiding, assisting, procuring or advising any unauthorized  
20 person to practice medicine and surgery or podiatry contrary to  
21 law;

22 (5) Making or filing a report that the person knows to be  
23 false; intentionally or negligently failing to file a report or  
24 record required by state or federal law; willfully impeding or  
25 obstructing the filing of a report or record required by state or  
26 federal law; or inducing another person to do any of the foregoing.

1 The reports and records covered in this subdivision mean only those  
2 that are signed in the capacity as a licensed physician or  
3 podiatrist;

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

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

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

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

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

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

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

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

17           (13) Prescribing, dispensing, administering, mixing or  
18 otherwise preparing a prescription drug, including any controlled  
19 substance under state or federal law, other than in good faith and  
20 in a therapeutic manner in accordance with accepted medical  
21 standards and in the course of the physician's or podiatrist's  
22 professional practice. A physician who discharges his or her  
23 professional obligation to relieve the pain and suffering and  
24 promote the dignity and autonomy of dying patients in his or her  
25 care and, in so doing, exceeds the average dosage of a pain  
26 relieving controlled substance, as defined in Schedules II and III

1 of the Uniform Controlled Substance Act, does not violate this  
2 article. A physician licensed under this chapter may not be  
3 disciplined for providing expedited partner therapy in accordance  
4 with the provisions of article four-f, chapter sixteen of this  
5 code;

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

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

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

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

21 (18) Conspiring with any other person to commit an act or  
22 committing an act that would tend to coerce, intimidate or preclude  
23 another physician or podiatrist from lawfully advertising his or  
24 her services;

25 (19) Gross negligence in the use and control of prescription  
26 forms;

1 (20) Professional incompetence; or

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

13 (d) The board shall deny any application for a license or  
14 other authorization to practice medicine and surgery or podiatry in  
15 this state to any applicant who, and shall revoke the license of  
16 any physician or podiatrist licensed or otherwise lawfully  
17 practicing within this state who, is found guilty by any court of  
18 competent jurisdiction of any felony involving prescribing,  
19 selling, administering, dispensing, mixing or otherwise preparing  
20 any prescription drug, including any controlled substance under  
21 state or federal law, for other than generally accepted therapeutic  
22 purposes. Presentation to the board of a certified copy of the  
23 guilty verdict or plea rendered in the court is sufficient proof  
24 thereof for the purposes of this article. A plea of nolo  
25 contendere has the same effect as a verdict or plea of guilt. Upon  
26 application of a physician that has had his or her license revoked



1 because of a drug-related felony conviction, upon completion of any  
2 sentence of confinement, parole, probation or other court-ordered  
3 supervision and full satisfaction of any fines, judgments or other  
4 fees imposed by the sentencing court, the board may issue the  
5 applicant a new license upon a finding that the physician is,  
6 except for the underlying conviction, otherwise qualified to  
7 practice medicine: *Provided*, That the board may place whatever  
8 terms, conditions or limitations it deems appropriate upon a  
9 physician licensed pursuant to this subsection.

10 (e) The board may refer any cases coming to its attention to  
11 an appropriate committee of an appropriate professional  
12 organization for investigation and report. Except for complaints  
13 related to obtaining initial licensure to practice medicine and  
14 surgery or podiatry in this state by bribery or fraudulent  
15 misrepresentation, any complaint filed more than two years after  
16 the complainant knew, or in the exercise of reasonable diligence  
17 should have known, of the existence of grounds for the complaint  
18 shall be dismissed: *Provided*, That in cases of conduct alleged to  
19 be part of a pattern of similar misconduct or professional  
20 incapacity that, if continued, would pose risks of a serious or  
21 substantial nature to the physician's or podiatrist's current  
22 patients, the investigating body may conduct a limited  
23 investigation related to the physician's or podiatrist's current  
24 capacity and qualification to practice and may recommend  
25 conditions, restrictions or limitations on the physician's or  
26 podiatrist's license to practice that it considers necessary for

1 the protection of the public. Any report shall contain  
2 recommendations for any necessary disciplinary measures and shall  
3 be filed with the board within ninety days of any referral. The  
4 recommendations shall be considered by the board and the case may  
5 be further investigated by the board. The board after full  
6 investigation shall take whatever action it considers appropriate,  
7 as provided in this section.

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

1 refusal is prima facie evidence of his or her inability to practice  
2 medicine and surgery or podiatry competently and in compliance with  
3 the standards of acceptable and prevailing medical practice.

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

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

25 (i) In disciplinary actions in which probable cause has been  
26 found by the board, the board shall, within twenty days of the date

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

1 any trial expert pursuant to the requirements of Rule 26(b)(4) of  
2 the West Virginia Rules of Civil Procedure; provide inspection and  
3 copying of the results of any reports of physical and mental  
4 examinations or scientific tests or experiments; and provide a list  
5 and copy of any proposed exhibit to be used at the hearing.

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

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

11 (2) Administer a public reprimand;

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

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

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

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

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

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

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

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

26           (1) The evidence appears to have been discovered since the

1 board hearing; and

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

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

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

26       (n) Any entity, organization or person, including the board,

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

15       (o) A physician or podiatrist may request in writing to the  
16 board a limitation on or the surrendering of his or her license to  
17 practice medicine and surgery or podiatry or other appropriate  
18 sanction as provided in this section. The board may grant the  
19 request and, if it considers it appropriate, may waive the  
20 commencement or continuation of other proceedings under this  
21 section. A physician or podiatrist whose license is limited or  
22 surrendered or against whom other action is taken under this  
23 subsection may, at reasonable intervals, petition for removal of  
24 any restriction or limitation on or for reinstatement of his or her  
25 license to practice medicine and surgery or podiatry.

26       (p) In every case considered by the board under this article



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

14 (q) If the board receives notice that a physician or  
15 podiatrist has been subjected to disciplinary action or has had his  
16 or her credentials suspended or revoked by the board, a hospital or  
17 a professional society, as defined in subsection (b) of this  
18 section, for three or more incidents during a five-year period, the  
19 board shall require the physician or podiatrist to practice under  
20 the direction of a physician or podiatrist designated by the board  
21 for a specified period of time to be established by the board.

22 (r) Notwithstanding any other provisions of this article, the  
23 board may, at any time, on its own motion, or upon motion by the  
24 complainant, or upon motion by the physician or podiatrist, or by  
25 stipulation of the parties, refer the matter to mediation. The  
26 board shall obtain a list from the West Virginia State Bar's

1 mediator referral service of certified mediators with expertise in  
2 professional disciplinary matters. The board and the physician or  
3 podiatrist may choose a mediator from that list. If the board and  
4 the physician or podiatrist are unable to agree on a mediator, the  
5 board shall designate a mediator from the list by neutral rotation.  
6 The mediation shall not be considered a proceeding open to the  
7 public and any reports and records introduced at the mediation  
8 shall not become part of the public record. The mediator and all  
9 participants in the mediation shall maintain and preserve the  
10 confidentiality of all mediation proceedings and records. The  
11 mediator may not be subpoenaed or called to testify or otherwise be  
12 subject to process requiring disclosure of confidential information  
13 in any proceeding relating to or arising out of the disciplinary or  
14 licensure matter mediated: *Provided*, That any confidentiality  
15 agreement and any written agreement made and signed by the parties  
16 as a result of mediation may be used in any proceedings  
17 subsequently instituted to enforce the written agreement. The  
18 agreements may be used in other proceedings if the parties agree in  
19 writing.

20 **§30-3-16. Physician assistants; definitions; Board of Medicine**  
21 **rules; annual report; licensure; temporary license;**  
22 **relicensure; job description required; revocation or**  
23 **suspension of licensure; responsibilities of**  
24 **supervising physician; legal responsibility for**  
25 **physician assistants; reporting by health care**

1                   **facilities; identification; limitations on**  
2                   **employment and duties; fees; continuing education;**  
3                   **unlawful representation of physician assistant as a**  
4                   **physician; criminal penalties.**

5           (a) As used in this section:

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

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

12           (3) "Physician assistant" means an assistant to a physician  
13 who is a graduate of an approved program of instruction in primary  
14 health care or surgery, has attained a baccalaureate or master's  
15 degree, has passed the national certification examination and is  
16 qualified to perform direct patient care services under the  
17 supervision of a physician;

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

25           (5) "Supervising physician" means a doctor or doctors of

1 medicine or podiatry permanently and fully licensed in this state  
2 without restriction or limitation who assume legal and supervisory  
3 responsibility for the work or training of any physician assistant  
4 under his or her supervision.

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

1 receive legislative approval. The board shall compile and publish  
2 an annual report that includes a list of currently licensed  
3 physician assistants and their supervising physician(s) and  
4 location in the state.

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

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

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

15 (3) Is of good moral character; and

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

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

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

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

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

26 (e) The board may license as a physician assistant any person

1 who files an application together with a proposed job description  
2 and furnishes satisfactory evidence that he or she is of good moral  
3 character and meets either of the following standards:

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

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

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

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

24 (h) When a graduate of an approved program submits an  
25 application to the board for a physician assistant license,  
26 accompanied by a job description as referenced by this section, and

1 a \$50 temporary license fee, and the application is complete, the  
2 board shall issue to the applicant a temporary license allowing the  
3 applicant to function as a physician assistant until the applicant  
4 successfully passes the National Commission on Certification of  
5 Physician Assistants certifying examination so long as the  
6 applicant sits for and obtains a passing score on the examination  
7 next offered following graduation from the approved program.

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

11 (j) A physician assistant who has not been certified by the  
12 National Commission on Certification of Physician Assistants will  
13 be restricted to work under the direct supervision of the  
14 supervising physician.

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

23 (l) In the event a physician assistant fails a recertification  
24 examination of the National Commission on Certification of  
25 Physician Assistants and is no longer certified, the physician  
26 assistant shall immediately notify his or her supervising physician

1 or physicians and the board in writing. The physician assistant  
2 shall immediately cease practicing, the license shall terminate  
3 automatically and the physician assistant is not eligible for  
4 reinstatement until he or she has obtained a passing score on the  
5 examination.

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

18 (n) The supervising physician is responsible for observing,  
19 directing and evaluating the work, records and practices of each  
20 physician assistant performing under his or her supervision. He or  
21 she shall notify the board in writing of any termination of his or  
22 her supervisory relationship with a physician assistant within ten  
23 days of the termination. The legal responsibility for any  
24 physician assistant remains with the supervising physician at all  
25 times including occasions when the assistant under his or her  
26 direction and supervision aids in the care and treatment of a



1 patient in a health care facility. In his or her absence, a  
2 supervising physician must designate an alternate supervising  
3 physician but the legal responsibility remains with the supervising  
4 physician at all times. A health care facility is not legally  
5 responsible for the actions or omissions of the physician assistant  
6 unless the physician assistant is an employee of the facility.

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

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

26 (q) When functioning as a physician assistant, the physician

1 assistant shall wear a name tag that identifies him or her as a  
2 physician assistant. A two and one-half by three and one-half inch  
3 card of identification shall be furnished by the board upon  
4 licensure of the physician assistant.

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

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

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

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

23 (C) In addition to the above-referenced provisions and  
24 restrictions and at the direction of a supervising physician, the  
25 rules shall permit the prescribing of an annual supply of any drug,  
26 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

25 (5) A requirement that to maintain prescription privileges, a  
26 physician assistant shall continue to maintain national

1 certification as a physician assistant and, in meeting the national  
2 certification requirements, shall complete a minimum of ten hours  
3 of continuing education in rational drug therapy in each  
4 certification period. Nothing in this subsection permits a  
5 physician assistant to independently prescribe or dispense drugs;  
6 and

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

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

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

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

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

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

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

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

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

1 (1) Provide certification with supporting written  
2 documentation of the successful completion of the required  
3 continuing education;

4 (2) Pay a renewal fee; and

5 (3) Pay a reinstatement fee equal to fifty percent of the  
6 renewal fee.

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

10 (1) Apply for a new license;

11 (2) Provide certification with supporting written  
12 documentation of the successful completion of the required  
13 continuing education; and

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

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

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

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

1 §30-5-3. **When licensed pharmacist required; person not licensed**  
2 **pharmacist, pharmacy technician or licensed intern not**  
3 **to compound prescriptions or dispense poisons or**  
4 **narcotics; licensure of interns; prohibiting the**  
5 **dispensing of prescription orders in absence of**  
6 **practitioner-patient relationship.**

7 (a) It is unlawful for any person not a pharmacist, or who  
8 does not employ a pharmacist, to conduct any pharmacy or store for  
9 the purpose of retailing, compounding or dispensing prescription  
10 drugs or prescription devices.

11 (b) It is unlawful for the proprietor of any store or  
12 pharmacy, any "ambulatory health care facility", as that term is  
13 defined in section one, article five-b, chapter sixteen of this  
14 code, that offers pharmaceutical care, or a facility operated to  
15 provide health care or mental health care services free of charge  
16 or at a reduced rate and that operates a charitable clinic pharmacy  
17 to permit any person not a pharmacist to compound or dispense  
18 prescriptions or prescription refills or to retail or dispense the  
19 poisons and narcotic drugs named in sections two, three and six,  
20 article eight, chapter sixteen of this code: *Provided*, That a  
21 licensed intern may compound and dispense prescriptions or  
22 prescription refills under the direct supervision of a pharmacist:  
23 *Provided, however*, That registered pharmacy technicians may assist  
24 in the preparation and dispensing of prescriptions or prescription  
25 refills, including, but not limited to, reconstitution of liquid

1 medications, typing and affixing labels under the direct  
2 supervision of a licensed pharmacist.

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

7 (d) The experience requirement for licensure as a pharmacist  
8 shall be computed from the date certified by the supervising  
9 pharmacist as the date of entering the internship. If the  
10 internship is not registered with the Board of Pharmacy, then the  
11 intern shall receive no credit for the experience when he or she  
12 makes application for examination for licensure as a pharmacist:  
13 *Provided*, That credit may be given for the unregistered experience  
14 if an appeal is made and evidence produced showing experience was  
15 obtained but not registered and that failure to register the  
16 internship experience was not the fault of the intern.

17 (e) An intern having served part or all of his or her  
18 internship in a pharmacy in another state or foreign country shall  
19 be given credit for the same when the affidavit of his or her  
20 internship is signed by the pharmacist under whom he or she served,  
21 and it shows the dates and number of hours served in the internship  
22 and when the affidavit is attested by the secretary of the State  
23 Board of Pharmacy of the state or country where the internship was  
24 served.

25 (f) Up to one third of the experience requirement for  
26 licensure as a pharmacist may be fulfilled by an internship in a



1 foreign country.

2 (g) No pharmacist may compound or dispense any prescription  
3 order when he or she has knowledge that the prescription was issued  
4 by a practitioner without establishing a valid practitioner-patient  
5 relationship. An online or telephonic evaluation by questionnaire,  
6 or an online or telephonic consultation, is inadequate to establish  
7 a valid practitioner-patient relationship: *Provided*, That this  
8 prohibition does not apply:

9 (1) In a documented emergency;

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

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

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

18 **ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**

19 **§30-7-15a. Prescriptive authority for prescription drugs;**  
20 **coordination with Board of Pharmacy.**

21 (a) The board may, in its discretion, authorize an advanced  
22 practice registered nurse to prescribe prescription drugs in a  
23 collaborative relationship with a physician licensed to practice in  
24 West Virginia and in accordance with applicable state and federal  
25 laws. An authorized advanced practice registered nurse may write

1 or sign prescriptions or transmit prescriptions verbally or by  
2 other means of communication.

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

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

14 (2) Statements describing the individual and shared  
15 responsibilities of the advanced practice registered nurse and the  
16 physician pursuant to the collaborative agreement between them;

17 (3) Periodic and joint evaluation of prescriptive practice;  
18 and

19 (4) Periodic and joint review and updating of the written  
20 guidelines or protocols.

21 (c) The board shall promulgate legislative rules in accordance  
22 with the provisions of chapter twenty-nine-a of this code governing  
23 the eligibility and extent to which an advanced practice registered  
24 nurse may prescribe drugs. Such rules shall provide, at a minimum,  
25 a state formulary classifying those categories of drugs which shall  
26 not be prescribed by advanced practice registered nurse including,

1 but not limited to, Schedules I and II of the Uniform Controlled  
2 Substances Act, antineoplastics, radiopharmaceuticals and general  
3 anesthetics. Drugs listed under Schedule III shall be limited to  
4 a 72-hour supply without refill. The rules shall also include a  
5 provision that advanced nurse practitioners licensed under this  
6 chapter may not be disciplined for providing expedited partner  
7 therapy in accordance with the provisions of article four-f,  
8 chapter sixteen of this code. In addition to the above-referenced  
9 provisions and restrictions and pursuant to a collaborative  
10 agreement as set forth in subsections (a) and (b) of this section,  
11 the rules shall permit the prescribing of an annual supply of any  
12 drug, with the exception of controlled substances, which is  
13 prescribed for the treatment of a chronic condition, other than  
14 chronic pain management. For the purposes of this section, a  
15 "chronic condition" is a condition which lasts three months or  
16 more, generally cannot be prevented by vaccines, can be controlled  
17 but not cured by medication and does not generally disappear.  
18 These conditions, with the exception of chronic pain, include, but  
19 are not limited to, arthritis, asthma, cardiovascular disease,  
20 cancer, diabetes, epilepsy and seizures and obesity. The  
21 prescriber authorized in this section shall note on the  
22 prescription the chronic disease being treated.

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

25 (e) The board shall transmit to the Board of Pharmacy a list  
26 of all advanced practice registered nurses with prescriptive

1 authority. The list shall include:

2 (1) The name of the authorized advanced practice registered  
3 nurse;

4 (2) The prescriber's identification number assigned by the  
5 board; and

6 (3) The effective date of prescriptive authority.

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

8 **§30-14-11. Refusal, suspension or revocation of license;**  
9 **suspension or revocation of certificate of**  
10 **authorization.**

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

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

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

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

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

20 (5) Gross malpractice;

21 (6) Advertising by means of knowingly false or deceptive  
22 statements;

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

25 (8) Habitual drunkenness or habitual addiction to the use of

1 morphine, cocaine or other habit-forming drugs.

2 (b) The board shall also have the power to suspend or revoke  
3 for cause any certificate of authorization issued by it. It shall  
4 have the power to reinstate any certificate of authorization  
5 suspended or revoked by it.

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

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

11 **§30-14A-1. Osteopathic physician assistant to osteopathic**  
12 **physicians and surgeons; definitions; Board of**  
13 **Osteopathy rules; licensure; temporary licensure;**  
14 **renewal of license; job description required;**  
15 **revocation or suspension of license;**  
16 **responsibilities of the supervising physician;**  
17 **legal responsibility for osteopathic physician**  
18 **assistants; reporting of disciplinary procedures;**  
19 **identification; limitation on employment and**  
20 **duties; fees; unlawful use of the title of**  
21 **osteopathic physician assistant; unlawful**  
22 **representation of an osteopathic physician**  
23 **assistant as a physician; criminal penalties.**

24 (a) As used in this section:

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

1 osteopathic physician assistants approved and accredited by the  
2 Committee on Allied Health Education and Accreditation or its  
3 successor.

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

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

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

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

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

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

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

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

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

22           (3) The board may allow the osteopathic physician assistant to  
23 perform those procedures and examinations and, in the case of  
24 authorized osteopathic physician assistants, to prescribe at the  
25 direction of his or her supervising physician in accordance with  
26 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 the  
5 provisions of article 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  
25 physician assistant for the period of one year. The temporary  
26 license may be renewed for one additional year upon the request of



1 the supervising physician. An osteopathic physician assistant who  
2 has not been certified as such by the National Board of Medical  
3 Examiners on behalf of the National Commission on Certification of  
4 Physician Assistants will be restricted to work under the direct  
5 supervision of the supervising physician.

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

16 (g) The supervising physician is responsible for observing,  
17 directing and evaluating the work records and practices of each  
18 osteopathic physician assistant performing under his or her  
19 supervision. He or she shall notify the board in writing of any  
20 termination of his or her supervisory relationship with an  
21 osteopathic physician assistant within ten days of his or her  
22 termination. The legal responsibility for any osteopathic  
23 physician assistant remains with the supervising physician at all  
24 times, including occasions when the assistant, under his or her  
25 direction and supervision, aids in the care and treatment of a  
26 patient in a health care facility. In his or her absence, a

1 supervising physician must designate an alternate supervising  
2 physician but the legal responsibility remains with the supervising  
3 physician at all times. A health care facility is not legally  
4 responsible for the actions or omissions of an osteopathic  
5 physician assistant unless the osteopathic physician assistant is  
6 an employee of the facility.

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

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

1           (j) When functioning as an osteopathic physician assistant,  
2 the osteopathic physician assistant shall wear a name tag that  
3 identifies him or her as a physician assistant.

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

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

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

15           (4) The provisions of this section do not authorize an  
16 osteopathic physician assistant to perform any specific function or  
17 duty delegated by this code to those persons licensed as  
18 chiropractors, dentists, registered nurses, licensed practical  
19 nurses, dental hygienists, optometrists or pharmacists or certified  
20 as nurse anesthetists.

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

25           (m) As a condition of renewal of an osteopathic physician  
26 assistant license, each osteopathic physician assistant shall

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

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

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

1 imprisoned.

2       (p) An osteopathic physician assistant may write or sign  
3 prescriptions or transmit prescriptions by word of mouth, telephone  
4 or other means of communication at the direction of his or her  
5 supervising physician. The board shall propose rules for  
6 legislative approval in accordance with the provisions of article  
7 three, chapter twenty-nine-a of this code governing the eligibility  
8 and extent to which an osteopathic physician assistant may  
9 prescribe at the direction of the supervising physician. The rules  
10 shall provide for a state formulary classifying pharmacologic  
11 categories of drugs which may be prescribed by such an osteopathic  
12 physician assistant. In classifying such pharmacologic categories,  
13 those categories of drugs which shall be excluded include, but are  
14 not limited to, Schedules I and II of the Uniform Controlled  
15 Substances Act, antineoplastics, radiopharmaceuticals, general  
16 anesthetics and radiographic contrast materials. Drugs listed  
17 under Schedule III are limited to a 72-hour supply without refill.  
18 In addition to the above-referenced provisions and restrictions and  
19 at the direction of a supervising physician, the rules shall permit  
20 the prescribing an annual supply of any drug other than controlled  
21 substances which is prescribed for the treatment of a chronic  
22 condition other than chronic pain management. For the purposes of  
23 this section, a "chronic condition" is a condition which last three  
24 months or more, generally cannot be prevented by vaccines, can be  
25 controlled but not cured by medication and does not generally  
26 disappear. These conditions include, but are not limited to,

1 arthritis, asthma, cardiovascular disease, cancer, diabetes,  
2 epilepsy and seizures and obesity. The prescriber authorized in  
3 this section shall note on the prescription the condition for which  
4 the patient is being treated. The rules shall provide that all  
5 pharmacological categories of drugs to be prescribed by an  
6 osteopathic physician assistant be listed in each job description  
7 submitted to the board as required in this section. The rules  
8 shall provide the maximum dosage an osteopathic physician assistant  
9 may prescribe.

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

12 (A) Submit an application to the board for prescription  
13 privileges;

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

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

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

20 (A) Continue to maintain national certification as an  
21 osteopathic physician assistant; and

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

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