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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2007**

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**ENROLLED**

**Senate Bill No. 573**

(BY SENATORS PREZIOSO, MCKENZIE, FOSTER,  
STOLLINGS, KESSLER AND JENKINS)

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[Passed March 8, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §30-3-9, §30-3-12 and §30-3-16 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §30-3D-1, §30-3D-2 and §30-3D-3; and to amend said code by adding thereto a new section, designated §30-14-11a, all relating to authorizing the West Virginia Board of Medicine and the West Virginia Board of Osteopathy; designating programs in which physicians, podiatrists and physician assistants may be monitored while they pursue treatment and recovery for alcohol abuse, chemical dependency or major mental illness; enrolling on a voluntary basis without being subject to disciplinary

action if the person complies with the goals and restrictions of the program; and requiring licenses for physicians, podiatrists and physician assistants to expire rather than being suspended if required continuing education is not documented.

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

That §30-3-9, §30-3-12 and §30-3-16 of the Code of West Virginia, 1931, as amended be amended and reenacted; that said code be amended by adding thereto a new article, designated §30-3D-1, §30-3D-2 and §30-3D-3, and that said code be amended by adding thereto a new section, designated §30-14-11a, all to read as follows:

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

**§30-3-9. Records of board; expungement; examination; notice; public information; voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges.**

1       (a) The board shall maintain a permanent record of  
2 the names of all physicians, podiatrists, and physician  
3 assistants, licensed, certified or otherwise lawfully  
4 practicing in this state and of all persons applying to be  
5 so licensed to practice, along with an individual  
6 historical record for each such individual containing  
7 reports and all other information furnished the board  
8 under this article or otherwise. Such record may  
9 include, in accordance with rules established by the  
10 board, additional items relating to the individual's  
11 record of professional practice that will facilitate proper  
12 review of such individual's professional competence.

13       (b) Upon a determination by the board that any report

14 submitted to it is without merit, the report shall be  
15 expunged from the individual's historical record.

16 (c) A physician, podiatrist, physician assistant or  
17 applicant, or authorized representative thereof, has the  
18 right, upon request, to examine his or her own  
19 individual historical record maintained by the board  
20 pursuant to this article and to place into such record a  
21 statement of reasonable length of his or her own view of  
22 the correctness or relevance of any information existing  
23 in such record. Such statement shall at all times  
24 accompany that part of the record in contention.

25 (d) A physician, podiatrist, physician assistant or  
26 applicant has the right to seek through court action the  
27 amendment or expungement of any part of his or her  
28 historical record.

29 (e) A physician, podiatrist, physician assistant or  
30 applicant shall be provided written notice within thirty  
31 days of the placement and substance of any information  
32 in his or her individual historical record that pertains to  
33 him or her and that was not submitted to the board by  
34 him or her.

35 (f) Except for information relating to biographical  
36 background, education, professional training and  
37 practice, a voluntary agreement entered into pursuant  
38 to subsection (h) of this section and which has been  
39 disclosed to the board, prior disciplinary action by any  
40 entity, or information contained on the licensure  
41 application, the board shall expunge information in an  
42 individual's historical record unless it has initiated a  
43 proceeding for a hearing upon such information within  
44 two years of the placing of the information into the

45 historical record.

46 (g) Orders of the board relating to disciplinary action  
47 against a physician, podiatrist or physician assistant are  
48 public information.

49 (h) (1) In order to encourage voluntary participation in  
50 monitored alcohol chemical dependency or major  
51 mental illness programs and in recognition of the fact  
52 that major mental illness, alcoholism and chemical  
53 dependency are illnesses, a physician, podiatrist or  
54 physician assistant licensed, certified or otherwise  
55 lawfully practicing in this state or applying for a license  
56 to practice in this state may enter into a voluntary  
57 agreement with the physician health program as defined  
58 in section two, article three-d of this chapter. The  
59 agreement between the physician, podiatrist or  
60 physician assistant and the physician health program  
61 shall include a jointly agreed upon treatment program  
62 and mandatory conditions and procedures to monitor  
63 compliance with the program of recovery.

64 (2) Any voluntary agreement entered into pursuant to  
65 this subsection shall not be considered a disciplinary  
66 action or order by the board, shall not be disclosed to  
67 the board and shall not be public information if:

68 (A) Such voluntary agreement is the result of the  
69 physician, podiatrist or physician assistant  
70 self-enrolling or voluntarily participating in the board-  
71 designated physician health program;

72 (B) The board has not received nor filed any written  
73 complaints regarding said physician, podiatrist or  
74 physician assistant relating to an alcohol, chemical

75 dependency or major mental illness affecting the care  
76 and treatment of patients, nor received any reports  
77 pursuant to subsection (b), section fourteen of this  
78 article relating to an alcohol or chemical dependency  
79 impairment; and

80 (C) The physician, podiatrist or physician assistant is  
81 in compliance with the voluntary treatment program  
82 and the conditions and procedures to monitor  
83 compliance.

84 (3) If any physician, podiatrist or physician assistant  
85 enters into a voluntary agreement with the board-  
86 approved physician health program, pursuant to this  
87 subsection and then fails to comply with or fulfill the  
88 terms of said agreement, the physician health program  
89 shall report the noncompliance to the board within  
90 twenty-four hours. The board may initiate disciplinary  
91 proceedings pursuant to subsection (a), section fourteen  
92 of this article or may permit continued participation in  
93 the physician health program or both.

94 (4) If the board has not instituted any disciplinary  
95 proceeding as provided for in this article, any  
96 information received, maintained or developed by the  
97 board relating to the alcohol or chemical dependency  
98 impairment of any physician, podiatrist or physician  
99 assistant and any voluntary agreement made pursuant  
100 to this subsection shall be confidential and not available  
101 for public information, discovery or court subpoena, nor  
102 for introduction into evidence in any medical  
103 professional liability action or other action for damages  
104 arising out of the provision of or failure to provide  
105 health care services.

106 In the board's annual report of its activities to the  
107 Legislature required under section seven of this article,  
108 the board shall include information regarding the  
109 success of the voluntary agreement mechanism  
110 established therein: *Provided*, That in making such  
111 report, the board shall not disclose any personally  
112 identifiable information relating to any physician,  
113 podiatrist or physician assistant participating in a  
114 voluntary agreement as provided herein.

115 Notwithstanding any of the foregoing provisions, the  
116 board may cooperate with and provide documentation  
117 of any voluntary agreement entered into pursuant to  
118 this subsection to licensing boards in other jurisdictions  
119 of which the board has become aware and may be  
120 appropriate.

121 (i) Any physician-patient privilege does not apply in  
122 any investigation or proceeding by the board or by a  
123 medical peer review committee or by a hospital  
124 governing board with respect to relevant hospital  
125 medical records, while any of the aforesaid are acting  
126 within the scope of their authority: *Provided*, That the  
127 disclosure of any information pursuant to this provision  
128 shall not be considered a waiver of any such privilege in  
129 any other proceeding.

**§30-3-12. Biennial renewal of license to practice medicine and  
surgery or podiatry; continuing education; rules;  
fee; inactive license.**

1 (a) A license to practice medicine and surgery or  
2 podiatry in this state is valid for a term of two years.

3 (b) The license shall be renewed:

4 (1) Upon receipt of a reasonable fee, as set by the  
5 board;

6 (2) Submission of an application on forms provided by  
7 the board; and

8 (3) A certification of participation in and successful  
9 completion of a minimum of fifty hours of continuing  
10 medical or podiatric education satisfactory to the board,  
11 as appropriate to the particular license, during the  
12 preceding two-year period.

13 (c) The application may not require disclosure of a  
14 voluntary agreement entered into pursuant to  
15 subsection (h), section nine of this article.

16 (d) Continuing medical education satisfactory to the  
17 board is continuing medical education designated as  
18 Category I by the American Medical Association or the  
19 Academy of Family Physicians and alternate categories  
20 approved by the board.

21 (e) Continuing podiatric education satisfactory to the  
22 board is continuing podiatric education approved by the  
23 Council on Podiatric Education and alternate categories  
24 approved by the board.

25 (f) Notwithstanding any provision of this chapter to  
26 the contrary, beginning the first day of July, two  
27 thousand seven, failure to timely submit to the board a  
28 certification of successful completion of a minimum of  
29 fifty hours of continuing medical or podiatric education  
30 satisfactory to the board, as appropriate to the  
31 particular license, shall result in the automatic  
32 expiration of any license to practice medicine and



33 surgery or podiatry until such time as the certification,  
34 with all supporting written documentation, is submitted  
35 to and approved by the board.

36 (g) If a license is automatically expired and  
37 reinstatement is sought within one year of the  
38 automatic expiration, the former licensee shall:

39 (1) Provide certification with supporting written  
40 documentation of the successful completion of the  
41 required continuing education;

42 (2) Pay a renewal fee; and

43 (3) Pay a reinstatement fee equal to fifty percent of the  
44 renewal fee.

45 (h) If a license is automatically expired and more than  
46 one year has passed since the automatic expiration, the  
47 former licensee shall:

48 (1) Apply for a new license;

49 (2) Provide certification with supporting written  
50 documentation of the successful completion of the  
51 required continuing education; and

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

53 (i) Any individual who accepts the privilege of  
54 practicing medicine and surgery or podiatry in this state  
55 is required to provide supporting written  
56 documentation of the continuing education represented  
57 as received within thirty days of receipt of a written  
58 request to do so by the board. If a licensee fails or

59 refuses to provide supporting written documentation of  
60 the continuing education represented as received as  
61 required in this section, such failure or refusal to  
62 provide supporting written documentation is prima  
63 facie evidence of renewing a license to practice  
64 medicine and surgery or podiatry by fraudulent  
65 misrepresentation.

66 (j) The board may renew, on an inactive basis, the  
67 license of a physician or podiatrist who is currently  
68 licensed to practice medicine and surgery or podiatry in,  
69 but is not actually practicing, medicine and surgery or  
70 podiatry in this state. A physician or podiatrist holding  
71 an inactive license shall not practice medicine and  
72 surgery or podiatry in this state.

73 (k) An inactive license may be converted by the board  
74 to an active license upon a written request by the  
75 licensee to the board that:

76 (1) Accounts for his or her period of inactivity to the  
77 satisfaction of the board; and

78 (2) Submits written documentation of participation in  
79 and successful completion of a minimum of fifty hours  
80 of continuing medical or podiatric education  
81 satisfactory to the board, as appropriate to the  
82 particular license, during each preceding two-year  
83 period.

84 (l) An inactive license may be obtained upon receipt of  
85 a reasonable fee, as set by the board, and submission of  
86 an application on forms provided by the board on a  
87 biennial basis.

88 (m) The board may not require any physician or  
89 podiatrist who is retired or retiring from the active  
90 practice of medicine and surgery or the practice of  
91 podiatry and who is voluntarily surrendering their  
92 license to return to the board the license certificate  
93 issued to them by the board.

**§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  
3 program for physician assistants approved and  
4 accredited by the committee on allied health education  
5 and accreditation on behalf of the American Medical  
6 Association or its successor;

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

10 (3) "Physician assistant" means an assistant to a  
11 physician who is a graduate of an approved program of  
12 instruction in primary health care or surgery, has  
13 attained a baccalaureate or master's degree, has passed  
14 the national certification examination and is qualified

15 to perform direct patient care services under the  
16 supervision of a physician;

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

24 (5) "Supervising physician" means a doctor or doctors  
25 of medicine or podiatry permanently licensed in this  
26 state who assume legal and supervisory responsibility  
27 for the work or training of any physician assistant  
28 under his or her supervision.

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

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

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

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

66 (2) Has passed the certifying examination for a  
67 primary care physician assistant administered by the  
68 national commission on certification of physician  
69 assistants and has maintained certification by that  
70 commission so as to be currently certified;

71 (3) Is of good moral character; and

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

73 (d) The board shall license as a physician assistant-  
74 midwife any person who meets the standards set forth  
75 under subsection (d) of this section and, in addition

76 thereto, the following standards:

77 (1) Is a graduate of a school of midwifery accredited  
78 by the American college of nurse-midwives;

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

81 (3) Practices midwifery under the supervision of a  
82 board-certified obstetrician, gynecologist or a board-  
83 certified family practice physician who routinely  
84 practices obstetrics.

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

90 (1) He or she is a graduate of an approved program of  
91 instruction in primary health care or surgery prior to  
92 the first day of July, one thousand nine hundred ninety-  
93 four, and has passed the certifying examination for a  
94 physician assistant administered by the national  
95 commission on certification of physician assistants and  
96 has maintained certification by that commission so as to  
97 be currently certified; or

98 (2) He or she had been certified by the board as a  
99 physician assistant then classified as "Type B" prior to  
100 the first day of July, one thousand nine hundred eighty-  
101 three.

102 (f) Licensure of an assistant to a physician practicing  
103 the specialty of ophthalmology is permitted under this

104 section: *Provided*, That a physician assistant may not  
105 dispense a prescription for a refraction.

106 (g) When any graduate of an approved program  
107 submits an application to the board for a physician  
108 assistant license, accompanied by a job description as  
109 referenced by this section, the board shall issue to that  
110 applicant a temporary license allowing that applicant to  
111 function as a physician assistant until the applicant  
112 successfully passes the national commission on  
113 certification of physician assistants' certifying  
114 examination: *Provided*, That the applicant shall sit for  
115 and obtain a passing score on the examination next  
116 offered following graduation from the approved  
117 program. No applicant shall receive a temporary license  
118 who, following graduation from an approved program,  
119 has sat for and not obtained a passing score on the  
120 examination. A physician assistant who has not been  
121 certified by the National Board of Medical Examiners  
122 on behalf of the national commission on certification of  
123 physician assistants will be restricted to work under the  
124 direct supervision of the supervising physician.

125 (h) 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  
128 certification of physician assistants of his or her  
129 performance on the certifying examination, notify the  
130 board in writing of his or her results. In the event of  
131 failure of that examination, the temporary license shall  
132 expire and terminate automatically and the board shall  
133 so notify the physician assistant in writing.

134 (i) Any physician applying to the board to supervise a  
135 physician assistant shall affirm that the range of

136 medical services set forth in the physician assistant's job  
137 description are consistent with the skills and training of  
138 the supervising physician and the physician assistant.  
139 Before a physician assistant can be employed or  
140 otherwise use his or her skills, the supervising physician  
141 and the physician assistant must obtain approval of the  
142 job description from the board. The board may revoke  
143 or suspend any license of an assistant to a physician for  
144 cause, after giving that assistant an opportunity to be  
145 heard in the manner provided by article five, chapter  
146 twenty-nine-a of this code and as set forth in rules duly  
147 adopted by the board.

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

167 (k) The acts or omissions of a physician assistant  
168 employed by health care facilities providing inpatient or



169 outpatient services shall be the legal responsibility of  
170 the facilities. Physician assistants employed by facilities  
171 in staff positions shall be supervised by a permanently  
172 licensed physician.

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

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

196 (n) A physician assistant may write or sign  
197 prescriptions or transmit prescriptions by word of  
198 mouth, telephone or other means of communication at  
199 the direction of his or her supervising physician. The  
200 board shall promulgate rules pursuant to the provisions

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

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

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

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

216 (C) Categories of other drugs may be excluded as  
217 determined by the board;

218 (2) All pharmacological categories of drugs to be  
219 prescribed by a physician assistant shall be listed in  
220 each job description submitted to the board as required  
221 in subsection (i) of this section;

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

224 (4) A requirement that to be eligible for prescription  
225 privileges, a physician assistant shall have performed  
226 patient care services for a minimum of two years  
227 immediately preceding the submission to the board of  
228 the job description containing prescription privileges

229 and shall have successfully completed an accredited  
230 course of instruction in clinical pharmacology approved  
231 by the board; and

232 (5) A requirement that to maintain prescription  
233 privileges, a physician assistant shall continue to  
234 maintain national certification as a physician assistant  
235 and, in meeting the national certification requirements,  
236 shall complete a minimum of ten hours of continuing  
237 education in rational drug therapy in each certification  
238 period. Nothing in this subsection shall be construed to  
239 permit a physician assistant to independently prescribe  
240 or dispense drugs.

241 (o) A supervising physician may not supervise at any  
242 one time more than three full-time physician assistants  
243 or their equivalent, except that a physician may  
244 supervise up to four hospital-employed physician  
245 assistants. No physician shall supervise more than four  
246 physician assistants at any one time.

247 (p) A physician assistant may not sign any  
248 prescription, except in the case of an authorized  
249 physician assistant at the direction of his or her  
250 supervising physician in accordance with the provisions  
251 of subsection (n) of this section. A physician assistant  
252 may not perform any service that his or her supervising  
253 physician is not qualified to perform. A physician  
254 assistant may not perform any service that is not  
255 included in his or her job description and approved by  
256 the board as provided for in this section.

257 (q) The provisions of this section do not authorize any  
258 physician assistant to perform any specific function or  
259 duty delegated by this code to those persons licensed as

260 chiropractors, dentists, dental hygienists, optometrists  
261 or pharmacists or certified as nurse anesthetists.

262 (r) Each application for licensure submitted by a  
263 licensed supervising physician under this section is to  
264 be accompanied by a fee of one hundred dollars. A fee  
265 of fifty dollars is to be charged for the biennial renewal  
266 of the license. A fee of twenty-five dollars is to be  
267 charged for any change of supervising physician.

268 (s) As a condition of renewal of physician assistant  
269 license, each physician assistant shall provide written  
270 documentation of participation in and successful  
271 completion during the preceding two-year period of  
272 continuing education, in the number of hours specified  
273 by the board by rule, designated as Category I by the  
274 American Medical Association, American Academy of  
275 Physician Assistants or the Academy of Family  
276 Physicians and continuing education, in the number of  
277 hours specified by the board by rule, designated as  
278 Category II by the association or either academy.

279 (t) Notwithstanding any provision of this chapter to  
280 the contrary, beginning the first day of July, two  
281 thousand seven, failure to timely submit the required  
282 written documentation shall result in the automatic  
283 expiration of any license as a physician assistant until  
284 the written documentation is submitted to and  
285 approved by the board.

286 (u) If a license is automatically expired and  
287 reinstatement is sought within one year of the  
288 automatic expiration, the former licensee shall:

289 (1) Provide certification with supporting written

290 documentation of the successful completion of the  
291 required continuing education;

292 (2) Pay a renewal fee; and

293 (3) Pay a reinstatement fee equal to fifty percent of the  
294 renewal fee.

295 (v) If a license is automatically expired and more than  
296 one year has passed since the automatic expiration, the  
297 former licensee shall:

298 (1) Apply for a new license;

299 (2) Provide certification with supporting written  
300 documentation of the successful completion of the  
301 required continuing education; and

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

303 (w) It is unlawful for any physician assistant to  
304 represent to any person that he or she is a physician,  
305 surgeon or podiatrist. Any person who violates the  
306 provisions of this subsection is guilty of a felony and,  
307 upon conviction thereof, shall be imprisoned in the  
308 penitentiary for not less than one nor more than two  
309 years, or be fined not more than two thousand dollars,  
310 or both fined and imprisoned.

311 (x) All physician assistants holding valid certificates  
312 issued by the board prior to the first day of July, one  
313 thousand nine hundred ninety-two, shall be considered  
314 to be licensed under this section.

**ARTICLE 3D. PHYSICIAN HEALTH PROGRAMS.****§30-3D-1. Definitions.**

1 For the purposes of this article, the following words  
2 and terms have the meanings ascribed to them, unless  
3 the context clearly indicates otherwise.

4 (1) "Boards" mean the West Virginia Board of  
5 Medicine and Board of Osteopathy.

6 (2) "Major mental illness" means a diagnosis of a  
7 mental disorder within the axis of psychotic or affective  
8 or mood, or alcohol or chemical abuse, or alcohol or  
9 chemical dependency, as stipulated in the International  
10 Code of Diagnosis.

11 (3) "Physician and physician assistant" mean those  
12 health care professionals licensed by the West Virginia  
13 Board of Medicine or the West Virginia Board of  
14 Osteopathy.

15 (4) "Podiatrist" means those individuals licensed by  
16 the West Virginia Board of Medicine to undertake the  
17 practice of podiatry.

18 (5) "Qualifying illness" means the diagnosis of alcohol  
19 or substance abuse or alcohol or substance dependency  
20 or major mental illness.

**§30-3D-2. Physician health program.**

1 (a) The boards are authorized to designate one or more  
2 physician health programs. To be eligible for  
3 designation by the boards, a physician health program  
4 shall:

- 5 (1) Agree to make their services available to all  
6 licensed West Virginia physicians, podiatrists and  
7 physicians' assistants with a qualifying illness;
- 8 (2) Provide for the education of physicians, podiatrists  
9 and physicians' assistants with respect to the  
10 recognition and treatment of alcohol, chemical  
11 dependency and mental illness and the availability of  
12 the physician health program for qualifying illnesses;
- 13 (3) Offer assistance to any person in referring a  
14 physician, podiatrist or physicians' assistant for  
15 purposes of assessment or treatment or both for a  
16 qualifying illness;
- 17 (4) Monitor the status of a physician, podiatrist or  
18 physicians' assistant who enters treatment for a  
19 qualifying illness pursuant to a written, voluntary  
20 agreement during treatment;
- 21 (5) Monitor the compliance of a physician, podiatrist  
22 or physicians' assistant who enters into a written,  
23 voluntary agreement for a qualifying illness with the  
24 physician health program setting forth a course for  
25 recovery;
- 26 (6) Agree to accept referrals from the boards to  
27 provide monitoring services pursuant to a board order;  
28 and
- 29 (7) Include such other requirements as the boards  
30 deem necessary.
- 31 (b) A designated physician health program shall:

32 (1) Set and collect reasonable fees, grants and  
33 donations for administration and services provided;

34 (2) Work collaboratively with the boards to develop  
35 model compliance agreements;

36 (3) Work collaboratively with the boards to identify  
37 qualified providers of services as may be needed by the  
38 individuals participating in the physician health  
39 program;

40 (4) Report to the boards no less than annually,  
41 statistics including the number of individuals served by  
42 license held; the number of compliant individuals; the  
43 number of individuals who have successfully completed  
44 their agreement period; and the number of individuals  
45 reported to a particular board for suspected  
46 noncompliance. Provided, that in making such report  
47 the physician health program shall not disclose any  
48 personally identifiable information relating to any  
49 physician, podiatrist or physician assistant  
50 participating in a voluntary agreement as provided  
51 herein.

52 (c) The fact that a physician, physician's assistant or  
53 podiatrist is participating in a designated physician  
54 health program is confidential, as is all physicians,  
55 podiatrists or physicians assistants patient information,  
56 acquired, created or used by the physician health  
57 program, and it shall remain confidential and may not  
58 be subject to discovery or subpoena in a civil case. The  
59 disclosure of participation and noncompliance to the  
60 appropriate board, as required by a compliance  
61 agreement, waives the confidentiality as to the  
62 appropriate board for disciplinary purposes.



63 (d) The physician health program and all persons  
64 engaged in physician health program activities are  
65 immune from civil liability and no civil action may be  
66 brought or maintained while the physician health  
67 program and all persons engaged in physician health  
68 program activities are acting in good faith and within  
69 the scope of their duties.

70 (e) The boards are immune from civil liability and no  
71 civil action may be brought or maintained against the  
72 boards or the state for an injury alleged to have been  
73 the result of the activities of the physician health  
74 program or the boards referral of an individual to the  
75 physician health program when they are acting in good  
76 faith and within the scope of their duties.

**§30-3D-3. Discretionary authority of boards to designate programs.**

1 The West Virginia Board of Medicine and the West  
2 Virginia Board of Osteopathy have the sole discretion to  
3 designate physician health programs for licensees of the  
4 respective boards and no provision of this article may  
5 be construed to entitle any physician, podiatrist or  
6 physician assistant to the creation or designation of a  
7 physician health program for any individual qualifying  
8 illness or group of qualifying illnesses.

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

**§30-14-11a. Records of board; expungement; examination; notice; public information; voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges.**

1 (a) The board shall maintain a permanent record of  
2 the names of all osteopathic physicians and osteopathic  
3 physician assistants, licensed, certified or otherwise  
4 lawfully practicing in this state and of all persons  
5 applying to be so licensed to practice, along with an  
6 individual historical record for each such individual  
7 containing reports and all other information furnished  
8 the board under this article or otherwise. When the  
9 board receives a report submitted pursuant to the  
10 provisions of section twelve-a of this article, or when  
11 the board receives or initiates a complaint regarding the  
12 conduct of anyone practicing osteopathic medicine or  
13 surgery, the board shall create a separate complaint file  
14 in which the board shall maintain all documents  
15 relating to the investigation and action upon the alleged  
16 conduct.

17 (b) Upon a determination by the board that any report  
18 submitted to it is without merit, the report shall be  
19 expunged from the individual's historical record.

20 (c) An osteopathic physician, osteopathic physician  
21 assistant, or applicant, or authorized representative  
22 thereof, has the right, upon request, to examine his or  
23 her own individual records maintained by the board  
24 pursuant to this article and to place into such record a  
25 statement of reasonable length of his or her own view of  
26 the correctness or relevance of any information existing  
27 in such record. Such statement shall at all times  
28 accompany that part of the record in contention.

29 (d) An osteopathic physician, osteopathic physician  
30 assistant or applicant has the right to seek through  
31 court action the amendment or expungement of any  
32 part of his or her historical record.

33 (e) An osteopathic physician, osteopathic physician  
34 assistant or applicant shall be provided written notice  
35 within thirty days of the placement and substance of  
36 any information in his or her individual historical  
37 record that pertains to him or her and that was not  
38 submitted to the board by him or her, other than  
39 requests for verification of the status of the individual's  
40 license and the board's responses thereto.

41 (f) Except for information relating to biographical  
42 background, education, professional training and  
43 practice, a voluntary agreement entered into pursuant  
44 to subsection (h) of this section and which has been  
45 disclosed to the board, prior disciplinary action by any  
46 entity, or information contained on the licensure  
47 application, the board shall expunge information in an  
48 individual's complaint file unless it has initiated a  
49 proceeding for a hearing upon such information within  
50 two years of the placing of the information into the  
51 complaint file.

52 (g) Orders of the board relating to disciplinary action  
53 against a physician, or physician assistant are public  
54 information.

55 (h) (1) In order to encourage voluntary participation in  
56 monitored alcohol, chemical dependency or major  
57 mental illness programs and in recognition of the fact  
58 that major mental illness, alcoholism and chemical  
59 dependency are illnesses, an osteopathic physician or  
60 osteopathic physician assistant licensed, certified, or  
61 otherwise lawfully practicing in this state or applying  
62 for a license to practice in this state may enter into a  
63 voluntary agreement with the board-designated  
64 physician health program. The agreement between the

65 physician or physician assistant and the physician  
66 health program shall include a jointly agreed upon  
67 treatment program and mandatory conditions and  
68 procedures to monitor compliance with the program of  
69 recovery.

70 (2) Any voluntary agreement entered into pursuant to  
71 this subsection shall not be considered a disciplinary  
72 action or order by the board, shall not be disclosed to  
73 the board and shall not be public information if:

74 (A) Such voluntary agreement is the result of the  
75 physician or physician assistant self-enrolling or  
76 voluntarily participating in the board-designated  
77 physician health program;

78 (B) The board has not received nor filed any written  
79 complaints regarding said physician or physician  
80 assistant relating to an alcohol, chemical dependency or  
81 major mental illness affecting the care and treatment of  
82 patients, nor received any written reports pursuant to  
83 subsection (b), section fourteen of this article relating to  
84 an alcohol or chemical dependency impairment; and

85 (C) The physician or physician assistant is in  
86 compliance with the voluntary treatment program and  
87 the conditions and procedures to monitor compliance.

88 (3) If any osteopathic physician or osteopathic  
89 physician assistant enters into a voluntary agreement  
90 with the board-approved physician health program,  
91 pursuant to this subsection and then fails to comply  
92 with, or fulfill the terms of said agreement the physician  
93 health program shall report the noncompliance to the  
94 board within twenty-four hours. The board may initiate

95 disciplinary proceedings pursuant to section eleven of  
96 this article or may permit continued participation in the  
97 physician health program or both.

98 (4) If the board has not instituted any disciplinary  
99 proceeding as provided in this article, any information  
100 received, maintained, or developed by the board  
101 relating to the alcohol or chemical dependency  
102 impairment of any osteopathic physician or osteopathic  
103 physician assistant and any voluntary agreement made  
104 pursuant to this subsection shall be confidential and not  
105 available for public information, discovery or court  
106 subpoena, nor for introduction into evidence in any  
107 medical professional liability action or other action for  
108 damages arising out of the provision of or failure to  
109 provide health care services.

110 In the board's annual report of its activities to the  
111 Governor and the Legislature required under section  
112 twelve, article one of this chapter, the board shall  
113 include information regarding the success of the  
114 voluntary agreement mechanism established therein:  
115 *Provided*, That in making such report the board shall  
116 not disclose any personally identifiable information  
117 relating to any osteopathic physician or osteopathic  
118 physician assistant participating in a voluntary  
119 agreement as provided herein.

120 Notwithstanding any of the foregoing provisions, the  
121 board may cooperate with and provide documentation  
122 of any voluntary agreement entered into pursuant to  
123 this subsection to licensing boards in other jurisdictions  
124 of which the board has become aware and as may be  
125 appropriate.

126 (i) Any physician-patient privilege does not apply in  
127 any investigation or proceeding by the board or by a  
128 medical peer review committee or by a hospital  
129 governing board with respect to relevant hospital  
130 medical records, while any of the aforesaid are acting  
131 within the scope of their authority: *Provided*, That the  
132 disclosure of any information pursuant to this provision  
133 shall not be considered a waiver of any such privilege in  
134 any other proceeding.

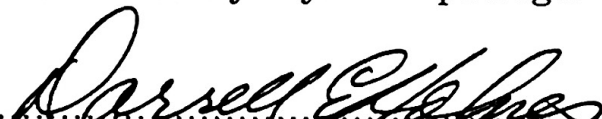
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

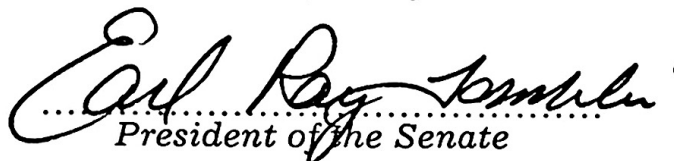
  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is* approved..... this  
the *21<sup>st</sup>* Day of *March*....., 2007.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 20 2007

Time 1:55 pm