

Senate Bill No. 642

(By Senator Stollings)

[Introduced February 17, 2012; referred to the Committee on
Health and Human Resources.]

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §16-4F-1, §16-4F-2,
12 §16-4F-3, §16-4F-4 and §16-4F-5; to amend and reenact §30-3-14
13 and §30-3-16 of said code; to amend and reenact §30-7-15a of
14 said code; to amend and reenact §30-14-11 of said code; and to
15 amend and reenact §30-14A-1 of said code, all relating to
16 treatment for a sexually transmitted disease; defining terms;
17 permitting prescribing of antibiotics to sexual partners of a
18 patient without a prior examination of the partner; requiring
19 patient counseling; establishing counseling criteria;
20 requiring information materials be prepared by the Department
21 of Health and Human Resources; providing limited liability for
22 providing expedited partnership therapy; and requiring
23 legislative rules regarding what is considered a sexually
24 transmitted disease and providing that physicians, physician

1 assistants and advanced nurse practitioners are not subject to
2 disciplinary action for providing treatment in an expedited
3 partnership setting.

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

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

12 **CHAPTER 16. PUBLIC HEALTH.**

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

14 **§16-4F-1. Definitions.**

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

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

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

24 (3) "Health care professional" means:

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

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

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

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

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

15 **§16-4F-2. Expedited partner therapy.**

16 (a) Notwithstanding any other provision of law to the
17 contrary, a health care professional who makes a clinical diagnosis
18 of a sexually transmitted disease may provide expedited partner
19 therapy for the treatment of the sexually transmitted disease if in
20 the judgment of the health care professional the sexual partner is
21 unlikely or unable to present for comprehensive health care,
22 including evaluation, testing and treatment for sexually
23 transmitted diseases. Expedited partner therapy is limited to a
24 sexual partner who may have been exposed to a sexually transmitted

1 disease within the previous sixty days and who is able to be
2 contacted by the patient.

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

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

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

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

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

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

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

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

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

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

16 (9) Other information found to be necessary and informative by
17 the department.

18 **§16-4F-3. Informational materials.**

19 (a) The department shall provide information and technical
20 assistance as appropriate to health care professionals who provide
21 expedited partner therapy. The department shall develop and
22 disseminate in electronic and other formats the following written
23 materials:

24 (1) Informational materials for sexual partners, as described

1 in subsection (c) of section two of this article;

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

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

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

10 **§16-4F-4. Limitation of liability.**

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

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

24 **§16-4F-5. Rulemaking.**

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

14 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

16 **§30-3-14. Professional discipline of physicians and podiatrists;**
17 **reporting of information to board pertaining to**
18 **medical professional liability and professional**
19 **incompetence required; penalties; grounds for license**
20 **denial and discipline of physicians and podiatrists;**
21 **investigations; physical and mental examinations;**
22 **hearings; sanctions; summary sanctions; reporting by**
23 **the board; reapplication; civil and criminal**
24 **immunity; voluntary limitation of license; probable**

1 **cause determinations.**

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

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

21 (b) Upon request of the board, any medical peer review
22 committee in this state shall report any information that may
23 relate to the practice or performance of any physician or
24 podiatrist known to that medical peer review committee. Copies of

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

8 The chief executive officer of every hospital shall, within
9 sixty days after the completion of the hospital's formal
10 disciplinary procedure and also within sixty days after the
11 commencement of and again after the conclusion of any resulting
12 legal action, report in writing to the board the name of any member
13 of the medical staff or any other physician or podiatrist
14 practicing in the hospital whose hospital privileges have been
15 revoked, restricted, reduced or terminated for any cause, including
16 resignation, together with all pertinent information relating to
17 such action. The chief executive officer shall also report any
18 other formal disciplinary action taken against any physician or
19 podiatrist by the hospital upon the recommendation of its medical
20 staff relating to professional ethics, medical incompetence,
21 medical professional liability, moral turpitude or drug or alcohol
22 abuse. Temporary suspension for failure to maintain records on a
23 timely basis or failure to attend staff or section meetings need
24 not be reported. Voluntary cessation of hospital privileges for

1 reasons unrelated to professional competence or ethics need not be
2 reported.

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

24 Any professional society in this state comprised primarily of

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

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

18 Within thirty days from the entry of an order by a court in a
19 medical professional liability action or other civil action in
20 which a physician or podiatrist licensed by the board is determined
21 to have rendered health care services below the applicable standard
22 of care, the clerk of the court in which the order was entered
23 shall forward a certified copy of the order to the board.

24 Within thirty days after a person known to be a physician or

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

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

1 disposition of a case by the board does not preclude any action by
2 a hospital, other health care facility or professional society
3 comprised primarily of physicians or podiatrists to suspend,
4 restrict or revoke the privileges or membership of the physician or
5 podiatrist.

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

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

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

20 (3) False or deceptive advertising;

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

24 (5) Making or filing a report that the person knows to be

1 false; intentionally or negligently failing to file a report or
2 record required by state or federal law; willfully impeding or
3 obstructing the filing of a report or record required by state or
4 federal law; or inducing another person to do any of the foregoing.

5 The reports and records covered in this subdivision mean only those
6 that are signed in the capacity as a licensed physician or
7 podiatrist;

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

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

1 care services;

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

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

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

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

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

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

23 (13) Prescribing, dispensing, administering, mixing or
24 otherwise preparing a prescription drug, including any controlled

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

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

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

22 (16) Delegating professional responsibilities to a person when
23 the physician or podiatrist delegating the responsibilities knows
24 or has reason to know that the person is not qualified by training,

1 experience or licensure to perform them;

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

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

9 (19) Gross negligence in the use and control of prescription
10 forms;

11 (20) Professional incompetence; or

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

23 (d) The board shall deny any application for a license or
24 other authorization to practice medicine and surgery or podiatry in

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

22 (e) The board may refer any cases coming to its attention to
23 an appropriate committee of an appropriate professional
24 organization for investigation and report. Except for complaints

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

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

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

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

23 (h) In every disciplinary or licensure denial action, the
24 board shall furnish the physician or podiatrist or applicant with

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

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

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

1 and copy of any proposed exhibit to be used at the hearing.

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

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

7 (2) Administer a public reprimand;

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

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

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

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

23 (7) Require him or her to practice under the direction of a
24 physician or podiatrist designated by the board for a specified

1 period of time; and

2 (8) Assess a civil fine of not less than \$1,000 nor more than
3 \$10,000.

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

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

24 (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

1 resume practice if the board has so ordered.

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

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

1 subsection may, at reasonable intervals, petition for removal of
2 any restriction or limitation on or for reinstatement of his or her
3 license to practice medicine and surgery or podiatry.

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

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

1 for a specified period of time to be established by the board.

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

1 writing.

2 **§30-3-16. Physician assistants; definitions; Board of Medicine**
3 **rules; annual report; licensure; temporary license;**
4 **relicensure; job description required; revocation or**
5 **suspension of licensure; responsibilities of**
6 **supervising physician; legal responsibility for**
7 **physician assistants; reporting by health care**
8 **facilities; identification; limitations on employment**
9 **and duties; fees; continuing education; unlawful**
10 **representation of physician assistant as a physician;**
11 **criminal penalties.**

12 (a) As used in this section:

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

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

19 (3) "Physician assistant" means an assistant to a physician
20 who is a graduate of an approved program of instruction in primary
21 health care or surgery, has attained a baccalaureate or master's
22 degree, has passed the national certification examination and is
23 qualified to perform direct patient care services under the
24 supervision of a physician;

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

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

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

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

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

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

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

24 (3) Is of good moral character; and

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

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

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

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

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

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

15 (1) He or she or she is a graduate of an approved program of
16 instruction in primary health care or surgery prior to July 1,
17 1994, and has passed the certifying examination for a physician
18 assistant administered by the National Commission on Certification
19 of Physician Assistants and has maintained certification by that
20 commission so as to be currently certified; or

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

23 (f) Licensure of an assistant to a physician practicing the
24 specialty of ophthalmology is permitted under this section:

1 *Provided*, That a physician assistant may not dispense a
2 prescription for a refraction.

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

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

22 (i) No applicant may receive a temporary license who,
23 following graduation from an approved program, has sat for and not
24 obtained a passing score on the examination.

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

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

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

22 (m) Any physician applying to the board to supervise a
23 physician assistant shall affirm that the range of medical services
24 set forth in the physician assistant's job description are

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

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

1 facility.

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

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

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

1 licensure of the physician assistant.

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

11 (1) Provisions for approving a state formulary classifying
12 pharmacologic categories of drugs that may be prescribed by a
13 physician assistant:

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

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

21 (C) Categories of other drugs may be excluded as determined by
22 the board.

23 (2) All pharmacological categories of drugs to be prescribed
24 by a physician assistant shall be listed in each job description

1 submitted to the board as required in subsection (i) of this
2 section;

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

4 (4) A requirement that to be eligible for prescription
5 privileges, a physician assistant shall have performed patient care
6 services for a minimum of two years immediately preceding the
7 submission to the board of the job description containing
8 prescription privileges and shall have successfully completed an
9 accredited course of instruction in clinical pharmacology approved
10 by the board; ~~and~~

11 (5) A requirement that to maintain prescription privileges, a
12 physician assistant shall continue to maintain National
13 Certification as a Physician Assistant and, in meeting the national
14 certification requirements, shall complete a minimum of ten hours
15 of continuing education in rational drug therapy in each
16 certification period. Nothing in this subsection shall be construed
17 to permit a physician assistant to independently prescribe or
18 dispense drugs; and

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

23 (s) A supervising physician may not supervise at any one time
24 more than three full-time physician assistants or their equivalent,

1 except that a physician may supervise up to four hospital-employed
2 physician assistants. No physician shall supervise more than four
3 physician assistants at any one time.

4 (t) A physician assistant may not sign any prescription,
5 except in the case of an authorized physician assistant at the
6 direction of his or her supervising physician in accordance with
7 the provisions of subsection (r) of this section. A physician
8 assistant may not perform any service that his or her supervising
9 physician is not qualified to perform. A physician assistant may
10 not perform any service that is not included in his or her job
11 description and approved by the board as provided for in this
12 section.

13 (u) The provisions of this section do not authorize any
14 physician assistant to perform any specific function or duty
15 delegated by this code to those persons licensed as chiropractors,
16 dentists, dental hygienists, optometrists or pharmacists or
17 certified as nurse anesthetists.

18 (v) Each application for licensure submitted by a licensed
19 supervising physician under this section is to be accompanied by a
20 fee of \$200. A fee of \$100 is to be charged for the biennial
21 renewal of the license. A fee of \$50 is to be charged for any
22 change or addition of supervising physician, or change or addition
23 of job location. A fee of \$50 will be charged for prescriptive
24 writing privileges.

1 (w) As a condition of renewal of physician assistant license,
2 each physician assistant shall provide written documentation of
3 participation in and successful completion during the preceding
4 two-year period of continuing education, in the number of hours
5 specified by the board by rule, designated as Category I by the
6 American Medical Association, American Academy of Physician
7 Assistants or the Academy of Family Physicians and continuing
8 education, in the number of hours specified by the board by rule,
9 designated as Category II by the association or either academy.

10 (x) Notwithstanding any provision of this chapter to the
11 contrary, failure to timely submit the required written
12 documentation shall result in the automatic expiration of any
13 license as a physician assistant until the written documentation is
14 submitted to and approved by the board.

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

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

21 (2) Pay a renewal fee; and

22 (3) Pay a reinstatement fee equal to fifty percent of the
23 renewal fee.

24 (z) If a license is automatically expired and more than one

1 year has passed since the automatic expiration, the former licensee
2 shall:

3 (1) Apply for a new license;

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

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

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

10 Any person who violates the provisions of this subsection is guilty
11 of a felony and, upon conviction thereof, shall be imprisoned in a
12 state correctional facility for not less than one nor more than two
13 years, or be fined not more than \$2,000, or both fined and
14 imprisoned.

15 (bb) All physician assistants holding valid certificates
16 issued by the board prior to July 1, 1992, shall be considered to
17 be licensed under this section.

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

19 **§30-7-15a. Prescriptive authority for prescription drugs;**
20 **collaborative relationship with physician**
21 **requirements; promulgation of rules; classification**
22 **of drugs to be prescribed; coordination with other**
23 **boards; coordination with Board of Pharmacy.**

24 (a) The board may, in its discretion, authorize an advanced

1 nurse practitioner to prescribe prescription drugs in a
2 collaborative relationship with a physician licensed to practice in
3 West Virginia and in accordance with applicable state and federal
4 laws. An authorized advanced nurse practitioner may write or sign
5 prescriptions or transmit prescriptions verbally or by other means
6 of communication.

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

14 (1) Mutually agreed upon written guidelines or protocols for
15 prescriptive authority as it applies to the advanced nurse
16 practitioner's clinical practice;

17 (2) Statements describing the individual and shared
18 responsibilities of the advanced nurse practitioner and the
19 physician pursuant to the collaborative agreement between them;

20 (3) Periodic and joint evaluation of prescriptive practice;

21 and

22 (4) Periodic and joint review and updating of the written
23 guidelines or protocols.

24 (c) The board shall promulgate legislative rules in accordance

1 with the provisions of chapter twenty-nine-a of this code governing
2 the eligibility and extent to which an advanced nurse practitioner
3 may prescribe drugs. Such rules shall provide, at a minimum, a
4 state formulary classifying those categories of drugs which shall
5 not be prescribed by advanced nurse practitioners, including, but
6 not limited to, Schedules I and II of the Uniform Controlled
7 Substances Act, anticoagulants, antineoplastics, radio-
8 pharmaceuticals and general anesthetics. Drugs listed under
9 schedule III shall be limited to a seventy-two hour supply without
10 refill. The rules shall also include a provision that advanced
11 nurse practitioners licensed under this chapter may not be
12 disciplined for providing expedited partner therapy in accordance
13 with the provisions of article four-f, chapter sixteen of this
14 code.

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

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

20 (1) The name of the authorized advanced nurse practitioner;

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

23 (3) The effective date of prescriptive authority.

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

1 **§30-14-11. Refusal, suspension or revocation of license;**
2 **suspension or revocation of certificate of**
3 **authorization.**

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

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

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

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

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

13 (5) Gross malpractice;

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

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

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

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

24 (c) An osteopathic physician licensed under this chapter may

1 not be disciplined for providing expedited partner therapy in
2 accordance with the provisions of article four-f, chapter sixteen
3 of this code.

4 **§30-14A-1. Osteopathic physician assistant to osteopathic**
5 **physicians and surgeons; definitions; Board of**
6 **Osteopathy rules; licensure; temporary licensure;**
7 **renewal of license; job description required;**
8 **revocation or suspension of license;**
9 **responsibilities of the supervising physician;**
10 **legal responsibility for osteopathic physician**
11 **assistants; reporting of disciplinary procedures;**
12 **identification; limitation on employment and**
13 **duties; fees; unlawful use of the title of**
14 **"osteopathic physician assistant"; unlawful**
15 **representation of an osteopathic physician**
16 **assistant as a physician; criminal penalties.**

17 (a) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (4) The provisions of this section do not authorize an
23 osteopathic physician assistant to perform any specific function or
24 duty delegated by this code to those persons licensed as

1 chiropractors, dentists, registered nurses, licensed practical
2 nurses, dental hygienists, optometrists or pharmacists or certified
3 as nurse anesthetists.

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

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

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

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

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

13 (p) An osteopathic physician assistant may write or sign
14 prescriptions or transmit prescriptions by word of mouth, telephone
15 or other means of communication at the direction of his or her
16 supervising physician. The board shall propose rules for
17 legislative approval in accordance with the provisions of article
18 three, chapter twenty-nine-a of this code governing the eligibility
19 and extent to which such an osteopathic physician assistant may
20 prescribe at the direction of the supervising physician. The rules
21 shall provide for a state formulary classifying pharmacologic
22 categories of drugs which may be prescribed by such an osteopathic
23 physician assistant. In classifying such pharmacologic categories,
24 those categories of drugs which shall be excluded shall include,

1 but not be limited to, Schedules I and II of the Uniform Controlled
2 Substances Act, anticoagulants, antineoplastics, radio-
3 pharmaceuticals, general anesthetics and radiographic contrast
4 materials. Drugs listed under Schedule III are limited to a
5 seventy-two hour supply without refill. The rules shall provide
6 that all pharmacological categories of drugs to be prescribed by an
7 osteopathic physician assistant shall be listed in each job
8 description submitted to the board as required in this section.
9 The rules shall provide the maximum dosage an osteopathic physician
10 assistant may prescribe.

11 (q) The rules shall also provide that to be eligible for such
12 prescription privileges, an osteopathic physician assistant must
13 submit an application to the board for such privileges. The rules
14 shall also provide that an osteopathic physician assistant shall
15 have performed patient care services for a minimum of two years
16 immediately preceding the submission to the board of said
17 application for prescription privileges and shall have successfully
18 completed an accredited course of instruction in clinical
19 pharmacology approved by the board. The rules shall also provide
20 that to maintain prescription privileges, an osteopathic physician
21 assistant shall continue to maintain national certification as an
22 osteopathic physician assistant, and in meeting such national
23 certification requirements shall complete a minimum of ten hours of
24 continuing education in rational drug therapy in each licensing

1 period. Nothing in this subsection may be construed to permit an
2 osteopathic physician assistant to independently prescribe or
3 dispense drugs.

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

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

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