

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 201**

4 (By Senators Stollings, Jenkins, Kirkendoll, Laird,
5 Miller, Palumbo, Plymale, Prezioso, Tucker,
6 Yost, Boley and M. Hall)

7 _____
8 [Originating in the Committee on Health and Human Resources;
9 reported March 8, 2013.]
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11
12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new article, designated §16-4F-1, §16-4F-2,
14 §16-4F-3, §16-4F-4 and §16-4F-5; to amend and reenact §30-3-14
15 and §30-3-16 of said code; to amend and reenact §30-5-3 of
16 said code; to amend and reenact §30-7-15a of said code; to
17 amend and reenact §30-14-11 of said code; and to amend and
18 reenact §30-14A-1 of said code, all relating to treatment for
19 a sexually transmitted disease; defining terms; permitting
20 prescribing of antibiotics to sexual partners of a patient
21 without a prior examination of the partner; requiring patient
22 counseling; establishing counseling criteria; requiring
23 information materials be prepared by the Department of Health
24 and Human Resources; providing limited liability for providing
25 expedited partnership therapy; requiring legislative rules
26 regarding what is considered a sexually transmitted disease;

1 and providing that physicians, physician assistants,
2 pharmacists and advanced nurse practitioners are not subject
3 to disciplinary action for providing treatment in an expedited
4 partnership setting.

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

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

14 **CHAPTER 16. PUBLIC HEALTH.**

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

16 **§16-4F-1. Definitions.**

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

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

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

1 (3) "Health care professional" means:

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

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

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

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

12 (E) A pharmacists pursuant to the provisions of article four-
13 B, chapter thirty of this code.

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

17 **§16-4F-2. Expedited partner therapy.**

18 (a) Notwithstanding any other provision of law to the
19 contrary, a health care professional who makes a clinical diagnosis
20 of a sexually transmitted disease may provide expedited partner
21 therapy for the treatment of the sexually transmitted disease if in
22 the judgment of the health care professional the sexual partner is
23 unlikely or unable to present for comprehensive health care,
24 including evaluation, testing and treatment for sexually
25 transmitted diseases. Expedited partner therapy is limited to a
26 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 in written or electronic format materials
12 provided by the department to be given by the patient to his or her
13 sexual partner.

14 **§16-4F-3. Informational materials.**

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

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

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

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

26 (b) The department may offer educational programs about

1 expedited partner therapy for health care professionals.

2 **§16-4F-4. Limitation of liability.**

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

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

16 **§16-4F-5. Rulemaking.**

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

1 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

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

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

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

1 or any combination of judgments and settlements resulting in five
2 or more unfavorable outcomes arising from medical professional
3 liability have been rendered or made against the physician or
4 podiatrist within a five-year period. The board may not consider
5 any judgments or settlements as conclusive evidence of professional
6 incompetence or conclusive lack of qualification to practice.

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

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

1 such action. The chief executive officer shall also report any
2 other formal disciplinary action taken against any physician or
3 podiatrist by the hospital upon the recommendation of its medical
4 staff relating to professional ethics, medical incompetence,
5 medical professional liability, moral turpitude or drug or alcohol
6 abuse. Temporary suspension for failure to maintain records on a
7 timely basis or failure to attend staff or section meetings need
8 not be reported. Voluntary cessation of hospital privileges for
9 reasons unrelated to professional competence or ethics need not be
10 reported.

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

1 credentialed by the plan to provide health care services to
2 enrollees or insureds to whom the plan has the ultimate obligation
3 to arrange for the provision of or payment for health care services
4 through organizational arrangements for ongoing quality assurance,
5 utilization review programs or dispute resolutions.

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

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

24 Within thirty days from the entry of an order by a court in a
25 medical professional liability action or other civil action in
26 which a physician or podiatrist licensed by the board is determined

1 to have rendered health care services below the applicable standard
2 of care, the clerk of the court in which the order was entered
3 shall forward a certified copy of the order to the board.

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

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

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

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

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

25 The filing of a report with the board pursuant to any
26 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
25 false; intentionally or negligently failing to file a report or
26 record required by state or federal law; willfully impeding or

1 obstructing the filing of a report or record required by state or
2 federal law; or inducing another person to do any of the foregoing.
3 The reports and records covered in this subdivision mean only those
4 that are signed in the capacity as a licensed physician or
5 podiatrist;

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

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

24 As used in this subdivision, "proprietary interest" does not
25 include an ownership interest in a building in which space is
26 leased to a clinical laboratory or pharmacy at the prevailing rate

1 under a lease arrangement that is not conditional upon the income
2 or gross receipts of the clinical laboratory or pharmacy;

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

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

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

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

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

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

1 his or her care and, in so doing, exceeds the average dosage of a
2 pain relieving controlled substance, as defined in Schedules II and
3 III of the Uniform Controlled Substance Act, does not violate this
4 article. A physician licensed under this chapter may not be
5 disciplined for providing expedited partner therapy in accordance
6 with the provisions of article four-f, chapter sixteen of this
7 code;

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

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

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

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

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

1 (19) Gross negligence in the use and control of prescription
2 forms;

3 (20) Professional incompetence; or

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

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

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

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

1 conditions, restrictions or limitations on the physician's or
2 podiatrist's license to practice that it considers necessary for
3 the protection of the public. Any report shall contain
4 recommendations for any necessary disciplinary measures and shall
5 be filed with the board within ninety days of any referral. The
6 recommendations shall be considered by the board and the case may
7 be further investigated by the board. The board after full
8 investigation shall take whatever action it considers appropriate,
9 as provided in this section.

10 (f) The investigating body, as provided in subsection (e) of
11 this section, may request and the board under any circumstances may
12 require a physician or podiatrist or person applying for licensure
13 or other authorization to practice medicine and surgery or podiatry
14 in this state to submit to a physical or mental examination by a
15 physician or physicians approved by the board. A physician or
16 podiatrist submitting to an examination has the right, at his or
17 her expense, to designate another physician to be present at the
18 examination and make an independent report to the investigating
19 body or the board. The expense of the examination shall be paid by
20 the board. Any individual who applies for or accepts the privilege
21 of practicing medicine and surgery or podiatry in this state is
22 considered to have given his or her consent to submit to all
23 examinations when requested to do so in writing by the board and to
24 have waived all objections to the admissibility of the testimony or
25 examination report of any examining physician on the ground that
26 the testimony or report is privileged communication. If a person

1 fails or refuses to submit to an examination under circumstances
2 which the board finds are not beyond his or her control, failure or
3 refusal is prima facie evidence of his or her inability to practice
4 medicine and surgery or podiatry competently and in compliance with
5 the standards of acceptable and prevailing medical practice.

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

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

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

1 and telephone numbers, to be called at hearing, with a brief
2 summary of his or her anticipated testimony; provide disclosure of
3 any trial expert pursuant to the requirements of Rule 26(b)(4) of
4 the West Virginia Rules of Civil Procedure; provide inspection and
5 copying of the results of any reports of physical and mental
6 examinations or scientific tests or experiments; and provide a list
7 and copy of any proposed exhibit to be used at the hearing.

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

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

13 (2) Administer a public reprimand;

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

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

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

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

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

6 (8) Assess a civil fine of not less than \$1,000 nor more than
7 \$10,000.

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

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

1 the board and:

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

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

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

21 (m) Any person against whom disciplinary action has been taken
22 under the provisions of this article shall, at reasonable
23 intervals, be afforded an opportunity to demonstrate that he or she
24 can resume the practice of medicine and surgery or podiatry on a
25 general or limited basis. At the conclusion of a suspension,
26 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
25 subsection may, at reasonable intervals, petition for removal of
26 any restriction or limitation on or for reinstatement of his or her

1 license to practice medicine and surgery or podiatry.

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

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

24 (r) Notwithstanding any other provisions of this article, the
25 board may, at any time, on its own motion, or upon motion by the
26 complainant, or upon motion by the physician or podiatrist, or by

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

22 **§30-3-16. Physician assistants; definitions; Board of Medicine**
23 **rules; annual report; licensure; temporary license;**
24 **relicensure; job description required; revocation or**
25 **suspension of licensure; responsibilities of**

1 **supervising physician; legal responsibility for**
2 **physician assistants; reporting by health care**
3 **facilities; identification; limitations on**
4 **employment and duties; fees; continuing education;**
5 **unlawful representation of physician assistant as a**
6 **physician; criminal penalties.**

7 (a) As used in this section:

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

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

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

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

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

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

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

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

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

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

16 (3) Is of good moral character; and

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

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

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

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

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

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

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

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

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

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

25 (h) When a graduate of an approved program submits an
26 application to the board for a physician assistant license,

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

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

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

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

24 (l) In the event a physician assistant fails a recertification
25 examination of the National Commission on Certification of
26 Physician Assistants and is no longer certified, the physician

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

7 (m) A physician applying to the board to supervise a physician
8 assistant shall affirm that the range of medical services set forth
9 in the physician assistant's job description are consistent with
10 the skills and training of the supervising physician and the
11 physician assistant. Before a physician assistant can be employed
12 or otherwise use his or her skills, the supervising physician and
13 the physician assistant 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 the assistant an
16 opportunity to be heard in the manner provided by article five,
17 chapter twenty-nine-a of this code and as set forth in rules duly
18 adopted by the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (5) A requirement that to maintain prescription privileges, a

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

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

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

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

26 (u) The provisions of this section do not authorize a

1 physician assistant to perform any specific function or duty
2 delegated by this code to those persons licensed as chiropractors,
3 dentists, dental hygienists, optometrists or pharmacists or
4 certified as nurse anesthetists.

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

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

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

26 (y) If a license is automatically expired and reinstatement is

1 sought within one year of the automatic expiration, the former
2 licensee shall:

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

6 (2) Pay a renewal fee; and

7 (3) Pay a reinstatement fee equal to fifty percent of the
8 renewal fee.

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

12 (1) Apply for a new license;

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

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

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

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

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

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

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

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

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

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

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

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

1 foreign country.

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

9 (1) In a documented emergency;

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

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

14 ~~(3)~~ (4) Where patient care is rendered in consultation with
15 another practitioner who has an ongoing relationship with the
16 patient and who has agreed to supervise the patient's treatment,
17 including the use of any prescribed medications.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 authority. The list shall include:

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

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

6 (3) The effective date of prescriptive authority.

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

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

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

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

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

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

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

20 (5) Gross malpractice;

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

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

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

1 morphine, cocaine or other habit-forming drugs.

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

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

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

11 **§30-14A-1. Osteopathic physician assistant to osteopathic**

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

24 (a) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (3) Is of good moral character.

20 (e) When a graduate of an approved program submits an
21 application to the board, accompanied by a job description in
22 conformity with this section, for an osteopathic physician
23 assistant license, the board may issue to the applicant a temporary
24 license allowing the applicant to function as an osteopathic
25 physician assistant for the period of one year. The temporary
26 license may be renewed for one additional year upon the request of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 imprisoned.

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

1 conditions include, but are not limited to, arthritis, asthma,
2 cardiovascular disease, cancer, diabetes, epilepsy and seizures and
3 obesity. The prescriber authorized in this section shall note on
4 the prescription the condition for which the patient is being
5 treated. The rules shall provide that all pharmacological
6 categories of drugs to be prescribed by an osteopathic physician
7 assistant be listed in each job description submitted to the board
8 as required in this section. The rules shall provide the maximum
9 dosage an osteopathic physician assistant may prescribe.

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

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

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

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

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

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

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

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

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.