

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 201**

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

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

1 expedited partnership therapy; requiring legislative rules  
2 regarding what is considered a sexually transmitted disease;  
3 and providing that physicians, physician assistants,  
4 pharmacists and advanced nurse practitioners are not subject  
5 to disciplinary action for providing certain treatment for  
6 sexually transmitted diseases for sexual partners of a  
7 patient.

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

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

17 **CHAPTER 16. PUBLIC HEALTH.**

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

19 **§16-4F-1. Definitions.**

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

22 (1) "Department" means the West Virginia Department of Health  
23 and Human Resources.

24 (2) "Expedited partner therapy" means prescribing, dispensing,  
25 furnishing or otherwise providing prescription antibiotic drugs to

1 the sexual partner or partners of a person clinically diagnosed as  
2 infected with a sexually transmitted disease without physical  
3 examination of the partner or partners.

4 (3) "Health care professional" means:

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

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

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

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

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

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

20 **§16-4F-2. Expedited partner therapy.**

21 (a) Notwithstanding any other provision of law to the  
22 contrary, a health care professional who makes a clinical diagnosis  
23 of a sexually transmitted disease may provide expedited partner  
24 therapy for the treatment of the sexually transmitted disease if in  
25 the judgment of the health care professional the sexual partner is  
26 unlikely or unable to present for comprehensive health care,

1 including evaluation, testing and treatment for sexually  
2 transmitted diseases. Expedited partner therapy is limited to a  
3 sexual partner who may have been exposed to a sexually transmitted  
4 disease within the previous sixty days and who is able to be  
5 contacted by the patient.

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

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

17 **§16-4F-3. Informational materials.**

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

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

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

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

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

5 **§16-4F-4. Limitation of liability.**

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

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

19 **§16-4F-5. Rulemaking.**

20 The Secretary of the Department of Health and Human Resources  
21 shall propose rules for legislative approval in accordance with the  
22 provisions of article three, chapter twenty-nine-a of this code to  
23 designate certain diseases as sexually transmitted diseases which  
24 may be treated by expedited partner therapy. The department shall  
25 consider the recommendations and classifications of the federal

1 Department of Health and Human Services, Centers for Disease  
2 Control and Prevention and other nationally recognized medical  
3 authorities in making these designations.

4 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

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

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

21 The board may initiate investigations as to professional  
22 incompetence or other reasons for which a licensed physician or  
23 podiatrist may be adjudged unqualified based upon criminal  
24 convictions; complaints by citizens, pharmacists, physicians,  
25 podiatrists, peer review committees, hospital administrators,

1 professional societies or others; or unfavorable outcomes arising  
2 out of medical professional liability. The board shall initiate an  
3 investigation if it receives notice that three or more judgments,  
4 or any combination of judgments and settlements resulting in five  
5 or more unfavorable outcomes arising from medical professional  
6 liability have been rendered or made against the physician or  
7 podiatrist within a five-year period. The board may not consider  
8 any judgments or settlements as conclusive evidence of professional  
9 incompetence or conclusive lack of qualification to practice.

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

21 The chief executive officer of every hospital shall, within  
22 sixty days after the completion of the hospital's formal  
23 disciplinary procedure and also within sixty days after the  
24 commencement of and again after the conclusion of any resulting  
25 legal action, report in writing to the board the name of any member  
26 of the medical staff or any other physician or podiatrist

1 practicing in the hospital whose hospital privileges have been  
2 revoked, restricted, reduced or terminated for any cause, including  
3 resignation, together with all pertinent information relating to  
4 such action. The chief executive officer shall also report any  
5 other formal disciplinary action taken against any physician or  
6 podiatrist by the hospital upon the recommendation of its medical  
7 staff relating to professional ethics, medical incompetence,  
8 medical professional liability, moral turpitude or drug or alcohol  
9 abuse. Temporary suspension for failure to maintain records on a  
10 timely basis or failure to attend staff or section meetings need  
11 not be reported. Voluntary cessation of hospital privileges for  
12 reasons unrelated to professional competence or ethics need not be  
13 reported.

14 Any managed care organization operating in this state which  
15 provides a formal peer review process shall report in writing to  
16 the board, within sixty days after the completion of any formal  
17 peer review process and also within sixty days after the  
18 commencement of and again after the conclusion of any resulting  
19 legal action, the name of any physician or podiatrist whose  
20 credentialing has been revoked or not renewed by the managed care  
21 organization. The managed care organization shall also report in  
22 writing to the board any other disciplinary action taken against a  
23 physician or podiatrist relating to professional ethics,  
24 professional liability, moral turpitude or drug or alcohol abuse  
25 within sixty days after completion of a formal peer review process  
26 which results in the action taken by the managed care organization.



1 For purposes of this subsection, "managed care organization" means  
2 a plan that establishes, operates or maintains a network of health  
3 care providers who have entered into agreements with and been  
4 credentialed by the plan to provide health care services to  
5 enrollees or insureds to whom the plan has the ultimate obligation  
6 to arrange for the provision of or payment for health care services  
7 through organizational arrangements for ongoing quality assurance,  
8 utilization review programs or dispute resolutions.

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

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

1           Within thirty days from the entry of an order by a court in a  
2 medical professional liability action or other civil action in  
3 which a physician or podiatrist licensed by the board is determined  
4 to have rendered health care services below the applicable standard  
5 of care, the clerk of the court in which the order was entered  
6 shall forward a certified copy of the order to the board.

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

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

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

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

25 The board shall provide forms for filing reports pursuant to  
26 this section. Reports submitted in other forms shall be accepted

1 by the board.

2       The filing of a report with the board pursuant to any  
3 provision of this article, any investigation by the board or any  
4 disposition of a case by the board does not preclude any action by  
5 a hospital, other health care facility or professional society  
6 comprised primarily of physicians or podiatrists to suspend,  
7 restrict or revoke the privileges or membership of the physician or  
8 podiatrist.

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

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

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

23       (3) False or deceptive advertising;

24       (4) Aiding, assisting, procuring or advising any unauthorized  
25 person to practice medicine and surgery or podiatry contrary to  
26 law;

1           (5) Making or filing a report that the person knows to be  
2 false; intentionally or negligently failing to file a report or  
3 record required by state or federal law; willfully impeding or  
4 obstructing the filing of a report or record required by state or  
5 federal law; or inducing another person to do any of the foregoing.  
6 The reports and records covered in this subdivision mean only those  
7 that are signed in the capacity as a licensed physician or  
8 podiatrist;

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

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

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

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

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

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

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

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

22       (13) Prescribing, dispensing, administering, mixing or  
23 otherwise preparing a prescription drug, including any controlled  
24 substance under state or federal law, other than in good faith and  
25 in a therapeutic manner in accordance with accepted medical  
26 standards and in the course of the physician's or podiatrist's

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

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

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

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

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

26 (18) Conspiring with any other person to commit an act or

1 committing an act that would tend to coerce, intimidate or preclude  
2 another physician or podiatrist from lawfully advertising his or  
3 her services;

4 (19) Gross negligence in the use and control of prescription  
5 forms;

6 (20) Professional incompetence; or

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

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



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

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

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

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

1 have waived all objections to the admissibility of the testimony or  
2 examination report of any examining physician on the ground that  
3 the testimony or report is privileged communication. If a person  
4 fails or refuses to submit to an examination under circumstances  
5 which the board finds are not beyond his or her control, failure or  
6 refusal is prima facie evidence of his or her inability to practice  
7 medicine and surgery or podiatry competently and in compliance with  
8 the standards of acceptable and prevailing medical practice.

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

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

1 production of documents. The board shall make all its final  
2 actions public. The order shall contain the terms of all action  
3 taken by the board.

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

1 the complete identity, address and telephone number of any person  
2 known to the respondent with knowledge about the facts of any of  
3 the charges; provide a list of proposed witnesses with addresses  
4 and telephone numbers, to be called at hearing, with a brief  
5 summary of his or her anticipated testimony; provide disclosure of  
6 any trial expert pursuant to the requirements of Rule 26(b)(4) of  
7 the West Virginia Rules of Civil Procedure; provide inspection and  
8 copying of the results of any reports of physical and mental  
9 examinations or scientific tests or experiments; and provide a list  
10 and copy of any proposed exhibit to be used at the hearing.

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

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

16 (2) Administer a public reprimand;

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

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

26 (5) Require him or her to submit to care, counseling or

1 treatment designated by the board as a condition for initial or  
2 continued licensure or renewal of licensure or other authorization  
3 to practice medicine and surgery or podiatry;

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

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

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

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

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

1 evidence presented to it in support of a motion for remand that  
2 there is newly discovered evidence of such a character as ought to  
3 produce an opposite result at a second hearing on the merits before  
4 the board and:

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

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

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

24 (m) Any person against whom disciplinary action has been taken  
25 under the provisions of this article shall, at reasonable  
26 intervals, be afforded an opportunity to demonstrate that he or she

1 can resume the practice of medicine and surgery or podiatry on a  
2 general or limited basis. At the conclusion of a suspension,  
3 limitation or restriction period the physician or podiatrist may  
4 resume practice if the board has so ordered.

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

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



1 surrendered or against whom other action is taken under this  
2 subsection may, at reasonable intervals, petition for removal of  
3 any restriction or limitation on or for reinstatement of his or her  
4 license to practice medicine and surgery or podiatry.

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

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

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

25 **§30-3-16. Physician assistants; definitions; Board of Medicine**

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

10           (a) As used in this section:

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

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

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

23           (4) "Physician assistant-midwife" means a physician assistant  
24 who meets all qualifications set forth under subdivision (3) of  
25 this subsection and fulfills the requirements set forth in

1 subsection (d) of this section, is subject to all provisions of  
2 this section and assists in the management and care of a woman and  
3 her infant during the prenatal, delivery and postnatal periods; and

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

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

1 accordance with subsection (r) of this section, those categories of  
2 drugs submitted to it in the job description required by this  
3 section. Certain authorized physician assistants may pronounce  
4 death in accordance with the rules proposed by the board which  
5 receive legislative approval. The board shall compile and publish  
6 an annual report that includes a list of currently licensed  
7 physician assistants and their supervising physician(s) and  
8 location in the state.

9 (c) The board shall license as a physician assistant any  
10 person who files an application together with a proposed job  
11 description and furnishes satisfactory evidence to it that he or  
12 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 certifying examination for a primary care  
16 physician assistant administered by the National Commission on  
17 Certification of Physician Assistants and has maintained  
18 certification by that commission so as to be currently certified;

19 (3) Is of good moral character; and

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

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

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

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

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

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

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

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

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

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

1 function as a physician assistant.

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

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

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

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

1 (l) In the event a physician assistant fails a recertification  
2 examination of the National Commission on Certification of  
3 Physician Assistants and is no longer certified, the physician  
4 assistant shall immediately notify his or her supervising physician  
5 or physicians and the board in writing. The physician assistant  
6 shall immediately cease practicing, the license shall terminate  
7 automatically and the physician assistant is not eligible for  
8 reinstatement until he or she has obtained a passing score on the  
9 examination.

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

22 (n) The supervising physician is responsible for observing,  
23 directing and evaluating the work, records and practices of each  
24 physician assistant performing under his or her supervision. He or  
25 she shall notify the board in writing of any termination of his or  
26 her supervisory relationship with a physician assistant within ten



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

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

16 (p) A health care facility shall report in writing to the  
17 board within sixty days after the completion of the facility's  
18 formal disciplinary procedure and after the commencement and  
19 conclusion of any resulting legal action, the name of any physician  
20 assistant practicing in the facility whose privileges at the  
21 facility have been revoked, restricted, reduced or terminated for  
22 any cause including resignation, together with all pertinent  
23 information relating to the action. The health care facility shall  
24 also report any other formal disciplinary action taken against any  
25 physician assistant by the facility relating to professional  
26 ethics, medical incompetence, medical malpractice, moral turpitude

1 or drug or alcohol abuse. Temporary suspension for failure to  
2 maintain records on a timely basis or failure to attend staff or  
3 section meetings need not be reported.

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

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

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

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

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

1 (C) In addition to the above referenced provisions and  
2 restrictions and at the direction of a supervising physician, the  
3 rules shall permit the prescribing of an annual supply of any drug,  
4 with the exception of controlled substances, which is prescribed  
5 for the treatment of a chronic condition, other than chronic pain  
6 management. For the purposes of this section, a "chronic  
7 condition" is a condition which lasts three months or more,  
8 generally cannot be prevented by vaccines, can be controlled but  
9 not cured by medication and does not generally disappear. These  
10 conditions, with the exception of chronic pain, include, but are  
11 not limited to, arthritis, asthma, cardiovascular disease, cancer,  
12 diabetes, epilepsy and seizures and obesity. The prescriber  
13 authorized in this section shall note on the prescription the  
14 chronic disease being treated.

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

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

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

22 (4) A requirement that to be eligible for prescription  
23 privileges, a physician assistant shall have performed patient care  
24 services for a minimum of two years immediately preceding the  
25 submission to the board of the job description containing  
26 prescription privileges and shall have successfully completed an

1 accredited course of instruction in clinical pharmacology approved  
2 by the board; and

3 (5) A requirement that to maintain prescription privileges, a  
4 physician assistant shall continue to maintain national  
5 certification as a physician assistant and, in meeting the national  
6 certification requirements, shall complete a minimum of ten hours  
7 of continuing education in rational drug therapy in each  
8 certification period. Nothing in this subsection permits a  
9 physician assistant to independently prescribe or dispense drugs;  
10 and

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

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

20 (t) A physician assistant may not sign any prescription,  
21 except in the case of an authorized physician assistant at the  
22 direction of his or her supervising physician in accordance with  
23 the provisions of subsection (r) of this section. A physician  
24 assistant may not perform any service that his or her supervising  
25 physician is not qualified to perform. A physician assistant may  
26 not perform any service that is not included in his or her job

1 description and approved by the board as provided ~~for~~ in this  
2 section.

3 (u) The provisions of this section do not authorize a  
4 physician assistant to perform any specific function or duty  
5 delegated by this code to those persons licensed as chiropractors,  
6 dentists, dental hygienists, optometrists or pharmacists or  
7 certified as nurse anesthetists.

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

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

24 (x) Notwithstanding any provision of this chapter to the  
25 contrary, failure to timely submit the required written  
26 documentation results in the automatic expiration of any license as

1 a physician assistant until the written documentation is submitted  
2 to and approved by the board.

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

6 (1) Provide certification with supporting written  
7 documentation of the successful completion of the required  
8 continuing education;

9 (2) Pay a renewal fee; and

10 (3) Pay a reinstatement fee equal to fifty percent of the  
11 renewal fee.

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

15 (1) Apply for a new license;

16 (2) Provide certification with supporting written  
17 documentation of the successful completion of the required  
18 continuing education; and

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

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

22 A person who violates the provisions of this subsection is guilty  
23 of a felony and, upon conviction thereof, shall be imprisoned in a  
24 state correctional facility for not less than one nor more than two  
25 years, or be fined not more than \$2,000, or both fined and  
26 imprisoned.

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

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

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

12 (a) It is unlawful for any person not a pharmacist, or who  
13 does not employ a pharmacist, to conduct any pharmacy or store for  
14 the purpose of retailing, compounding or dispensing prescription  
15 drugs or prescription devices.

16 (b) It is unlawful for the proprietor of any store or  
17 pharmacy, any "ambulatory health care facility", as that term is  
18 defined in section one, article five-b, chapter sixteen of this  
19 code, that offers pharmaceutical care, or a facility operated to  
20 provide health care or mental health care services free of charge  
21 or at a reduced rate and that operates a charitable clinic pharmacy  
22 to permit any person not a pharmacist to compound or dispense  
23 prescriptions or prescription refills or to retail or dispense the  
24 poisons and narcotic drugs named in sections two, three and six,  
25 article eight, chapter sixteen of this code: *Provided, That a*

1 licensed intern may compound and dispense prescriptions or  
2 prescription refills under the direct supervision of a pharmacist:  
3 *Provided, however,* That registered pharmacy technicians may assist  
4 in the preparation and dispensing of prescriptions or prescription  
5 refills, including, but not limited to, reconstitution of liquid  
6 medications, typing and affixing labels under the direct  
7 supervision of a licensed pharmacist.

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

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

22 (e) An intern having served part or all of his or her  
23 internship in a pharmacy in another state or foreign country shall  
24 be given credit for the same when the affidavit of his or her  
25 internship is signed by the pharmacist under whom he or she served,  
26 and it shows the dates and number of hours served in the internship



1 and when the affidavit is attested by the secretary of the State  
2 Board of Pharmacy of the state or country where the internship was  
3 served.

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

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

14 (1) In a documented emergency;

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

16 (3) For the treatment of sexually transmitted diseases by  
17 expedited partner theater as set forth in article four-f, chapter  
18 sixteen of this code; or

19 ~~(3)~~ (4) Where patient care is rendered in consultation with  
20 another practitioner who has an ongoing relationship with the  
21 patient and who has agreed to supervise the patient's treatment,  
22 including the use of any prescribed medications.

23 **ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**

24 **§30-7-15a. Prescriptive authority for prescription drugs;**  
25 **coordination with Board of Pharmacy.**

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

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

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

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

22 (3) Periodic and joint evaluation of prescriptive practice;  
23 and

24 (4) Periodic and joint review and updating of the written  
25 guidelines or protocols.

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

1 prescription the chronic disease being treated.

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

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

7 (1) The name of the authorized advanced practice registered  
8 nurse;

9 (2) The prescriber's identification number assigned by the  
10 board; and

11 (3) The effective date of prescriptive authority.

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

13 **§30-14-11. Refusal, suspension or revocation of license;**  
14 **suspension or revocation of certificate of**  
15 **authorization.**

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

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

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

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

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

25 (5) Gross malpractice;

1 (6) Advertising by means of knowingly false or deceptive  
2 statements;

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

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

7 (b) The board shall also have the power to suspend or revoke  
8 for cause any certificate of authorization issued by it. It shall  
9 have the power to reinstate any certificate of authorization  
10 suspended or revoked by it.

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

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

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

1                   **osteopathic physician assistant; unlawful**  
2                   **representation of an osteopathic physician**  
3                   **assistant as a physician; criminal penalties.**

4           (a) As used in this section:

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

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

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

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

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

1           (6) "Osteopathic physician assistant" means an assistant to an  
2 osteopathic physician who is a graduate of an approved program of  
3 instruction in primary care or surgery, has passed the National  
4 Certification Examination and is qualified to perform direct  
5 patient care services under the supervision of an osteopathic  
6 physician.

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

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

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

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

1 the osteopathic physician assistant may not be established; ~~and~~

2 (3) The board may allow the osteopathic physician assistant to  
3 perform those procedures and examinations and, in the case of  
4 authorized osteopathic physician assistants, to prescribe at the  
5 direction of his or her supervising physician in accordance with  
6 subsections (p) and (q) of this section those categories of drugs  
7 submitted to it in the job description required by subsection (f)  
8 of this section; and

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

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

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

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

21 (2) Has passed the examination for a primary care or surgery  
22 physician assistant administered by the National Board of Medical  
23 Examiners on behalf of the National Commission on Certification of  
24 Physician Assistants; and

25 (3) Is of good moral character.

26 (e) When a graduate of an approved program submits an



1 application to the board, accompanied by a job description in  
2 conformity with this section, for an osteopathic physician  
3 assistant license, the board may issue to the applicant a temporary  
4 license allowing the applicant to function as an osteopathic  
5 physician assistant for the period of one year. The temporary  
6 license may be renewed for one additional year upon the request of  
7 the supervising physician. An osteopathic physician assistant who  
8 has not been certified as such by the National Board of Medical  
9 Examiners on behalf of the National Commission on Certification of  
10 Physician Assistants will be restricted to work under the direct  
11 supervision of the supervising physician.

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

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

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

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

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

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

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

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

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

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

21 (4) The provisions of this section do not authorize an  
22 osteopathic physician assistant to perform any specific function or  
23 duty delegated by this code to those persons licensed as  
24 chiropractors, dentists, registered nurses, licensed practical  
25 nurses, dental hygienists, optometrists or pharmacists or certified  
26 as nurse anesthetists.

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

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

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

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

8 (p) An osteopathic physician assistant may write or sign  
9 prescriptions or transmit prescriptions by word of mouth, telephone  
10 or other means of communication at the direction of his or her  
11 supervising physician. The board shall propose rules for  
12 legislative approval in accordance with the provisions of article  
13 three, chapter twenty-nine-a of this code governing the eligibility  
14 and extent to which an osteopathic physician assistant may  
15 prescribe at the direction of the supervising physician. The rules  
16 shall provide for a state formulary classifying pharmacologic  
17 categories of drugs which may be prescribed by such an osteopathic  
18 physician assistant. In classifying such pharmacologic categories,  
19 those categories of drugs which shall be excluded include, but are  
20 not limited to, Schedules I and II of the Uniform Controlled  
21 Substances Act, antineoplastics, radiopharmaceuticals, general  
22 anesthetics and radiographic contrast materials. Drugs listed  
23 under Schedule III are limited to a seventy-two hour supply without  
24 refill. 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 an annual supply of any drug

1 other than controlled substances which is prescribed for the  
2 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 last 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 include, but are not limited to, arthritis, asthma,  
8 cardiovascular disease, cancer, diabetes, epilepsy and seizures and  
9 obesity. The prescriber authorized in this section shall note on  
10 the prescription the condition for which the patient is being  
11 treated. The rules shall provide that all pharmacological  
12 categories of drugs to be prescribed by an osteopathic physician  
13 assistant be listed in each job description submitted to the board  
14 as required in this section. The rules shall provide the maximum  
15 dosage an osteopathic physician assistant may prescribe.

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

18 (A) Submit an application to the board for prescription  
19 privileges;

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

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

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

26 (A) Continue to maintain national certification as an

1 osteopathic physician assistant; and

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

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

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(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.)