

H. B. 2523

(By Delegates Perdue, Eldridge, Marshall,
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[Introduced February 18, 2013; referred to the
Committee on Health and Human Resources then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §16-4F-1, §16-4F-2,
§16-4F-3, §16-4F-4 and §16-4F-5; to amend and reenact §30-3-14
and §30-3-16 of said code; to amend and reenact §30-7-15a of
said code; to amend and reenact §30-14-11 of said code; and to
amend and reenact §30-14A-1 of said code, all relating to
treatment for a sexually transmitted disease; defining terms;
permitting prescribing of antibiotics to sexual partners of a
patient without a prior examination of the partner; requiring
patient counseling; establishing counseling criteria;
requiring information materials be prepared by the Department
of Health and Human Resources; providing limited liability for
providing expedited partnership therapy; and requiring
legislative rules regarding what is considered a sexually
transmitted disease and providing that physicians, physician
assistants and advanced nurse practitioners are not subject to

disciplinary action for providing treatment in an expedited partnership setting.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4F. EXPEDITED PARTNER THERAPY.

§16-4F-1. Definitions.

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

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

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

(3) "Health care professional" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **§16-4F-5. Rulemaking.**

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

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

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

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

**civil and criminal immunity; voluntary limitation of
license; probable cause determinations.**

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

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

(b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any physician or

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

9 The chief executive officer of every hospital shall, within
10 sixty days after the completion of the hospital's formal
11 disciplinary procedure and also within sixty days after the
12 commencement of and again after the conclusion of any resulting
13 legal action, report in writing to the board the name of any member
14 of the medical staff or any other physician or podiatrist
15 practicing in the hospital whose hospital privileges have been
16 revoked, restricted, reduced or terminated for any cause, including
17 resignation, together with all pertinent information relating to
18 such action. The chief executive officer shall also report any
19 other formal disciplinary action taken against any physician or
20 podiatrist by the hospital upon the recommendation of its medical
21 staff relating to professional ethics, medical incompetence,
22 medical professional liability, moral turpitude or drug or alcohol
23 abuse. Temporary suspension for failure to maintain records on a
24 timely basis or failure to attend staff or section meetings need

1 not be reported. Voluntary cessation of hospital privileges for
2 reasons unrelated to professional competence or ethics need not be
3 reported.

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

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

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

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

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

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

1 \$1,000 nor more than \$10,000 against the violator. The board shall
2 notify any person so assessed of the assessment in writing and the
3 notice shall specify the reasons for the assessment. If the
4 violator fails to pay the amount of the assessment to the board
5 within thirty days, the Attorney General may institute a civil
6 action in the circuit court of Kanawha County to recover the amount
7 of the assessment. In any civil action, the court's review of the
8 board's action shall be conducted in accordance with the provisions
9 of section four, article five, chapter twenty-nine-a of this code.
10 Notwithstanding any other provision of this article to the
11 contrary, when there are conflicting views by recognized experts as
12 to whether any alleged conduct breaches an applicable standard of
13 care, the evidence must be clear and convincing before the board
14 may find that the physician or podiatrist has demonstrated a lack
15 of professional competence to practice with a reasonable degree of
16 skill and safety for patients.

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

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

24 The filing of a report with the board pursuant to any

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

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

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

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

21 (3) False or deceptive advertising;

22 (4) Aiding, assisting, procuring or advising any unauthorized
23 person to practice medicine and surgery or podiatry contrary to
24 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

1 goods or devices used in connection with medical or other health
2 care services;

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

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

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

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

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

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

24 (13) Prescribing, dispensing, administering, mixing or

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

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

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

23 (16) Delegating professional responsibilities to a person when
24 the physician or podiatrist delegating the responsibilities knows

1 or has reason to know that the person is not qualified by training,
2 experience or licensure to perform them;

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

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

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

12 (20) Professional incompetence; or

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

24 (d) The board shall deny any application for a license or

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

23 (e) The board may refer any cases coming to its attention to
24 an appropriate committee of an appropriate professional

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

23 (f) The investigating body, as provided in subsection (e) of
24 this section, may request and the board under any circumstances may

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

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

24 (h) In every disciplinary or licensure denial action, the

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

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

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

1 examinations or scientific tests or experiments; and provide a list
2 and copy of any proposed exhibit to be used at the hearing.

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

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

8 (2) Administer a public reprimand;

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

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

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

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

24 (7) Require him or her to practice under the direction of a

1 physician or podiatrist designated by the board for a specified
2 period of time; and

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

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

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

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

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

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

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

1 limitation or restriction period the physician or podiatrist may
2 resume practice if the board has so ordered.

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

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

1 the direction of a physician or podiatrist designated by the board
2 for a specified period of time to be established by the board.

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

1 agreements may be used in other proceedings if the parties agree in
2 writing.

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

13 (a) As used in this section:

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

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

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

1 qualified to perform direct patient care services under the
2 supervision of a physician;

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

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

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

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

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

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

22 (2) Has passed the certifying examination for a primary care
23 physician assistant administered by the National Commission on
24 Certification of Physician Assistants and has maintained

1 certification by that commission so as to be currently certified;

2 (3) Is of good moral character; and

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

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

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

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

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

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

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

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

1 (f) Licensure of an assistant to a physician practicing the
2 specialty of ophthalmology is permitted under this section:
3 *Provided*, That a physician assistant may not dispense a
4 prescription for a refraction.

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

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

23 (I) No applicant may receive a temporary license who,
24 following graduation from an approved program, has not obtained a

1 passing score on the examination.

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

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

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

23 (m) A physician applying to the board to supervise a physician
24 assistant shall affirm that the range of medical services set forth

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

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

1 unless the physician assistant is an employee of the facility.

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

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

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

1 licensure of the physician assistant.

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

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

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

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

20 (C) In addition to the above referenced provisions and
21 restrictions and at the direction of a supervising physician, the
22 rules shall permit the prescribing of an annual supply of any drug,
23 with the exception of controlled substances, which is prescribed
24 for the treatment of a chronic condition, other than chronic pain

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

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

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

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

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

24 (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

1 section.

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

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

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

23 (x) Notwithstanding any provision of this chapter to the
24 contrary, failure to timely submit the required written

1 documentation results in the automatic expiration of any license as
2 a physician assistant until the written documentation is submitted
3 to and approved by the board.

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

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

10 (2) Pay a renewal fee; and

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

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

16 (1) Apply for a new license;

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

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

21 (aa) It is unlawful for any physician assistant to represent
22 to any person that he or she is a physician, surgeon or podiatrist.
23 A person who violates the provisions of this subsection is guilty
24 of a felony and, upon conviction thereof, shall be imprisoned in a

1 state correctional facility for not less than one nor more than two
2 years, or be fined not more than \$2,000, or both fined and
3 imprisoned.

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

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

8 **§30-7-15a. Prescriptive authority for prescription drugs;**
9 **coordination with Board of Pharmacy.**

10 (a) The board may, in its discretion, authorize an advanced
11 practice registered nurse to prescribe prescription drugs in a
12 collaborative relationship with a physician licensed to practice in
13 West Virginia and in accordance with applicable state and federal
14 laws. An authorized advanced practice registered nurse may write
15 or sign prescriptions or transmit prescriptions verbally or by
16 other means of communication.

17 (b) For purposes of this section an agreement to a
18 collaborative relationship for prescriptive practice between a
19 physician and an advanced practice registered nurse shall be set
20 forth in writing. Verification of the agreement shall be filed
21 with the board by the advanced practice registered nurse. The
22 board shall forward a copy of the verification to the Board of
23 Medicine and the Board of Osteopathic Medicine. Collaborative
24 agreements shall include, but are not limited to, the following:

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

4 (2) Statements describing the individual and shared
5 responsibilities of the advanced practice registered nurse and the
6 physician pursuant to the collaborative agreement between them;

7 (3) Periodic and joint evaluation of prescriptive practice;
8 and

9 (4) Periodic and joint review and updating of the written
10 guidelines or protocols.

11 (c) The board shall promulgate legislative rules in accordance
12 with the provisions of chapter twenty-nine-a of this code governing
13 the eligibility and extent to which an advanced practice registered
14 nurse may prescribe drugs. Such rules shall provide, at a minimum,
15 a state formulary classifying those categories of drugs which shall
16 not be prescribed by advanced practice registered nurse including,
17 but not limited to, Schedules I and II of the Uniform Controlled
18 Substances Act, antineoplastics, radiopharmaceuticals and general
19 anesthetics. Drugs listed under Schedule III shall be limited to
20 a seventy-two hour supply without refill. The rules shall also
21 include a provision that advanced nurse practitioners licensed
22 under this chapter may not be disciplined for providing expedited
23 partner therapy in accordance with the provisions of article four-
24 f, chapter sixteen of this code. In addition to the above

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

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

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

20 (1) The name of the authorized advanced practice registered
21 nurse;

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

24 (3) The effective date of prescriptive authority.

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

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

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

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

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

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

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

14 (5) Gross malpractice;

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

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

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

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

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

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

6 **§30-14A-1. Osteopathic physician assistant to osteopathic**

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

19 (a) As used in this section:

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

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

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

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

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

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

24 (7) "Supervising physician" means a doctor of osteopathy

1 permanently licensed in this state who assumes legal and
2 supervising responsibility for the work or training of an
3 osteopathic physician assistant under his or her supervision.

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

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

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

21 (3) The board may allow the osteopathic physician assistant to
22 perform those procedures and examinations and, in the case of
23 authorized osteopathic physician assistants, to prescribe at the
24 direction of his or her supervising physician in accordance with

1 subsections (p) and (q) of this section those categories of drugs
2 submitted to it in the job description required by subsection (f)
3 of this section; and

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

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

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

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

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

20 (3) Is of good moral character.

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

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

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

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

1 termination. The legal responsibility for any osteopathic
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 an osteopathic
10 physician assistant unless the osteopathic physician assistant is
11 an employee of the facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 not limited to, Schedules I and II of the Uniform Controlled
2 Substances Act, antineoplastics, radiopharmaceuticals, general
3 anesthetics and radiographic contrast materials. Drugs listed
4 under Schedule III are limited to a seventy-two hour supply without
5 refill. In addition to the above referenced provisions and
6 restrictions and at the direction of a supervising physician, the
7 rules shall permit the prescribing an annual supply of any drug
8 other than controlled substances which is prescribed for the
9 treatment of a chronic condition other than chronic pain
10 management. For the purposes of this section, a "chronic
11 condition" is a condition which last three months or more,
12 generally cannot be prevented by vaccines, can be controlled but
13 not cured by medication and does not generally disappear. These
14 conditions include, but are not limited to, arthritis, asthma,
15 cardiovascular disease, cancer, diabetes, epilepsy and seizures and
16 obesity. The prescriber authorized in this section shall note on
17 the prescription the condition for which the patient is being
18 treated. The rules shall provide that all pharmacological
19 categories of drugs to be prescribed by an osteopathic physician
20 assistant be listed in each job description submitted to the board
21 as required in this section. The rules shall provide the maximum
22 dosage an osteopathic physician assistant may prescribe.

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

1 (A) Submit an application to the board for prescription
2 privileges;

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

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

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

9 (A) Continue to maintain national certification as an
10 osteopathic physician assistant; and

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

(3) Nothing in this subsection permits an osteopathic
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, they have been completely underscored.