

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 201**

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

---

[Originating in the Committee on the Judiciary;  
reported March 19, 2013.]

---

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 §30-5-3 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; requiring legislative rules regarding what is considered a sexually transmitted disease; and providing that physicians, physician assistants, pharmacists and advanced nurse practitioners are not subject to disciplinary action for providing certain treatment for sexually transmitted diseases for sexual partners of a patient.

*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 §30-5-3 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.**

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

3 (1) “Department” means the West Virginia Department  
4 of Health and Human Resources.

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

11 (3) “Health care professional” means:

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

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

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

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

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

24 (4) “Sexually transmitted disease” means a disease that  
25 may be treated by expedited partner therapy as determined by  
26 rule of the department.

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

1 (a) Notwithstanding any other provision of law to the  
2 contrary, a health care professional who makes a clinical  
3 diagnosis of a sexually transmitted disease may provide  
4 expedited partner therapy for the treatment of the sexually  
5 transmitted disease if in the judgment of the health care  
6 professional the sexual partner is unlikely or unable to  
7 present for comprehensive health care, including evaluation,

5

[Com. Sub. for Com. Sub. for S. B. No. 201]

8 testing and treatment for sexually transmitted diseases.

9 Expedited partner therapy is limited to a sexual partner who  
10 may have been exposed to a sexually transmitted disease  
11 within the previous sixty days and who is able to be  
12 contacted by the patient.

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

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

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

1 (a) The department shall provide information and  
2 technical assistance as appropriate to health care

3 professionals who provide expedited partner therapy. The  
4 department shall develop and disseminate in electronic and  
5 other formats the following written materials:

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

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

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

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

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

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

7

[Com. Sub. for Com. Sub. for S. B. No. 201]

8 and wanton misconduct. A health care professional is not  
9 subject to civil or professional liability for choosing not to  
10 provide expedited partner therapy.

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

**§16-4F-5. Rulemaking.**

1 The Secretary of the Department of Health and Human  
2 Resources shall propose rules for legislative approval in  
3 accordance with the provisions of article three, chapter  
4 twenty-nine-a of this code to designate certain diseases as  
5 sexually transmitted diseases which may be treated by  
6 expedited partner therapy. The department shall consider the  
7 recommendations and classifications of the federal  
8 Department of Health and Human Services, Centers for  
9 Disease Control and Prevention and other nationally  
10 recognized medical authorities in making these designations.

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

**§30-3-14. Professional discipline of physicians and podiatrists;**

**reporting of information to board pertaining to  
medical professional liability and professional  
incompetence required; penalties; grounds for license  
denial and discipline of physicians and podiatrists;  
investigations; physical and mental examinations;  
hearings; sanctions; summary sanctions; reporting by  
the board; reapplication; civil and criminal  
immunity; voluntary limitation of license; probable  
cause determinations.**

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

6       The board may initiate investigations as to professional  
7 incompetence or other reasons for which a licensed physician



9

[Com. Sub. for Com. Sub. for S. B. No. 201]

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

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

27 review committee may be provided to the subject physician  
28 or podiatrist if, in the discretion of the board, the provision of  
29 such copies will not jeopardize the board's investigation. In  
30 the event that copies are provided, the subject physician or  
31 podiatrist is allowed fifteen days to comment on the  
32 requested information and such comments must be  
33 considered by the board.

34 The chief executive officer of every hospital shall, within  
35 sixty days after the completion of the hospital's formal  
36 disciplinary procedure and also within sixty days after the  
37 commencement of and again after the conclusion of any  
38 resulting legal action, report in writing to the board the name  
39 of any member of the medical staff or any other physician or  
40 podiatrist practicing in the hospital whose hospital privileges  
41 have been revoked, restricted, reduced or terminated for any  
42 cause, including resignation, together with all pertinent  
43 information relating to such action. The chief executive  
44 officer shall also report any other formal disciplinary action  
45 taken against any physician or podiatrist by the hospital upon

46 the recommendation of its medical staff relating to  
47 professional ethics, medical incompetence, medical  
48 professional liability, moral turpitude or drug or alcohol  
49 abuse. Temporary suspension for failure to maintain records  
50 on a timely basis or failure to attend staff or section meetings  
51 need not be reported. Voluntary cessation of hospital  
52 privileges for reasons unrelated to professional competence  
53 or ethics need not be reported.

54 Any managed care organization operating in this state  
55 which provides a formal peer review process shall report in  
56 writing to the board, within sixty days after the completion of  
57 any formal peer review process and also within sixty days  
58 after the commencement of and again after the conclusion of  
59 any resulting legal action, the name of any physician or  
60 podiatrist whose credentialing has been revoked or not  
61 renewed by the managed care organization. The managed  
62 care organization shall also report in writing to the board any  
63 other disciplinary action taken against a physician or  
64 podiatrist relating to professional ethics, professional

65 liability, moral turpitude or drug or alcohol abuse within  
66 sixty days after completion of a formal peer review process  
67 which results in the action taken by the managed care  
68 organization. For purposes of this subsection, “managed care  
69 organization” means a plan that establishes, operates or  
70 maintains a network of health care providers who have  
71 entered into agreements with and been credentialed by the  
72 plan to provide health care services to enrollees or insureds  
73 to whom the plan has the ultimate obligation to arrange for  
74 the provision of or payment for health care services through  
75 organizational arrangements for ongoing quality assurance,  
76 utilization review programs or dispute resolutions.

77 Any professional society in this state comprised primarily  
78 of physicians or podiatrists which takes formal disciplinary  
79 action against a member relating to professional ethics,  
80 professional incompetence, medical professional liability,  
81 moral turpitude or drug or alcohol abuse shall report in  
82 writing to the board within sixty days of a final decision the  
83 name of the member, together with all pertinent information  
84 relating to the action.

13

[Com. Sub. for Com. Sub. for S. B. No. 201]

85 Every person, partnership, corporation, association,  
86 insurance company, professional society or other organization  
87 providing professional liability insurance to a physician or  
88 podiatrist in this state, including the State Board of Risk and  
89 Insurance Management, shall submit to the board the following  
90 information within thirty days from any judgment or settlement  
91 of a civil or medical professional liability action excepting  
92 product liability actions: The name of the insured; the date of  
93 any judgment or settlement; whether any appeal has been taken  
94 on the judgment and, if so, by which party; the amount of any  
95 settlement or judgment against the insured; and other  
96 information required by the board.

97 Within thirty days from the entry of an order by a court  
98 in a medical professional liability action or other civil action  
99 in which a physician or podiatrist licensed by the board is  
100 determined to have rendered health care services below the  
101 applicable standard of care, the clerk of the court in which  
102 the order was entered shall forward a certified copy of the  
103 order to the board.

104        Within thirty days after a person known to be a physician  
105 or podiatrist licensed or otherwise lawfully practicing  
106 medicine and surgery or podiatry in this state or applying to  
107 be licensed is convicted of a felony under the laws of this  
108 state or of any crime under the laws of this state involving  
109 alcohol or drugs in any way, including any controlled  
110 substance under state or federal law, the clerk of the court of  
111 record in which the conviction was entered shall forward to  
112 the board a certified true and correct abstract of record of the  
113 convicting court. The abstract shall include the name and  
114 address of the physician or podiatrist or applicant, the nature  
115 of the offense committed and the final judgment and sentence  
116 of the court.

117        Upon a determination of the board that there is probable  
118 cause to believe that any person, partnership, corporation,  
119 association, insurance company, professional society or other  
120 organization has failed or refused to make a report required  
121 by this subsection, the board shall provide written notice to  
122 the alleged violator stating the nature of the alleged violation

15

[Com. Sub. for Com. Sub. for S. B. No. 201]

123 and the time and place at which the alleged violator shall  
124 appear to show good cause why a civil penalty should not be  
125 imposed. The hearing shall be conducted in accordance with  
126 the provisions of article five, chapter twenty-nine-a of this  
127 code. After reviewing the record of the hearing, if the board  
128 determines that a violation of this subsection has occurred,  
129 the board shall assess a civil penalty of not less than \$1,000  
130 nor more than \$10,000 against the violator. The board shall  
131 notify any person so assessed of the assessment in writing  
132 and the notice shall specify the reasons for the assessment.  
133 If the violator fails to pay the amount of the assessment to the  
134 board within thirty days, the Attorney General may institute  
135 a civil action in the circuit court of Kanawha County to  
136 recover the amount of the assessment. In any civil action, the  
137 court's review of the board's action shall be conducted in  
138 accordance with the provisions of section four, article five,  
139 chapter twenty-nine-a of this code. Notwithstanding any  
140 other provision of this article to the contrary, when there are  
141 conflicting views by recognized experts as to whether any

142 alleged conduct breaches an applicable standard of care, the  
143 evidence must be clear and convincing before the board may  
144 find that the physician or podiatrist has demonstrated a lack  
145 of professional competence to practice with a reasonable  
146 degree of skill and safety for patients.

147 Any person may report to the board relevant facts about  
148 the conduct of any physician or podiatrist in this state which  
149 in the opinion of that person amounts to medical professional  
150 liability or professional incompetence.

151 The board shall provide forms for filing reports pursuant  
152 to this section. Reports submitted in other forms shall be  
153 accepted by the board.

154 The filing of a report with the board pursuant to any  
155 provision of this article, any investigation by the board or any  
156 disposition of a case by the board does not preclude any  
157 action by a hospital, other health care facility or professional  
158 society comprised primarily of physicians or podiatrists to  
159 suspend, restrict or revoke the privileges or membership of  
160 the physician or podiatrist.



17

[Com. Sub. for Com. Sub. for S. B. No. 201]

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

167 (1) Attempting to obtain, obtaining, renewing or  
168 attempting to renew a license to practice medicine and  
169 surgery or podiatry by bribery, fraudulent misrepresentation  
170 or through known error of the board;

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

176 (3) False or deceptive advertising;

177 (4) Aiding, assisting, procuring or advising any  
178 unauthorized person to practice medicine and surgery or  
179 podiatry contrary to law;

180       (5) Making or filing a report that the person knows to be  
181 false; intentionally or negligently failing to file a report or  
182 record required by state or federal law; willfully impeding or  
183 obstructing the filing of a report or record required by state  
184 or federal law; or inducing another person to do any of the  
185 foregoing. The reports and records covered in this  
186 subdivision mean only those that are signed in the capacity  
187 as a licensed physician or podiatrist;

188       (6) Requesting, receiving or paying directly or indirectly  
189 a payment, rebate, refund, commission, credit or other form  
190 of profit or valuable consideration for the referral of patients  
191 to any person or entity in connection with providing medical  
192 or other health care services or clinical laboratory services,  
193 supplies of any kind, drugs, medication or any other medical  
194 goods, services or devices used in connection with medical  
195 or other health care services;

196       (7) Unprofessional conduct by any physician or podiatrist  
197 in referring a patient to any clinical laboratory or pharmacy  
198 in which the physician or podiatrist has a proprietary interest

19

[Com. Sub. for Com. Sub. for S. B. No. 201]

199 unless the physician or podiatrist discloses in writing such  
200 interest to the patient. The written disclosure shall indicate  
201 that the patient may choose any clinical laboratory for  
202 purposes of having any laboratory work or assignment  
203 performed or any pharmacy for purposes of purchasing any  
204 prescribed drug or any other medical goods or devices used  
205 in connection with medical or other health care services;

206 As used in this subdivision, "proprietary interest" does  
207 not include an ownership interest in a building in which  
208 space is leased to a clinical laboratory or pharmacy at the  
209 prevailing rate under a lease arrangement that is not  
210 conditional upon the income or gross receipts of the clinical  
211 laboratory or pharmacy;

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

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

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

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

224 (12) Exercising influence on a patient in such a way as to  
225 exploit the patient for financial gain of the physician or  
226 podiatrist or of a third party. Any influence includes, but is  
227 not limited to, the promotion or sale of services, goods,  
228 appliances or drugs;

229 (13) Prescribing, dispensing, administering, mixing or  
230 otherwise preparing a prescription drug, including any  
231 controlled substance under state or federal law, other than in  
232 good faith and in a therapeutic manner in accordance with  
233 accepted medical standards and in the course of the  
234 physician's or podiatrist's professional practice. *Provided,*  
235 ~~That~~ A physician who discharges his or her professional  
236 obligation to relieve the pain and suffering and promote the

21

[Com. Sub. for Com. Sub. for S. B. No. 201]

237 dignity and autonomy of dying patients in his or her care and,  
238 in so doing, exceeds the average dosage of a pain relieving  
239 controlled substance, as defined in Schedules II and III of the  
240 Uniform Controlled Substance Act, does not violate this  
241 article. A physician licensed under this chapter may not be  
242 disciplined for providing expedited partner therapy in  
243 accordance with the provisions of article four-f, chapter  
244 sixteen of this code;

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

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

254 (16) Delegating professional responsibilities to a person  
255 when the physician or podiatrist delegating the

256 responsibilities knows or has reason to know that the person  
257 is not qualified by training, experience or licensure to  
258 perform them;

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

262 (18) Conspiring with any other person to commit an act  
263 or committing an act that would tend to coerce, intimidate or  
264 preclude another physician or podiatrist from lawfully  
265 advertising his or her services;

266 (19) Gross negligence in the use and control of  
267 prescription forms;

268 (20) Professional incompetence; or

269 (21) The inability to practice medicine and surgery or  
270 podiatry with reasonable skill and safety due to physical or  
271 mental impairment, including deterioration through the aging  
272 process, loss of motor skill or abuse of drugs or alcohol. A  
273 physician or podiatrist adversely affected under this  
274 subdivision shall be afforded an opportunity at reasonable

23

[Com. Sub. for Com. Sub. for S. B. No. 201]

275 intervals to demonstrate that he or she may resume the  
276 competent practice of medicine and surgery or podiatry with  
277 reasonable skill and safety to patients. In any proceeding  
278 under this subdivision, neither the record of proceedings nor  
279 any orders entered by the board shall be used against the  
280 physician or podiatrist in any other proceeding.

281 (d) The board shall deny any application for a license or  
282 other authorization to practice medicine and surgery or  
283 podiatry in this state to any applicant who, and shall revoke  
284 the license of any physician or podiatrist licensed or  
285 otherwise lawfully practicing within this state who, is found  
286 guilty by any court of competent jurisdiction of any felony  
287 involving prescribing, selling, administering, dispensing,  
288 mixing or otherwise preparing any prescription drug,  
289 including any controlled substance under state or federal law,  
290 for other than generally accepted therapeutic purposes.  
291 Presentation to the board of a certified copy of the guilty  
292 verdict or plea rendered in the court is sufficient proof  
293 thereof for the purposes of this article. A plea of nolo

294 contendere has the same effect as a verdict or plea of guilt.  
295 Upon application of a physician that has had his or her  
296 license revoked because of a drug-related felony conviction,  
297 upon completion of any sentence of confinement, parole,  
298 probation or other court-ordered supervision and full  
299 satisfaction of any fines, judgments or other fees imposed by  
300 the sentencing court, the board may issue the applicant a new  
301 license upon a finding that the physician is, except for the  
302 underlying conviction, otherwise qualified to practice  
303 medicine: *Provided*, That the board may place whatever  
304 terms, conditions or limitations it deems appropriate upon a  
305 physician licensed pursuant to this subsection.

306 (e) The board may refer any cases coming to its attention  
307 to an appropriate committee of an appropriate professional  
308 organization for investigation and report. Except for  
309 complaints related to obtaining initial licensure to practice  
310 medicine and surgery or podiatry in this state by bribery or  
311 fraudulent misrepresentation, any complaint filed more than  
312 two years after the complainant knew, or in the exercise of



25

[Com. Sub. for Com. Sub. for S. B. No. 201]

313 reasonable diligence should have known, of the existence of  
314 grounds for the complaint shall be dismissed: *Provided*, That  
315 in cases of conduct alleged to be part of a pattern of similar  
316 misconduct or professional incapacity that, if continued,  
317 would pose risks of a serious or substantial nature to the  
318 physician's or podiatrist's current patients, the investigating  
319 body may conduct a limited investigation related to the  
320 physician's or podiatrist's current capacity and qualification  
321 to practice and may recommend conditions, restrictions or  
322 limitations on the physician's or podiatrist's license to  
323 practice that it considers necessary for the protection of the  
324 public. Any report shall contain recommendations for any  
325 necessary disciplinary measures and shall be filed with the  
326 board within ninety days of any referral. The  
327 recommendations shall be considered by the board and the  
328 case may be further investigated by the board. The board  
329 after full investigation shall take whatever action it considers  
330 appropriate, as provided in this section.

331 (f) The investigating body, as provided in subsection (e)  
332 of this section, may request and the board under any  
333 circumstances may require a physician or podiatrist or person  
334 applying for licensure or other authorization to practice  
335 medicine and surgery or podiatry in this state to submit to a  
336 physical or mental examination by a physician or physicians  
337 approved by the board. A physician or podiatrist submitting  
338 to an examination has the right, at his or her expense, to  
339 designate another physician to be present at the examination  
340 and make an independent report to the investigating body or  
341 the board. The expense of the examination shall be paid by  
342 the board. Any individual who applies for or accepts the  
343 privilege of practicing medicine and surgery or podiatry in  
344 this state is considered to have given his or her consent to  
345 submit to all examinations when requested to do so in writing  
346 by the board and to have waived all objections to the  
347 admissibility of the testimony or examination report of any  
348 examining physician on the ground that the testimony or  
349 report is privileged communication. If a person fails or

350 refuses to submit to an examination under circumstances  
351 which the board finds are not beyond his or her control,  
352 failure or refusal is prima facie evidence of his or her  
353 inability to practice medicine and surgery or podiatry  
354 competently and in compliance with the standards of  
355 acceptable and prevailing medical practice.

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

359 (h) In every disciplinary or licensure denial action, the  
360 board shall furnish the physician or podiatrist or applicant  
361 with written notice setting out with particularity the reasons  
362 for its action. Disciplinary and licensure denial hearings  
363 shall be conducted in accordance with the provisions of  
364 article five, chapter twenty-nine-a of this code. However,  
365 hearings shall be heard upon sworn testimony and the rules  
366 of evidence for trial courts of record in this state shall apply  
367 to all hearings. A transcript of all hearings under this section  
368 shall be made, and the respondent may obtain a copy of the

369 transcript at his or her expense. The physician or podiatrist  
370 has the right to defend against any charge by the introduction  
371 of evidence, the right to be represented by counsel, the right  
372 to present and cross examine witnesses and the right to have  
373 subpoenas and subpoenas duces tecum issued on his or her  
374 behalf for the attendance of witnesses and the production of  
375 documents. The board shall make all its final actions public.  
376 The order shall contain the terms of all action taken by the  
377 board.

378 (i) In disciplinary actions in which probable cause has  
379 been found by the board, the board shall, within twenty days  
380 of the date of service of the written notice of charges or sixty  
381 days prior to the date of the scheduled hearing, whichever is  
382 sooner, provide the respondent with the complete identity,  
383 address and telephone number of any person known to the  
384 board with knowledge about the facts of any of the charges;  
385 provide a copy of any statements in the possession of or  
386 under the control of the board; provide a list of proposed  
387 witnesses with addresses and telephone numbers, with a brief

388 summary of his or her anticipated testimony; provide  
389 disclosure of any trial expert pursuant to the requirements of  
390 Rule 26(b)(4) of the West Virginia Rules of Civil Procedure;  
391 provide inspection and copying of the results of any reports  
392 of physical and mental examinations or scientific tests or  
393 experiments; and provide a list and copy of any proposed  
394 exhibit to be used at the hearing: *Provided*, That the board  
395 shall not be required to furnish or produce any materials  
396 which contain opinion work product information or would be  
397 a violation of the attorney-client privilege. Within twenty  
398 days of the date of service of the written notice of charges,  
399 the board shall disclose any exculpatory evidence with a  
400 continuing duty to do so throughout the disciplinary process.  
401 Within thirty days of receipt of the board's mandatory  
402 discovery, the respondent shall provide the board with the  
403 complete identity, address and telephone number of any  
404 person known to the respondent with knowledge about the  
405 facts of any of the charges; provide a list of proposed  
406 witnesses with addresses and telephone numbers, to be called

407 at hearing, with a brief summary of his or her anticipated  
408 testimony; provide disclosure of any trial expert pursuant to  
409 the requirements of Rule 26(b)(4) of the West Virginia Rules  
410 of Civil Procedure; provide inspection and copying of the  
411 results of any reports of physical and mental examinations or  
412 scientific tests or experiments; and provide a list and copy of  
413 any proposed exhibit to be used at the hearing.

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

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

420 (2) Administer a public reprimand;

421 (3) Suspend, limit or restrict his or her license or other  
422 authorization to practice medicine and surgery or podiatry for  
423 not more than five years, including limiting the practice of  
424 that person to, or by the exclusion of, one or more areas of  
425 practice, including limitations on practice privileges;

426 (4) Revoke his or her license or other authorization to  
427 practice medicine and surgery or podiatry or to prescribe or  
428 dispense controlled substances for a period not to exceed ten  
429 years;

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

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

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

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

441 (k) Notwithstanding the provisions of section eight,  
442 article one, chapter thirty of this code, if the board determines  
443 the evidence in its possession indicates that a physician's or  
444 podiatrist's continuation in practice or unrestricted practice

445 constitutes an immediate danger to the public, the board may  
446 take any of the actions provided in subsection (j) of this  
447 section on a temporary basis and without a hearing if  
448 institution of proceedings for a hearing before the board are  
449 initiated simultaneously with the temporary action and begin  
450 within fifteen days of the action. The board shall render its  
451 decision within five days of the conclusion of a hearing under  
452 this subsection.

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

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



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

468 A person may not practice medicine and surgery or  
469 podiatry or deliver health care services in violation of any  
470 disciplinary order revoking, suspending or limiting his or her  
471 license while any appeal is pending. Within sixty days, the  
472 board shall report its final action regarding restriction,  
473 limitation, suspension or revocation of the license of a  
474 physician or podiatrist, limitation on practice privileges or  
475 other disciplinary action against any physician or podiatrist  
476 to all appropriate state agencies, appropriate licensed health  
477 facilities and hospitals, insurance companies or associations  
478 writing medical malpractice insurance in this state, the  
479 American Medical Association, the American Podiatry  
480 Association, professional societies of physicians or  
481 podiatrists in the state and any entity responsible for the  
482 fiscal administration of Medicare and Medicaid.

483 (m) Any person against whom disciplinary action has  
484 been taken under the provisions of this article shall, at  
485 reasonable intervals, be afforded an opportunity to  
486 demonstrate that he or she can resume the practice of  
487 medicine and surgery or podiatry on a general or limited  
488 basis. At the conclusion of a suspension, limitation or  
489 restriction period the physician or podiatrist may resume  
490 practice if the board has so ordered.

491 (n) Any entity, organization or person, including the  
492 board, any member of the board, its agents or employees and  
493 any entity or organization or its members referred to in this  
494 article, any insurer, its agents or employees, a medical peer  
495 review committee and a hospital governing board, its  
496 members or any committee appointed by it acting without  
497 malice and without gross negligence in making any report or  
498 other information available to the board or a medical peer  
499 review committee pursuant to law and any person acting  
500 without malice and without gross negligence who assists in  
501 the organization, investigation or preparation of any such

35

[Com. Sub. for Com. Sub. for S. B. No. 201]

502 report or information or assists the board or a hospital  
503 governing body or any committee in carrying out any of its  
504 duties or functions provided by law is immune from civil or  
505 criminal liability, except that the unlawful disclosure of  
506 confidential information possessed by the board is a  
507 misdemeanor as provided in this article.

508 (o) A physician or podiatrist may request in writing to the  
509 board a limitation on or the surrendering of his or her license  
510 to practice medicine and surgery or podiatry or other  
511 appropriate sanction as provided in this section. The board  
512 may grant the request and, if it considers it appropriate, may  
513 waive the commencement or continuation of other  
514 proceedings under this section. A physician or podiatrist  
515 whose license is limited or surrendered or against whom  
516 other action is taken under this subsection may, at reasonable  
517 intervals, petition for removal of any restriction or limitation  
518 on or for reinstatement of his or her license to practice  
519 medicine and surgery or podiatry.

520 (p) In every case considered by the board under this  
521 article regarding discipline or licensure, whether initiated by  
522 the board or upon complaint or information from any person  
523 or organization, the board shall make a preliminary  
524 determination as to whether probable cause exists to  
525 substantiate charges of disqualification due to any reason set  
526 forth in subsection (c) of this section. If probable cause is  
527 found to exist, all proceedings on the charges shall be open  
528 to the public who are entitled to all reports, records and  
529 nondeliberative materials introduced at the hearing, including  
530 the record of the final action taken: *Provided*, That any  
531 medical records, which were introduced at the hearing and  
532 which pertain to a person who has not expressly waived his  
533 or her right to the confidentiality of the records, may not be  
534 open to the public nor is the public entitled to the records.

535 (q) If the board receives notice that a physician or  
536 podiatrist has been subjected to disciplinary action or has had  
537 his or her credentials suspended or revoked by the board, a  
538 hospital or a professional society, as defined in subsection (b)

37

[Com. Sub. for Com. Sub. for S. B. No. 201]

539 of this section, for three or more incidents during a five-year  
540 period, the board shall require the physician or podiatrist to  
541 practice under the direction of a physician or podiatrist  
542 designated by the board for a specified period of time to be  
543 established by the board.

544 (r) Notwithstanding any other provisions of this article,  
545 the board may, at any time, on its own motion, or upon  
546 motion by the complainant, or upon motion by the physician  
547 or podiatrist, or by stipulation of the parties, refer the matter  
548 to mediation. The board shall obtain a list from the West  
549 Virginia State Bar's mediator referral service of certified  
550 mediators with expertise in professional disciplinary matters.  
551 The board and the physician or podiatrist may choose a  
552 mediator from that list. If the board and the physician or  
553 podiatrist are unable to agree on a mediator, the board shall  
554 designate a mediator from the list by neutral rotation. The  
555 mediation shall not be considered a proceeding open to the  
556 public and any reports and records introduced at the  
557 mediation shall not become part of the public record. The

558 mediator and all participants in the mediation shall maintain  
559 and preserve the confidentiality of all mediation proceedings  
560 and records. The mediator may not be subpoenaed or called  
561 to testify or otherwise be subject to process requiring  
562 disclosure of confidential information in any proceeding  
563 relating to or arising out of the disciplinary or licensure  
564 matter mediated: *Provided*, That any confidentiality  
565 agreement and any written agreement made and signed by the  
566 parties as a result of mediation may be used in any  
567 proceedings subsequently instituted to enforce the written  
568 agreement. The agreements may be used in other  
569 proceedings if the parties agree in writing.

**§30-3-16. Physician assistants; definitions; Board of Medicine  
rules; annual report; licensure; temporary license;  
relicensure; job description required; revocation or  
suspension of licensure; responsibilities of  
supervising physician; legal responsibility for  
physician assistants; reporting by health care  
facilities; identification; limitations on employment**

**and duties; fees; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.**

1 (a) As used in this section:

2 (1) “Approved program” means an educational program  
3 for physician assistants approved and accredited by the  
4 Committee on Accreditation of Allied Health Education  
5 Programs or its successor;

6 (2) “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 (3) “Physician assistant” means an assistant to a  
10 physician who is a graduate of an approved program of  
11 instruction in primary health care or surgery, has attained a  
12 baccalaureate or master’s degree, has passed the national  
13 certification examination and is qualified to perform direct  
14 patient care services under the supervision of a physician;

15 (4) “Physician assistant-midwife” means a physician  
16 assistant who meets all qualifications set forth under

17 subdivision (3) of this subsection and fulfills the  
18 requirements set forth in subsection (d) of this section, is  
19 subject to all provisions of this section and assists in the  
20 management and care of a woman and her infant during the  
21 prenatal, delivery and postnatal periods; and

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

27 (b) The board shall promulgate rules pursuant to the  
28 provisions of article three, chapter twenty-nine-a of this code  
29 governing the extent to which physician assistants may  
30 function in this state. The rules shall provide that the  
31 physician assistant is limited to the performance of those  
32 services for which he or she is trained and that he or she  
33 performs only under the supervision and control of a  
34 physician permanently licensed in this state but that  
35 supervision and control does not require the personal



41

[Com. Sub. for Com. Sub. for S. B. No. 201]

36 presence of the supervising physician at the place or places  
37 where services are rendered if the physician assistant's  
38 normal place of employment is on the premises of the  
39 supervising physician. The supervising physician may send  
40 the physician assistant off the premises to perform duties  
41 under his or her direction but a separate place of work for the  
42 physician assistant may not be established. In promulgating  
43 the rules, the board shall allow the physician assistant to  
44 perform those procedures and examinations and, in the case  
45 of certain authorized physician assistants, to prescribe at the  
46 direction of his or her supervising physician, in accordance  
47 with subsection (r) of this section, those categories of drugs  
48 submitted to it in the job description required by this section.  
49 Certain authorized physician assistants may pronounce death  
50 in accordance with the rules proposed by the board which  
51 receive legislative approval. The board shall compile and  
52 publish an annual report that includes a list of currently  
53 licensed physician assistants and their supervising  
54 physician(s) and location in the state.

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

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

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

66 (3) Is of good moral character; and

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

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

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

43

[Com. Sub. for Com. Sub. for S. B. No. 201]

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

75 and

76 (3) Practices midwifery under the supervision of a board-

77 certified obstetrician, gynecologist or a board-certified family

78 practice physician who routinely practices obstetrics.

79 (e) The board may license as a physician assistant any

80 person who files an application together with a proposed job

81 description and furnishes satisfactory evidence that he or she

82 is of good moral character and meets either of the following

83 standards:

84 (1) He or she is a graduate of an approved program of

85 instruction in primary health care or surgery prior to July 1,

86 1994, and has passed the certifying examination for a

87 physician assistant administered by the National Commission

88 on Certification of Physician Assistants and has maintained

89 certification by that commission so as to be currently

90 certified; or

91 (2) He or she had been certified by the board as a physician

92 assistant then classified as Type B prior to July 1, 1983.

93 (f) Licensure of an assistant to a physician practicing the  
94 specialty of ophthalmology is permitted under this section:  
95 *Provided*, That a physician assistant may not dispense a  
96 prescription for a refraction.

97 (g) When a graduate of an approved program who has  
98 successfully passed the National Commission on  
99 Certification of Physician Assistants' certifying examination  
100 submits an application to the board for a physician assistant  
101 license, accompanied by a job description as referenced by  
102 this section, and a \$50 temporary license fee, and the  
103 application is complete, the board shall issue to that applicant  
104 a temporary license allowing that applicant to function as a  
105 physician assistant.

106 (h) When a graduate of an approved program submits an  
107 application to the board for a physician assistant license,  
108 accompanied by a job description as referenced by this  
109 section, and a \$50 temporary license fee, and the application  
110 is complete, the board shall issue to the applicant a temporary  
111 license allowing the applicant to function as a physician

112 assistant until the applicant successfully passes the National  
113 Commission on Certification of Physician Assistants'  
114 certifying examination so long as the applicant sits for and  
115 obtains a passing score on the examination next offered  
116 following graduation from the approved program.

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

120 (j) A physician assistant who has not been certified by the  
121 National Commission on Certification of Physician  
122 Assistants will be restricted to work under the direct  
123 supervision of the supervising physician.

124 (k) A physician assistant who has been issued a  
125 temporary license shall, within thirty days of receipt of  
126 written notice from the National Commission on Certification  
127 of Physician Assistants of his or her performance on the  
128 certifying examination, notify the board in writing of his or  
129 her results. In the event of failure of that examination, the  
130 temporary license shall terminate automatically and the board  
131 shall so notify the physician assistant in writing.

132 (l) In the event a physician assistant fails a recertification  
133 examination of the National Commission on Certification of  
134 Physician Assistants and is no longer certified, the physician  
135 assistant shall immediately notify his or her supervising  
136 physician or physicians and the board in writing. The  
137 physician assistant shall immediately cease practicing, the  
138 license shall terminate automatically and the physician  
139 assistant is not eligible for reinstatement until he or she has  
140 obtained a passing score on the examination.

141 (m) A physician applying to the board to supervise a  
142 physician assistant shall affirm that the range of medical  
143 services set forth in the physician assistant's job description  
144 are consistent with the skills and training of the supervising  
145 physician and the physician assistant. Before a physician  
146 assistant can be employed or otherwise use his or her skills,  
147 the supervising physician and the physician assistant must  
148 obtain approval of the job description from the board. The  
149 board may revoke or suspend any license of an assistant to a  
150 physician for cause, after giving the assistant an opportunity

47

[Com. Sub. for Com. Sub. for S. B. No. 201]

151 to be heard in the manner provided by article five, chapter  
152 twenty-nine-a of this code and as set forth in rules duly  
153 adopted by the board.

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

170 (o) The acts or omissions of a physician assistant  
171 employed by health care facilities providing inpatient or  
172 outpatient services are the legal responsibility of the  
173 facilities. Physician assistants employed by facilities in staff  
174 positions shall be supervised by a permanently licensed  
175 physician.

176 (p) A health care facility shall report in writing to the  
177 board within sixty days after the completion of the facility's  
178 formal disciplinary procedure and after the commencement  
179 and conclusion of any resulting legal action, the name of any  
180 physician assistant practicing in the facility whose privileges  
181 at the facility have been revoked, restricted, reduced or  
182 terminated for any cause including resignation, together with  
183 all pertinent information relating to the action. The health  
184 care facility shall also report any other formal disciplinary  
185 action taken against any physician assistant by the facility  
186 relating to professional ethics, medical incompetence,  
187 medical malpractice, moral turpitude or drug or alcohol  
188 abuse. Temporary suspension for failure to maintain records



49

[Com. Sub. for Com. Sub. for S. B. No. 201]

189 on a timely basis or failure to attend staff or section meetings  
190 need not be reported.

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

196 (r) A physician assistant may write or sign prescriptions  
197 or transmit prescriptions by word of mouth, telephone or  
198 other means of communication at the direction of his or her  
199 supervising physician. A fee of \$50 will be charged for  
200 prescription-writing privileges. The board shall promulgate  
201 rules pursuant to the provisions of article three, chapter  
202 twenty-nine-a of this code governing the eligibility and  
203 extent to which a physician assistant may prescribe at the  
204 direction of the supervising physician. The rules shall  
205 include, but not be limited to, the following:

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

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

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

215 (C) In addition to the above referenced provisions and  
216 restrictions and at the direction of a supervising physician,  
217 the rules shall permit the prescribing of an annual supply of  
218 any drug, with the exception of controlled substances, which  
219 is prescribed for the treatment of a chronic condition, other  
220 than chronic pain management. For the purposes of this  
221 section, a “chronic condition” is a condition which lasts three  
222 months or more, generally cannot be prevented by vaccines,  
223 can be controlled but not cured by medication and does not  
224 generally disappear. These conditions, with the exception of  
225 chronic pain, include, but are not limited to, arthritis, asthma,  
226 cardiovascular disease, cancer, diabetes, epilepsy and  
227 seizures and obesity. The prescriber authorized in this

51

[Com. Sub. for Com. Sub. for S. B. No. 201]

228 section shall note on the prescription the chronic disease  
229 being treated.

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

232 (2) All pharmacological categories of drugs to be  
233 prescribed by a physician assistant shall be listed in each job  
234 description submitted to the board as required in subsection  
235 (i) of this section;

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

238 (4) A requirement that to be eligible for prescription  
239 privileges, a physician assistant shall have performed patient  
240 care services for a minimum of two years immediately  
241 preceding the submission to the board of the job description  
242 containing prescription privileges and shall have successfully  
243 completed an accredited course of instruction in clinical  
244 pharmacology approved by the board; and

245 (5) A requirement that to maintain prescription privileges,  
246 a physician assistant shall continue to maintain national

247 certification as a physician assistant and, in meeting the  
248 national certification requirements, shall complete a  
249 minimum of ten hours of continuing education in rational  
250 drug therapy in each certification period. Nothing in this  
251 subsection permits a physician assistant to independently  
252 prescribe or dispense drugs;

253 and

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

258 (s) A supervising physician may not supervise at any one  
259 time more than three full-time physician assistants or their  
260 equivalent, except that a physician may supervise up to four  
261 hospital-employed physician assistants. No physician shall  
262 supervise more than four physician assistants at any one time.

263 (t) A physician assistant may not sign any prescription,  
264 except in the case of an authorized physician assistant at the  
265 direction of his or her supervising physician in accordance

266 with the provisions of subsection (r) of this section. A  
267 physician assistant may not perform any service that his or  
268 her supervising physician is not qualified to perform. A  
269 physician assistant may not perform any service that is not  
270 included in his or her job description and approved by the  
271 board as provided for in this section.

272 (u) The provisions of this section do not authorize a  
273 physician assistant to perform any specific function or duty  
274 delegated by this code to those persons licensed as  
275 chiropractors, dentists, dental hygienists, optometrists or  
276 pharmacists or certified as nurse anesthetists.

277 (v) Each application for licensure submitted by a licensed  
278 supervising physician under this section is to be accompanied  
279 by a fee of \$200. A fee of \$100 is to be charged for the  
280 biennial renewal of the license. A fee of \$50 is to be charged  
281 for any change or addition of supervising physician or  
282 change or addition of job location. A fee of \$50 will be  
283 charged for prescriptive writing privileges.

284 (w) As a condition of renewal of physician assistant  
285 license, each physician assistant shall provide written  
286 documentation of participation in and successful completion  
287 during the preceding two-year period of continuing  
288 education, in the number of hours specified by the board by  
289 rule, designated as Category I by the American Medical  
290 Association, American Academy of Physician Assistants or  
291 the Academy of Family Physicians and continuing education,  
292 in the number of hours specified by the board by rule,  
293 designated as Category II by the Association or either  
294 Academy.

295 (x) Notwithstanding any provision of this chapter to the  
296 contrary, failure to timely submit the required written  
297 documentation results in the automatic expiration of any  
298 license as a physician assistant until the written  
299 documentation is submitted to and approved by the board.

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

55

[Com. Sub. for Com. Sub. for S. B. No. 201]

303 (1) Provide certification with supporting written  
304 documentation of the successful completion of the required  
305 continuing education;

306 (2) Pay a renewal fee; and

307 (3) Pay a reinstatement fee equal to fifty percent of the  
308 renewal fee.

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

312 (1) Apply for a new license;

313 (2) Provide certification with supporting written  
314 documentation of the successful completion of the required  
315 continuing education; and

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

317 (aa) It is unlawful for any physician assistant to represent  
318 to any person that he or she is a physician, surgeon or  
319 podiatrist. A person who violates the provisions of this  
320 subsection is guilty of a felony and, upon conviction thereof,  
321 shall be imprisoned in a state correctional facility for not less

322 than one nor more than two years, or be fined not more than  
323 \$2,000, or both fined and imprisoned.

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

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

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

1 (a) It is unlawful for any person not a pharmacist, or who  
2 does not employ a pharmacist, to conduct any pharmacy or  
3 store for the purpose of retailing, compounding or dispensing  
4 prescription drugs or prescription devices.



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

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

28 (d) The experience requirement for licensure as a  
29 pharmacist shall be computed from the date certified by the  
30 supervising pharmacist as the date of entering the internship.  
31 If the internship is not registered with the Board of  
32 Pharmacy, then the intern shall receive no credit for the  
33 experience when he or she makes application for examination  
34 for licensure as a pharmacist: *Provided*, That credit may be  
35 given for the unregistered experience if an appeal is made  
36 and evidence produced showing experience was obtained but  
37 not registered and that failure to register the internship  
38 experience was not the fault of the intern.

39 (e) An intern having served part or all of his or her  
40 internship in a pharmacy in another state or foreign country  
41 shall be given credit for the same when the affidavit of his or

59

[Com. Sub. for Com. Sub. for S. B. No. 201]

42 her internship is signed by the pharmacist under whom he or  
43 she served, and it shows the dates and number of hours  
44 served in the internship and when the affidavit is attested by  
45 the secretary of the State Board of Pharmacy of the state or  
46 country where the internship was served.

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

50 (g) No pharmacist may compound or dispense any  
51 prescription order when he or she has knowledge that the  
52 prescription was issued by a practitioner without establishing  
53 a valid practitioner-patient relationship. An online or  
54 telephonic evaluation by questionnaire, or an online or  
55 telephonic consultation, is inadequate to establish a valid  
56 practitioner-patient relationship: *Provided*, That this  
57 prohibition does not apply:

58 (1) In a documented emergency;

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

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

63        ~~(3)~~ (4) Where patient care is rendered in consultation  
64 with another practitioner who has an ongoing relationship  
65 with the patient and who has agreed to supervise the patient's  
66 treatment, including the use of any prescribed medications.

**ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**

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

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

61

[Com. Sub. for Com. Sub. for S. B. No. 201]

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

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

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

25 (3) Periodic and joint evaluation of prescriptive practice;  
26 and

27 (4) Periodic and joint review and updating of the written  
28 guidelines or protocols.

29 (c) The board shall promulgate legislative rules in  
30 accordance with the provisions of chapter twenty-nine-a of  
31 this code governing the eligibility and extent to which an  
32 advanced practice registered nurse may prescribe drugs.  
33 Such rules shall provide, at a minimum, a state formulary  
34 classifying those categories of drugs which shall not be  
35 prescribed by advanced practice registered nurse including,  
36 but not limited to, Schedules I and II of the Uniform  
37 Controlled Substances Act, antineoplastics,  
38 radiopharmaceuticals and general anesthetics. Drugs listed  
39 under Schedule III shall be limited to a 72-hour supply  
40 without refill. The rules shall also include a provision that  
41 advanced nurse practitioners licensed under this chapter may  
42 not be disciplined for providing expedited partner therapy in  
43 accordance with the provisions of article four-f, chapter  
44 sixteen of this code. In addition to the above-referenced  
45 provisions and restrictions and pursuant to a collaborative

46 agreement as set forth in subsections (a) and (b) of this  
47 section, the rules shall permit the prescribing of an annual  
48 supply of any drug, with the exception of controlled  
49 substances, which is prescribed for the treatment of a chronic  
50 condition, other than chronic pain management. For the  
51 purposes of this section, a “chronic condition” is a condition  
52 which lasts three months or more, generally cannot be  
53 prevented by vaccines, can be controlled but not cured by  
54 medication and does not generally disappear. These  
55 conditions, with the exception of chronic pain, include, but  
56 are not limited to, arthritis, asthma, cardiovascular disease,  
57 cancer, diabetes, epilepsy and seizures and obesity. The  
58 prescriber authorized in this section shall note on the  
59 prescription the chronic disease being treated.

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

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

65 (1) The name of the authorized advanced practice  
66 registered nurse;

67 (2) The prescriber's identification number assigned by  
68 the board; and

69 (3) The effective date of prescriptive authority.

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

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

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

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

6 (2) Conviction of a misdemeanor involving moral  
7 turpitude;

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

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



65

[Com. Sub. for Com. Sub. for S. B. No. 201]

12 (5) Gross malpractice;

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

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

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

19 (b) The board shall also have the power to suspend or  
20 revoke for cause any certificate of authorization issued by it.

21 It shall have the power to reinstate any certificate of  
22 authorization suspended or revoked by it.

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

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

**§30-14A-1. Osteopathic physician assistant to osteopathic  
physicians and surgeons; definitions; Board of**

**Osteopathy rules; licensure; temporary licensure; renewal of license; job description required; revocation or suspension of license; responsibilities of the supervising physician; legal responsibility for osteopathic physician assistants; reporting of disciplinary procedures; identification; limitation on employment and duties; fees; unlawful use of the title of osteopathic physician assistant; unlawful representation of an osteopathic physician assistant as a physician; criminal penalties.**

1 (a) As used in this section:

2 (1) “Approved program” means an educational program  
3 for osteopathic physician assistants approved and accredited  
4 by the Committee on Allied Health Education and  
5 Accreditation or its successor.

6 (2) “Board” means the Board of Osteopathy established  
7 under the provisions of article fourteen, chapter thirty of this  
8 code.

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

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

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

24 (6) "Osteopathic physician assistant" means an assistant  
25 to an osteopathic physician who is a graduate of an approved  
26 program of instruction in primary care or surgery, has passed  
27 the National Certification Examination and is qualified to

28 perform direct patient care services under the supervision of  
29 an osteopathic physician.

30 (7) “Supervising physician” means a doctor of osteopathy  
31 permanently licensed in this state who assumes legal and  
32 supervising responsibility for the work or training of an  
33 osteopathic physician assistant under his or her supervision.

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

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

41 (2) The osteopathic physician assistant performs only  
42 under the supervision and control of an osteopathic physician  
43 permanently licensed in this state but such supervision and  
44 control does not require the personal presence of the  
45 supervising physician at the place or places where services  
46 are rendered if the osteopathic physician assistant’s normal

69

[Com. Sub. for Com. Sub. for S. B. No. 201]

47 place of employment is on the premises of the supervising  
48 physician. The supervising physician may send the  
49 osteopathic physician assistant off the premises to perform  
50 duties under his or her direction, but a separate place of work  
51 for the osteopathic physician assistant may not be  
52 established; ~~and~~

53 (3) The board may allow the osteopathic physician  
54 assistant to perform those procedures and examinations and,  
55 in the case of authorized osteopathic physician assistants, to  
56 prescribe at the direction of his or her supervising physician  
57 in accordance with subsections (p) and (q) of this section  
58 those categories of drugs submitted to it in the job description  
59 required by subsection (f) of this section; and

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

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

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

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

73 (2) Has passed the examination for a primary care or  
74 surgery physician assistant administered by the National  
75 Board of Medical Examiners on behalf of the National  
76 Commission on Certification of Physician Assistants; and

77 (3) Is of good moral character.

78 (e) When a graduate of an approved program submits an  
79 application to the board, accompanied by a job description in  
80 conformity with this section, for an osteopathic physician  
81 assistant license, the board may issue to the applicant a  
82 temporary license allowing the applicant to function as an  
83 osteopathic physician assistant for the period of one year.  
84 The temporary license may be renewed for one additional  
85 year upon the request of the supervising physician. An

71

[Com. Sub. for Com. Sub. for S. B. No. 201]

86 osteopathic physician assistant who has not been certified as  
87 such by the National Board of Medical Examiners on behalf  
88 of the National Commission on Certification of Physician  
89 Assistants will be restricted to work under the direct  
90 supervision of the supervising physician.

91 (f) An osteopathic physician applying to the board to  
92 supervise an osteopathic physician assistant shall provide a  
93 job description that sets forth the range of medical services to  
94 be provided by the assistant. Before an osteopathic physician  
95 assistant can be employed or otherwise use his or her skills,  
96 the supervising physician must obtain approval of the job  
97 description from the board. The board may revoke or  
98 suspend a license of an assistant to a physician for cause,  
99 after giving the person an opportunity to be heard in the  
100 manner provided by sections eight and nine, article one of  
101 this chapter.

102 (g) The supervising physician is responsible for  
103 observing, directing and evaluating the work records and  
104 practices of each osteopathic physician assistant performing

105 under his or her supervision. He or she shall notify the board  
106 in writing of any termination of his or her supervisory  
107 relationship with an osteopathic physician assistant within ten  
108 days of his or her termination. The legal responsibility for  
109 any osteopathic physician assistant remains with the  
110 supervising physician at all times, including occasions when  
111 the assistant, under his or her direction and supervision, aids  
112 in the care and treatment of a patient in a health care facility.  
113 In his or her absence, a supervising physician must designate  
114 an alternate supervising physician but the legal responsibility  
115 remains with the supervising physician at all times. A health  
116 care facility is not legally responsible for the actions or  
117 omissions of an osteopathic physician assistant unless the  
118 osteopathic physician assistant is an employee of the facility.

119 (h) The acts or omissions of an osteopathic physician  
120 assistant employed by health care facilities providing in-  
121 patient services are the legal responsibility of the facilities.  
122 Osteopathic physician assistants employed by such facilities  
123 in staff positions shall be supervised by a permanently  
124 licensed physician.



125 (i) A health care facility shall report in writing to the  
126 board within sixty days after the completion of the facility's  
127 formal disciplinary procedure, and after the commencement  
128 and the conclusion of any resulting legal action, the name of  
129 an osteopathic physician assistant practicing in the facility  
130 whose privileges at the facility have been revoked, restricted,  
131 reduced or terminated for any cause including resignation,  
132 together with all pertinent information relating to such action.  
133 The health care facility shall also report any other formal  
134 disciplinary action taken against an osteopathic physician  
135 assistant by the facility relating to professional ethics,  
136 medical incompetence, medical malpractice, moral turpitude  
137 or drug or alcohol abuse. Temporary suspension for failure  
138 to maintain records on a timely basis or failure to attend staff  
139 or section meetings need not be reported.

140 (j) When functioning as an osteopathic physician  
141 assistant, the osteopathic physician assistant shall wear a  
142 name tag that identifies him or her as a physician assistant.

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

148 (2) An osteopathic physician assistant shall not perform  
149 any service that his or her supervising physician is not  
150 qualified to perform.

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

154 (4) The provisions of this section do not authorize an  
155 osteopathic physician assistant to perform any specific  
156 function or duty delegated by this code to those persons  
157 licensed as chiropractors, dentists, registered nurses, licensed  
158 practical nurses, dental hygienists, optometrists or  
159 pharmacists or certified as nurse anesthetists.

160 (l) An application for license or renewal of license shall  
161 be accompanied by payment of a fee established by

75

[Com. Sub. for Com. Sub. for S. B. No. 201]

162 legislative rule of the Board of Osteopathy pursuant to the  
163 provisions of article three, chapter twenty-nine-a of this code.

164 (m) As a condition of renewal of an osteopathic physician  
165 assistant license, each osteopathic physician assistant shall  
166 provide written documentation satisfactory to the board of  
167 participation in and successful completion of continuing  
168 education in courses approved by the Board of Osteopathy  
169 for the purposes of continuing education of osteopathic  
170 physician assistants. The osteopathy board shall propose  
171 legislative rules for minimum continuing hours necessary for  
172 the renewal of a license. These rules shall provide for  
173 minimum hours equal to or more than the hours necessary for  
174 national certification. Notwithstanding any provision of this  
175 chapter to the contrary, failure to timely submit the required  
176 written documentation results in the automatic suspension of  
177 a license as an osteopathic physician assistant until the  
178 written documentation is submitted to and approved by the  
179 board.

180       (n) It is unlawful for any person who is not licensed by  
181 the board as an osteopathic physician assistant to use the title  
182 of osteopathic physician assistant or to represent to any other  
183 person that he or she is an osteopathic physician assistant. A  
184 person who violates the provisions of this subsection is guilty  
185 of a misdemeanor and, upon conviction thereof, shall be  
186 fined not more than \$2,000.

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

194       (p) An osteopathic physician assistant may write or sign  
195 prescriptions or transmit prescriptions by word of mouth,  
196 telephone or other means of communication at the direction  
197 of his or her supervising physician. The board shall propose  
198 rules for legislative approval in accordance with the

199 provisions of article three, chapter twenty-nine-a of this code  
200 governing the eligibility and extent to which an osteopathic  
201 physician assistant may prescribe at the direction of the  
202 supervising physician. The rules shall provide for a state  
203 formulary classifying pharmacologic categories of drugs  
204 which may be prescribed by such an osteopathic physician  
205 assistant. In classifying such pharmacologic categories, those  
206 categories of drugs which shall be excluded include, but are  
207 not limited to, Schedules I and II of the Uniform Controlled  
208 Substances Act, antineoplastics, radiopharmaceuticals,  
209 general anesthetics and radiographic contrast materials.  
210 Drugs listed under Schedule III are limited to a seventy-two  
211 hour supply without refill. In addition to the above-  
212 referenced provisions and restrictions and at the direction of  
213 a supervising physician, the rules shall permit the prescribing  
214 an annual supply of any drug other than controlled  
215 substances which is prescribed for the treatment of a chronic  
216 condition other than chronic pain management. For the  
217 purposes of this section, a "chronic condition" is a condition  
218 which last three months or more, generally cannot be

219 prevented by vaccines, can be controlled but not cured by  
220 medication and does not generally disappear. These  
221 conditions include, but are not limited to, arthritis, asthma,  
222 cardiovascular disease, cancer, diabetes, epilepsy and  
223 seizures and obesity. The prescriber authorized in this  
224 section shall note on the prescription the condition for which  
225 the patient is being treated. The rules shall provide that all  
226 pharmacological categories of drugs to be prescribed by an  
227 osteopathic physician assistant be listed in each job  
228 description submitted to the board as required in this section.  
229 The rules shall provide the maximum dosage an osteopathic  
230 physician assistant may prescribe.

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

234 (A) Submit an application to the board for prescription  
235 privileges;

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

79

[Com. Sub. for Com. Sub. for S. B. No. 201]

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

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

242 (A) Continue to maintain national certification as an  
243 osteopathic physician assistant; and

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

246 (3) Nothing in this subsection permits an osteopathic  
247 physician assistant to independently prescribe or dispense  
248 drugs.

---

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

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

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