

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 12**

(By Senator Stollings)

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[Originating in the Committee on Health and Human Resources;  
reported January 17, 2014.]

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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;  
22 or

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

25 (4) “Sexually transmitted disease” means a disease that  
26 may be treated by expedited partner therapy as determined  
27 by 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  
8 evaluation, testing and treatment for sexually transmitted  
9 diseases. Expedited partner therapy is limited to a sexual

10 partner who may have been exposed to a sexually  
11 transmitted disease within the previous sixty days and who  
12 is able to be 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  
21 attention. The health care professional shall also provide in  
22 written or electronic format materials provided by the  
23 department to be given by the patient to his or her sexual  
24 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  
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  
7 the 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  
11 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

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 after  
58 the commencement of and again after the conclusion of any  
59 resulting legal action, the name of any physician or podiatrist  
60 whose credentialing has been revoked or not renewed by the  
61 managed care organization. The managed care organization  
62 shall also report in writing to the board any other disciplinary  
63 action taken against a physician or podiatrist relating to  
64 professional ethics, professional liability, moral turpitude or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

175 (3) False or deceptive advertising;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

267 (20) Professional incompetence; or

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

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

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

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

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

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

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

331 circumstances may require a physician or podiatrist or person  
332 applying for licensure or other authorization to practice  
333 medicine and surgery or podiatry in this state to submit to a  
334 physical or mental examination by a physician or physicians  
335 approved by the board. A physician or podiatrist submitting  
336 to an examination has the right, at his or her expense, to  
337 designate another physician to be present at the examination  
338 and make an independent report to the investigating body or  
339 the board. The expense of the examination shall be paid by  
340 the board. Any individual who applies for or accepts the  
341 privilege of practicing medicine and surgery or podiatry in  
342 this state is considered to have given his or her consent to  
343 submit to all examinations when requested to do so in writing  
344 by the board and to have waived all objections to the  
345 admissibility of the testimony or examination report of any  
346 examining physician on the ground that the testimony or  
347 report is privileged communication. If a person fails or  
348 refuses to submit to an examination under circumstances  
349 which the board finds are not beyond his or her control,

350 failure or refusal is prima facie evidence of his or her  
351 inability to practice medicine and surgery or podiatry  
352 competently and in compliance with the standards of  
353 acceptable and prevailing medical practice.

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

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

369 of evidence, the right to be represented by counsel, the right  
370 to present and cross examine witnesses and the right to have  
371 subpoenas and subpoenas duces tecum issued on his or her  
372 behalf for the attendance of witnesses and the production of  
373 documents. The board shall make all its final actions public.  
374 The order shall contain the terms of all action taken by the  
375 board.

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

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

407 the requirements of Rule 26(b)(4) of the West Virginia Rules  
408 of Civil Procedure; provide inspection and copying of the  
409 results of any reports of physical and mental examinations or  
410 scientific tests or experiments; and provide a list and copy of  
411 any proposed exhibit to be used at the hearing.

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

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

418 (2) Administer a public reprimand;

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

424 (4) Revoke his or her license or other authorization to  
425 practice medicine and surgery or podiatry or to prescribe or

426 dispense controlled substances for a period not to exceed ten  
427 years;

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

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

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

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

439 (k) Notwithstanding the provisions of section eight,  
440 article one, chapter thirty of this code, if the board determines  
441 the evidence in its possession indicates that a physician's or  
442 podiatrist's continuation in practice or unrestricted practice  
443 constitutes an immediate danger to the public, the board may  
444 take any of the actions provided in subsection (j) of this

445 section on a temporary basis and without a hearing if  
446 institution of proceedings for a hearing before the board are  
447 initiated simultaneously with the temporary action and begin  
448 within fifteen days of the action. The board shall render its  
449 decision within five days of the conclusion of a hearing under  
450 this subsection.

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

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

462 (2) The physician or podiatrist exercised due diligence in  
463 asserting his or her evidence and that due diligence would not

464 have secured the newly discovered evidence prior to the  
465 appeal.

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

481 (m) Any person against whom disciplinary action has  
482 been taken under the provisions of this article shall, at

483 reasonable intervals, be afforded an opportunity to  
484 demonstrate that he or she can resume the practice of  
485 medicine and surgery or podiatry on a general or limited  
486 basis. At the conclusion of a suspension, limitation or  
487 restriction period the physician or podiatrist may resume  
488 practice if the board has so ordered.

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

502 duties or functions provided by law is immune from civil or  
503 criminal liability, except that the unlawful disclosure of  
504 confidential information possessed by the board is a  
505 misdemeanor as provided in this article.

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

518 (p) In every case considered by the board under this  
519 article regarding discipline or licensure, whether initiated by  
520 the board or upon complaint or information from any person

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

533 (q) If the board receives notice that a physician or  
534 podiatrist has been subjected to disciplinary action or has had  
535 his or her credentials suspended or revoked by the board, a  
536 hospital or a professional society, as defined in subsection (b)  
537 of this section, for three or more incidents during a five-year  
538 period, the board shall require the physician or podiatrist to  
539 practice under the direction of a physician or podiatrist

540 designated by the board for a specified period of time to be  
541 established by the board.

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

559 to testify or otherwise be subject to process requiring  
560 disclosure of confidential information in any proceeding  
561 relating to or arising out of the disciplinary or licensure  
562 matter mediated: *Provided*, That any confidentiality  
563 agreement and any written agreement made and signed by the  
564 parties as a result of mediation may be used in any  
565 proceedings subsequently instituted to enforce the written  
566 agreement. The agreements may be used in other  
567 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 post-natal 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 physician  
34 permanently licensed in this state but that supervision and  
35 control does not require the personal presence of the  
36 supervising physician at the place or places where services are  
37 rendered if the physician assistant’s normal place of  
38 employment is on the premises of the supervising physician.

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

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

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

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

65 (3) Is of good moral character; and

66 (4) Has attained a Baccalaureate or Master's Degree.

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

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

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

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

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

82 (1) He or she is a graduate of an approved program of  
83 instruction in primary health care or surgery prior to July 1,  
84 1994, and has passed the certifying examination for a  
85 physician assistant administered by the National Commission  
86 on Certification of Physician Assistants and has maintained  
87 certification by that commission so as to be currently  
88 certified; or

89 (2) He or she had been certified by the board as a  
90 physician assistant then classified as Type B prior to July 1,  
91 1983.

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

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

105 (h) When a graduate of an approved program submits an  
106 application to the board for a physician assistant license,  
107 accompanied by a job description as referenced by this  
108 section, and a \$50 temporary license fee, and the  
109 application is complete, the board shall issue to the  
110 applicant a temporary license allowing the applicant to  
111 function as a physician assistant until the applicant  
112 successfully passes the National Commission on  
113 Certification of Physician Assistants' certifying  
114 examination so long as the applicant sits for and obtains a

115 passing score on the examination next offered following  
116 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 assistant  
139 is not eligible for reinstatement until he or she has obtained a  
140 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 are  
144 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, the  
147 supervising physician and the physician assistant must obtain  
148 approval of the job description from the board. The board may  
149 revoke or suspend any license of an assistant to a physician for  
150 cause, after giving the assistant an opportunity to be heard in  
151 the manner provided by article five, chapter twenty-nine-a of  
152 this code and as set forth in rules duly adopted by the board.

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

169 (o) The acts or omissions of a physician assistant  
170 employed by health care facilities providing inpatient or  
171 outpatient services are the legal responsibility of the facilities.

172 Physician assistants employed by facilities in staff positions  
173 shall be supervised by a permanently licensed physician.

174 (p) A health care facility shall report in writing to the  
175 board within sixty days after the completion of the facility's  
176 formal disciplinary procedure and after the commencement  
177 and conclusion of any resulting legal action, the name of any  
178 physician assistant practicing in the facility whose privileges  
179 at the facility have been revoked, restricted, reduced or  
180 terminated for any cause including resignation, together with  
181 all pertinent information relating to the action. The health care  
182 facility shall also report any other formal disciplinary action  
183 taken against any physician assistant by the facility relating to  
184 professional ethics, medical incompetence, medical  
185 malpractice, moral turpitude or drug or alcohol abuse.  
186 Temporary suspension for failure to maintain records on a  
187 timely basis or failure to attend staff or section meetings need  
188 not be reported.

189 (q) When functioning as a physician assistant, the  
190 physician assistant shall wear a name tag that identifies him

191 or her as a physician assistant. A two and one-half by three  
192 and one-half inch card of identification shall be furnished by  
193 the board upon licensure of the physician assistant.

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

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

208 (A) Schedules I and II of the Uniform Controlled  
209 Substances Act, antineoplastic, radiopharmaceuticals, general

210 anesthetics and radiographic contrast materials shall be  
211 excluded from the formulary;

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

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

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

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

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

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

244 (5) A requirement that to maintain prescription privileges,  
245 a physician assistant shall continue to maintain national  
246 certification as a physician assistant and, in meeting the  
247 national certification requirements, shall complete a

248 minimum of ten hours of continuing education in rational  
249 drug therapy in each certification period. Nothing in this  
250 subsection permits a physician assistant to independently  
251 prescribe or dispense drugs; and

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

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

262 (t) A physician assistant may not sign any prescription,  
263 except in the case of an authorized physician assistant at the  
264 direction of his or her supervising physician in accordance  
265 with the provisions of subsection (r) of this section. A  
266 physician assistant may not perform any service that his or

267 her supervising physician is not qualified to perform. A  
268 physician assistant may not perform any service that is not  
269 included in his or her job description and approved by the  
270 board as provided for in this section.

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

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

283 (w) As a condition of renewal of physician assistant license,  
284 each physician assistant shall provide written documentation of  
285 participation in and successful completion during the preceding

286 two-year period of continuing education, in the number of  
287 hours specified by the board by rule, designated as Category I  
288 by the American Medical Association, American Academy of  
289 Physician Assistants or the Academy of Family Physicians and  
290 continuing education, in the number of hours specified by the  
291 board by rule, designated as Category II by the Association or  
292 either Academy.

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

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

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

304 (2) Pay a renewal fee; and

305 (3) Pay a reinstatement fee equal to fifty percent of the  
306 renewal fee.

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

310 (1) Apply for a new license;

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

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

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

322 (bb) All physician assistants holding valid certificates issued  
323 by the board prior to July 1, 1992, are licensed under 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 is  
7 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 charge  
10 or at a reduced rate and that operates a charitable clinic  
11 pharmacy to permit any person not a pharmacist to compound

12 or dispense prescriptions or prescription refills or to retail or  
13 dispense the poisons and narcotic drugs named in sections two,  
14 three and six, article eight, chapter sixteen of this code:  
15 *Provided*, That a licensed intern may compound and dispense  
16 prescriptions or prescription refills under the direct supervision  
17 of a pharmacist: *Provided, however*, That registered pharmacy  
18 technicians may assist in the preparation and dispensing of  
19 prescriptions or prescription refills, including, but not limited  
20 to, reconstitution of liquid medications, typing and affixing  
21 labels under the direct supervision of a licensed pharmacist.

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

26 (d) The experience requirement for licensure as a  
27 pharmacist shall be computed from the date certified by the  
28 supervising pharmacist as the date of entering the internship.  
29 If the internship is not registered with the Board of Pharmacy,  
30 then the intern shall receive no credit for the experience when

31 he or she makes application for examination for licensure as a  
32 pharmacist: *Provided*, That credit may be given for the  
33 unregistered experience if an appeal is made and evidence  
34 produced showing experience was obtained but not registered  
35 and that failure to register the internship experience was not the  
36 fault of the intern.

37 (e) An intern having served part or all of his or her  
38 internship in a pharmacy in another state or foreign country  
39 shall be given credit for the same when the affidavit of his or  
40 her internship is signed by the pharmacist under whom he or  
41 she served, and it shows the dates and number of hours served  
42 in the internship and when the affidavit is attested by the  
43 secretary of the State Board of Pharmacy of the state or country  
44 where the internship was served.

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

48 (g) No pharmacist may compound or dispense any  
49 prescription order when he or she has knowledge that the

50 prescription was issued by a practitioner without  
51 establishing a valid practitioner-patient relationship. An  
52 online or telephonic evaluation by questionnaire, or an  
53 online or telephonic consultation, is inadequate to establish  
54 a valid practitioner-patient relationship: *Provided*, That this  
55 prohibition does not apply:

56 (1) In a documented emergency;

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

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

61 ~~(3)~~ (4) Where patient care is rendered in consultation  
62 with another practitioner who has an ongoing relationship  
63 with the patient and who has agreed to supervise the  
64 patient's treatment, including the use of any prescribed  
65 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 advanced  
2 practice registered nurse to prescribe prescription drugs in a  
3 collaborative relationship with a physician licensed to practice  
4 in West Virginia and in accordance with applicable state and  
5 federal laws. An authorized advanced practice registered nurse  
6 may write or sign prescriptions or transmit prescriptions  
7 verbally or by other means of communication.

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

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

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

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

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

28 (c) The board shall promulgate legislative rules in  
29 accordance with the provisions of chapter twenty-nine-a of  
30 this code governing the eligibility and extent to which an  
31 advanced practice registered nurse may prescribe drugs.  
32 Such rules shall provide, at a minimum, a state formulary  
33 classifying those categories of drugs which shall not be  
34 prescribed by advanced practice registered nurse including,  
35 but not limited to, Schedules I and II of the Uniform  
36 Controlled Substances Act, antineoplastics,  
37 radiopharmaceuticals and general anesthetics. Drugs listed  
38 under Schedule III shall be limited to a 72-hour supply

39 without refill. The rules shall also include a provision that  
40 advanced nurse practitioners licensed under this chapter may  
41 not be disciplined for providing expedited partner therapy in  
42 accordance with the provisions of article four-f, chapter  
43 sixteen of this code. In addition to the above-referenced  
44 provisions and restrictions and pursuant to a collaborative  
45 agreement as set forth in subsections (a) and (b) of this section,  
46 the rules shall permit the prescribing of an annual supply of  
47 any drug, with the exception of controlled substances, which  
48 is prescribed for the treatment of a chronic condition, other  
49 than chronic pain management. For the purposes of this  
50 section, a “chronic condition” is a condition which lasts three  
51 months or more, generally cannot be prevented by vaccines,  
52 can be controlled but not cured by medication and does not  
53 generally disappear. These conditions, with the exception of  
54 chronic pain, include, but are not limited to, arthritis, asthma,  
55 cardiovascular disease, cancer, diabetes, epilepsy and seizures  
56 and obesity. The prescriber authorized in this section shall  
57 note on the prescription the chronic disease being treated.

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

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

63 (1) The name of the authorized advanced practice  
64 registered nurse;

65 (2) The prescriber's identification number assigned by  
66 the board; and

67 (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;

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  
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  
80 in 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  
86 osteopathic physician assistant who has not been certified  
87 as such by the National Board of Medical Examiners on  
88 behalf of the National Commission on Certification of  
89 Physician Assistants will be restricted to work under the  
90 direct 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  
94 to be provided by the assistant. Before an osteopathic  
95 physician assistant can be employed or otherwise use his or

96 her skills, the supervising physician must obtain approval of  
97 the job description from the board. The board may revoke  
98 or 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  
106 board in writing of any termination of his or her supervisory  
107 relationship with an osteopathic physician assistant within  
108 ten days of his or her termination. The legal responsibility  
109 for 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,  
112 aids in the care and treatment of a patient in a health care  
113 facility. In his or her absence, a supervising physician must  
114 designate an alternate supervising physician but the legal

115 responsibility remains with the supervising physician at all  
116 times. A health care facility is not legally responsible for  
117 the actions or omissions of an osteopathic physician  
118 assistant unless the osteopathic physician assistant is an  
119 employee of the facility.

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

126 (i) A health care facility shall report in writing to the  
127 board within sixty days after the completion of the facility's  
128 formal disciplinary procedure, and after the commencement  
129 and the conclusion of any resulting legal action, the name  
130 of an osteopathic physician assistant practicing in the  
131 facility whose privileges at the facility have been revoked,  
132 restricted, reduced or terminated for any cause including  
133 resignation, together with all pertinent information relating

134 to such action. The health care facility shall also report any  
135 other formal disciplinary action taken against an osteopathic  
136 physician assistant by the facility relating to professional  
137 ethics, medical incompetence, medical malpractice, moral  
138 turpitude or drug or alcohol abuse. Temporary suspension  
139 for failure to maintain records on a timely basis or failure to  
140 attend staff or section meetings need not be reported.

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

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

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

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

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

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

165 (m) As a condition of renewal of an osteopathic physician  
166 assistant license, each osteopathic physician assistant shall  
167 provide written documentation satisfactory to the board of  
168 participation in and successful completion of continuing  
169 education in courses approved by the Board of Osteopathy  
170 for the purposes of continuing education of osteopathic

171 physician assistants. The osteopathy board shall propose  
172 legislative rules for minimum continuing hours necessary for  
173 the renewal of a license. These rules shall provide for  
174 minimum hours equal to or more than the hours necessary for  
175 national certification. Notwithstanding any provision of this  
176 chapter to the contrary, failure to timely submit the required  
177 written documentation results in the automatic suspension of  
178 a license as an osteopathic physician assistant until the  
179 written documentation is submitted to and approved by the  
180 board.

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

188 (o) It is unlawful for an osteopathic physician assistant to  
189 represent to any person that he or she is a physician. A

190 person who violates the provisions of this subsection is guilty  
191 of a felony and, upon conviction thereof, shall be imprisoned  
192 in a state correctional facility for not less than one nor more  
193 than two years, or be fined not more than \$2,000, or both  
194 fined and imprisoned.

195 (p) An osteopathic physician assistant may write or sign  
196 prescriptions or transmit prescriptions by word of mouth,  
197 telephone or other means of communication at the direction  
198 of his or her supervising physician. The board shall propose  
199 rules for legislative approval in accordance with the  
200 provisions of article three, chapter twenty-nine-a of this code  
201 governing the eligibility and extent to which an osteopathic  
202 physician assistant may prescribe at the direction of the  
203 supervising physician. The rules shall provide for a state  
204 formulary classifying pharmacologic categories of drugs  
205 which may be prescribed by such an osteopathic physician  
206 assistant. In classifying such pharmacologic categories, those  
207 categories of drugs which shall be excluded include, but are  
208 not limited to, Schedules I and II of the Uniform Controlled

209 Substances Act, antineoplastics, radiopharmaceuticals,  
210 general anesthetics and radiographic contrast materials.  
211 Drugs listed under Schedule III are limited to a 72-hour  
212 supply without refill. In addition to the above-referenced  
213 provisions and restrictions and at the direction of a  
214 supervising physician, the rules shall permit the prescribing  
215 of an annual supply of any drug other than controlled  
216 substances which is prescribed for the treatment of a chronic  
217 condition other than chronic pain management. For the  
218 purposes of this section, a “chronic condition” is a condition  
219 which last three months or more, generally cannot be  
220 prevented by vaccines, can be controlled but not cured by  
221 medication and does not generally disappear. These  
222 conditions include, but are not limited to, arthritis, asthma,  
223 cardiovascular disease, cancer, diabetes, epilepsy and  
224 seizures and obesity. The prescriber authorized in this  
225 section shall note on the prescription the condition for which  
226 the patient is being treated. The rules shall provide that all  
227 pharmacological categories of drugs to be prescribed by an

228 osteopathic physician assistant be listed in each job  
229 description submitted to the board as required in this section.  
230 The rules shall provide the maximum dosage an osteopathic  
231 physician assistant may prescribe.

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

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

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

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

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

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

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

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

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

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

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