

1 **Senate Bill No. 232**

2 (By Senators Stollings, Laird, Cole (Mr. President), Kirkendoll, Miller, Palumbo, Plymale,  
3 Prezioso, Walters, Yost, Boley, M. Hall and Sypolt)

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5 [Introduced January 14, 2015; referred to the Committee on Health and Human Resources; and  
6 then to the Committee on the Judiciary.]

**Interim  
Bill**

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
11 designated §16-4F-1, §16-4F-2, §16-4F-3, §16-4F-4 and §16-4F-5; to amend and reenact  
12 §30-3-14 of said code; to amend and reenact §30-3E-3 of said code; to amend and reenact  
13 §30-5-14 of said code; to amend and reenact §30-7-15a of said code; and to amend and  
14 reenact §30-14-11 of said code, all relating to treatment for sexually transmitted diseases;  
15 providing for expedited partner therapy; defining terms; permitting prescribing of antibiotics  
16 to sexual partners of patient without prior examination of partner; requiring patient  
17 counseling; establishing counseling criteria; requiring informational materials be prepared  
18 by the Department of Health and Human Resources; providing limited liability for providing  
19 expedited partnership therapy; requiring rulemaking; and providing that physicians, physician  
20 assistants, pharmacists and advanced practice registered nurses are not subject to disciplinary  
21 action for providing certain treatment for sexually transmitted diseases for sexual partners

1 of patient.

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

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

8 **CHAPTER 16. PUBLIC HEALTH.**

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

10 **§16-4F-1. Definitions.**

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

13 "Department" means the West Virginia Department of Health and Human Resources.

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

17 "Health care professional" means:

18 (A) An allopathic physician licensed pursuant to article three, chapter thirty of this code;

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

20 (C) A physician assistant licensed pursuant to section four, article three-e, chapter thirty of  
21 this code;

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

3 (E) A pharmacist licensed pursuant to article five, chapter thirty of this code.

4 "Sexually transmitted disease" means a disease that may be treated by expedited partner  
5 therapy as determined by rule of the department.

6 **§16-4F-2. Expedited partner therapy.**

7 (a) Notwithstanding any other provision of law to the contrary, a health care professional who  
8 makes a clinical diagnosis of a sexually transmitted disease may provide expedited partner therapy  
9 for the treatment of the sexually transmitted disease if in the judgment of the health care professional  
10 the sexual partner is unlikely or unable to present for comprehensive health care, including  
11 evaluation, testing and treatment for sexually transmitted diseases. Expedited partner therapy is  
12 limited to a sexual partner who may have been exposed to a sexually transmitted disease within the  
13 previous sixty days and who is able to be contacted by the patient.

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

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

21 **§16-4F-3. Informational materials.**

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

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

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

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

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

12 **§16-4F-4. Limitation of liability.**

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

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

1 **§16-4F-5. Rulemaking.**

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

8                                   **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

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

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

20           The board may initiate investigations as to professional incompetence or other reasons for  
21 which a licensed physician or podiatrist may be adjudged unqualified based upon criminal

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

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

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

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

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

21         Any professional society in this state comprised primarily of physicians or podiatrists which

1 takes formal disciplinary action against a member relating to professional ethics, professional  
2 incompetence, medical professional liability, moral turpitude or drug or alcohol abuse shall report  
3 in writing to the board within sixty days of a final decision the name of the member, together with  
4 all pertinent information relating to the action.

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

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

17       Within thirty days after a person known to be a physician or podiatrist licensed or otherwise  
18 lawfully practicing medicine and surgery or podiatry in this state or applying to be licensed is  
19 convicted of a felony under the laws of this state or of any crime under the laws of this state  
20 involving alcohol or drugs in any way, including any controlled substance under state or federal law,  
21 the clerk of the court of record in which the conviction was entered shall forward to the board a



1 certified true and correct abstract of record of the convicting court. The abstract shall include the  
2 name and address of the physician or podiatrist or applicant, the nature of the offense committed and  
3 the final judgment and sentence of the court.

4       Upon a determination of the board that there is probable cause to believe that any person,  
5 partnership, corporation, association, insurance company, professional society or other organization  
6 has failed or refused to make a report required by this subsection, the board shall provide written  
7 notice to the alleged violator stating the nature of the alleged violation and the time and place at  
8 which the alleged violator shall appear to show good cause why a civil penalty should not be  
9 imposed. The hearing shall be conducted in accordance with ~~the provisions of~~ article five, chapter  
10 twenty-nine-a of this code. After reviewing the record of the hearing, if the board determines that  
11 a violation of this subsection has occurred, the board shall assess a civil penalty of not less than  
12 \$1,000 nor more than \$10,000 against the violator. The board shall notify any person so assessed  
13 of the assessment in writing and the notice shall specify the reasons for the assessment. If the  
14 violator fails to pay the amount of the assessment to the board within thirty days, the Attorney  
15 General may institute a civil action in the circuit court of Kanawha County to recover the amount  
16 of the assessment. In any civil action, the court's review of the board's action shall be conducted in  
17 accordance with ~~the provisions of~~ section four, article five, chapter twenty-nine-a of this code.  
18 Notwithstanding any other provision of this article to the contrary, when there are conflicting views  
19 by recognized experts as to whether any alleged conduct breaches an applicable standard of care, the  
20 evidence must be clear and convincing before the board may find that the physician or podiatrist has  
21 demonstrated a lack of professional competence to practice with a reasonable degree of skill and

1 safety for patients.

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

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

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

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

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

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

21 (3) False or deceptive advertising;

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

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

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

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

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

1 laboratory or pharmacy;

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

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

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

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

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

13 (13) Prescribing, dispensing, administering, mixing or otherwise preparing a prescription  
14 drug, including any controlled substance under state or federal law, other than in good faith and in  
15 a therapeutic manner in accordance with accepted medical standards and in the course of the  
16 physician's or podiatrist's professional practice. ~~Provided, That a~~ A physician who discharges his  
17 or her professional obligation to relieve the pain and suffering and promote the dignity and autonomy  
18 of dying patients in his or her care and, in so doing, exceeds the average dosage of a pain relieving  
19 controlled substance, as defined in Schedules II and III of the Uniform Controlled Substance Act,  
20 does not violate this article;

21 (14) Performing any procedure or prescribing any therapy that, by the accepted standards of

1 medical practice in the community, would constitute experimentation on human subjects without  
2 first obtaining full, informed and written consent;

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

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

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

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

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

15 (20) Professional incompetence; or

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

1 orders entered by the board shall be used against the physician or podiatrist in any other proceeding.

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

17 (e) The board may refer any cases coming to its attention to an appropriate committee of an  
18 appropriate professional organization for investigation and report. Except for complaints related to  
19 obtaining initial licensure to practice medicine and surgery or podiatry in this state by bribery or  
20 fraudulent misrepresentation, any complaint filed more than two years after the complainant knew,  
21 or in the exercise of reasonable diligence should have known, of the existence of grounds for the

1 complaint shall be dismissed: *Provided*, That in cases of conduct alleged to be part of a pattern of  
2 similar misconduct or professional incapacity that, if continued, would pose risks of a serious or  
3 substantial nature to the physician's or podiatrist's current patients, the investigating body may  
4 conduct a limited investigation related to the physician's or podiatrist's current capacity and  
5 qualification to practice and may recommend conditions, restrictions or limitations on the  
6 physician's or podiatrist's license to practice that it considers necessary for the protection of the  
7 public. Any report shall contain recommendations for any necessary disciplinary measures and shall  
8 be filed with the board within ninety days of any referral. The recommendations shall be considered  
9 by the board and the case may be further investigated by the board. The board after full investigation  
10 shall take whatever action it considers appropriate, as provided in this section.

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

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

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

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

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



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

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

21 (1) Deny his or her application for a license or other authorization to practice medicine and

- 1 surgery or podiatry;
- 2 (2) Administer a public reprimand;
- 3 (3) Suspend, limit or restrict his or her license or other authorization to practice medicine and  
4 surgery or podiatry for not more than five years, including limiting the practice of that person to, or  
5 by the exclusion of, one or more areas of practice, including limitations on practice privileges;
- 6 (4) Revoke his or her license or other authorization to practice medicine and surgery or  
7 podiatry or to prescribe or dispense controlled substances for a period not to exceed ten years;
- 8 (5) Require him or her to submit to care, counseling or treatment designated by the board as  
9 a condition for initial or continued licensure or renewal of licensure or other authorization to practice  
10 medicine and surgery or podiatry;
- 11 (6) Require him or her to participate in a program of education prescribed by the board;
- 12 (7) Require him or her to practice under the direction of a physician or podiatrist designated  
13 by the board for a specified period of time; and
- 14 (8) Assess a civil fine of not less than \$1,000 nor more than \$10,000.
- 15 (k) Notwithstanding the provisions of section eight, article one, chapter thirty of this code,  
16 if the board determines the evidence in its possession indicates that a physician's or podiatrist's  
17 continuation in practice or unrestricted practice constitutes an immediate danger to the public, the  
18 board may take any of the actions provided in subsection (j) of this section on a temporary basis and  
19 without a hearing if institution of proceedings for a hearing before the board are initiated  
20 simultaneously with the temporary action and begin within fifteen days of the action. The Board  
21 shall render its decision within five days of the conclusion of a hearing under this subsection.

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

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

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

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

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

1 conclusion of a suspension, limitation or restriction period the physician or podiatrist may resume  
2 practice if the board has so ordered.

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

13 (o) A physician or podiatrist may request in writing to the board a limitation on or the  
14 surrendering of his or her license to practice medicine and surgery or podiatry or other appropriate  
15 sanction as provided in this section. The board may grant the request and, if it considers it  
16 appropriate, may waive the commencement or continuation of other proceedings under this section.  
17 A physician or podiatrist whose license is limited or surrendered or against whom other action is  
18 taken under this subsection may, at reasonable intervals, petition for removal of any restriction or  
19 limitation on or for reinstatement of his or her license to practice medicine and surgery or podiatry.

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

1 the board shall make a preliminary determination as to whether probable cause exists to substantiate  
2 charges of disqualification due to any reason set forth in subsection (c) of this section. If probable  
3 cause is found to exist, all proceedings on the charges shall be open to the public who are entitled  
4 to all reports, records and nondeliberative materials introduced at the hearing, including the record  
5 of the final action taken: *Provided*, That any medical records, which were introduced at the hearing  
6 and which pertain to a person who has not expressly waived his or her right to the confidentiality of  
7 the records, may not be open to the public nor is the public entitled to the records.

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

14 (r) Notwithstanding any other provisions of this article, the board may, at any time, on its  
15 own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or  
16 by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the  
17 West Virginia State Bar's mediator referral service of certified mediators with expertise in  
18 professional disciplinary matters. The board and the physician or podiatrist may choose a mediator  
19 from that list. If the board and the physician or podiatrist are unable to agree on a mediator, the  
20 board shall designate a mediator from the list by neutral rotation. The mediation shall not be  
21 considered a proceeding open to the public and any reports and records introduced at the mediation

1 shall not become part of the public record. The mediator and all participants in the mediation shall  
 2 maintain and preserve the confidentiality of all mediation proceedings and records. The mediator  
 3 may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure  
 4 of confidential information in any proceeding relating to or arising out of the disciplinary or licensure  
 5 matter mediated: *Provided*, That any confidentiality agreement and any written agreement made and  
 6 signed by the parties as a result of mediation may be used in any proceedings subsequently instituted  
 7 to enforce the written agreement. The agreements may be used in other proceedings if the parties  
 8 agree in writing.

9 (s) A physician licensed under this chapter may not be disciplined for providing expedited  
 10 partner therapy in accordance with article four-f, chapter sixteen of this code.

11 **ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.**

12 **§30-3E-3. Rulemaking.**

13 (a) The boards shall propose rules for legislative approval in accordance with ~~the provisions~~  
 14 ~~of article three, chapter twenty-nine-a of this code to implement the provisions of this article,~~  
 15 including:

- 16 (1) The extent to which physician assistants may practice in this state;
- 17 (2) The extent to which physician assistants may pronounce death;
- 18 (3) Requirements for licenses and temporary licenses;
- 19 (4) Requirements for practice agreements;
- 20 (5) Requirements for continuing education;
- 21 (6) Conduct of a licensee for which discipline may be imposed;

1 (7) The eligibility and extent to which a physician assistant may prescribe at the direction of  
2 his or her supervising physician, including the following:

3 (A) A list of drugs and pharmacologic categories, or both, the prescription of which may not  
4 be delegated to a physician assistant, including all drugs listed in Schedules I and II of the Uniform  
5 Controlled Substances Act, antineoplastic and chemotherapeutic agents, or both, used in the active  
6 treatment of current cancer, radiopharmaceuticals, general anesthetics, radiographic contrast  
7 materials and any other limitation or exclusions of specific drugs or categories of drugs as  
8 determined by the boards;

9 (B) Authority to include, in a practice agreement, the delegation of prescribing authority for  
10 up to a 72-hour supply of drugs listed under Schedule III of the Uniform Controlled Substances Act  
11 so long as the prescription is nonrefillable and an annual supply of any drug, with the exception of  
12 controlled substances, which is prescribed for the treatment of a chronic condition, other than  
13 chronic pain management, with the chronic condition being treated identified on the prescription;  
14 and

15 (C) A description of the education and training requirements for a physician assistant to be  
16 eligible to receive delegated prescriptive writing authority as part of a practice agreement;

17 (8) The authority a supervising physician may delegate for prescribing, dispensing and  
18 administering of controlled substances, prescription drugs or medical devices if the practice  
19 agreement includes:

20 (A) A notice of intent to delegate prescribing of controlled substances, prescription drugs or  
21 medical devices;

1 (B) An attestation that all prescribing activities of the physician assistant shall comply with  
2 applicable federal and state law governing the practice of physician assistants;

3 (C) An attestation that all medical charts or records shall contain a notation of any  
4 prescriptions written by a physician assistant;

5 (D) An attestation that all prescriptions shall include the physician assistant's name and the  
6 supervising physician's name, business address and business telephone number legibly written or  
7 printed; and

8 (E) An attestation that the physician assistant has successfully completed each of the  
9 requirements established by the appropriate board to be eligible to prescribe pursuant to a practice  
10 agreement accompanied by the production of any required documentation establishing eligibility;

11 (9) A fee schedule; ~~and~~

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

15 ~~(10)~~ (11) Any other rules necessary to effectuate ~~the provisions~~ of this article.

16 (b) The boards may propose emergency rules pursuant to article three, chapter twenty-nine-a  
17 of this code to ensure conformity with this article.

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

20 **§30-5-14. Prohibiting the dispensing of prescription orders in absence of practitioner-patient**  
21 **relationship.**



1 A pharmacist may not compound or dispense any prescription order when he or she has  
 2 knowledge that the prescription was issued by a practitioner without establishing a valid practitioner-  
 3 patient relationship. An online or telephonic evaluation by questionnaire, or an online or telephonic  
 4 consultation, is inadequate to establish a valid practitioner-patient relationship: *Provided*, That this  
 5 prohibition does not apply:

6 (1) In a documented emergency;

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

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

10 ~~(3)~~ (4) Where patient care is rendered in consultation with another practitioner who has an  
 11 ongoing relationship with the patient and who has agreed to supervise the patient's treatment,  
 12 including the use of any prescribed medications.

### 13 **ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**

#### 14 **§30-7-15a. Prescriptive authority for prescription drugs; coordination with Board of** 15 **Pharmacy.**

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

21 (b) For purposes of this section an agreement to a collaborative relationship for prescriptive

1 practice between a physician and an advanced practice registered nurse shall be set forth in writing.  
2 Verification of the agreement shall be filed with the board by the advanced practice registered nurse.  
3 The board shall forward a copy of the verification to the board of Medicine and the board of  
4 Osteopathic Medicine. Collaborative agreements shall include, but are not limited to, the following:  
5 (1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it  
6 applies to the advanced practice registered nurse's clinical practice;  
7 (2) Statements describing the individual and shared responsibilities of the advanced practice  
8 registered nurse and the physician pursuant to the collaborative agreement between them;  
9 (3) Periodic and joint evaluation of prescriptive practice; and  
10 (4) Periodic and joint review and updating of the written guidelines or protocols.  
11 (c) The board shall promulgate legislative rules in accordance with ~~the provisions of chapter~~  
12 twenty-nine-a of this code governing the eligibility and extent to which an advanced practice  
13 registered nurse may prescribe drugs. Such rules shall provide, at a minimum, a state formulary  
14 classifying those categories of drugs which shall not be prescribed by advanced practice registered  
15 nurse including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act,  
16 antineoplastics, radiopharmaceuticals and general anesthetics. Drugs listed under Schedule III shall  
17 be limited to a seventy-two hour supply without refill. The rules shall also include a provision that  
18 advanced nurse practitioners licensed under this chapter may not be disciplined for providing  
19 expedited partner therapy in accordance with article four-f, chapter sixteen of this code. In addition  
20 to the above referenced provisions and restrictions and pursuant to a collaborative agreement as set  
21 forth in subsections (a) and (b) of this section, the rules shall permit the prescribing of an annual

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

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

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

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

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

14 (3) The effective date of prescriptive authority.

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

16 **§30-14-11. Refusal, suspension or revocation of license; suspension or revocation of certificate**  
17 **of authorization.**

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

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

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

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

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

5 (5) Gross malpractice;

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

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

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

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

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

NOTE: The purpose of this bill is to allow for expedited partner therapy treatment for a sexually transmitted disease. The bill permits prescribing antibiotics for the partner of a patient without first examining the partner under certain circumstances. The bill requires counseling by the physician. The bill also requires the Department of Health and Human Resources to develop outreach materials. The bill provides for limited liability for physicians, physician assistants and advanced practice registered nurses who prescribe in an expedited partner therapy setting. The bill provides that health care professionals and pharmacists are not liable for not providing expedited partner therapy or filling certain prescriptions. The bill makes changes to the licensing portions of the code to make it permissible for the various disciplines to provide expedited partner therapy without disciplinary actions from their respective licensing boards.

§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.

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

This bill is recommended for passage during the 2015 legislative session by the Joint Committee on Health.