

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Originating

Senate Bill 714

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[Originating in the Committee on Health and Human
Resources; reported on March 26, 2021]

1 A BILL to repeal §30-3E-10 of the Code of West Virginia, 1931, as amended; and to amend and
2 reenact §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-9, §30-3E-10a, §30-3E-11,
3 §30-3E-12, §30-3E-13, and §30-3E-17 of said code, all relating to Physician Assistants
4 Practice Act; defining terms; limiting rule-making authority; revising licensure
5 requirements; revising practice requirements; eliminating practice agreement
6 requirement; revising practice notification requirement; revising collaboration
7 requirements; expanding scope of practice for physician's assistant; and revising
8 complaint process.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.

§30-3E-1. Definitions.

1 As used in this article:

2 ~~(1) "Advance duties" means medical acts that require additional training beyond the basic~~
3 ~~education program training required for licensure as a physician assistant.~~

4 ~~(2) "Alternate collaborating physician" means one or more physicians licensed in this state~~
5 ~~and designated by the collaborating physician to provide collaboration with a physician assistant~~
6 ~~in accordance with an authorized practice agreement.~~

7 ~~(3)~~ (1) "Approved program" means an educational program for physician assistants
8 approved and accredited by the Accreditation Review Commission on Education for the Physician
9 Assistant or its successor. Prior to 2001, approval and accreditation would have been by either
10 the Committee on Allied Health Education and Accreditation or the Commission on Accreditation
11 ~~Review Commission on Education for the Physician Assistant~~ of Allied Health Education
12 Programs.

13 (4) (2) "Boards" means the West Virginia Board of Medicine and the West Virginia Board
14 of Osteopathic Medicine.

15 ~~(5)~~ (3) “Chronic condition” means a condition which lasts three months or more, generally
16 cannot be prevented by vaccines, can be controlled but not cured by medication, and does not
17 generally disappear. These conditions include, but are not limited to, arthritis, asthma,
18 cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity.

19 ~~(6)~~ (4) “Collaborating physician” means a doctor of medicine, osteopathy, or podiatry fully
20 licensed, by the appropriate board in this state, without restriction or limitation, who collaborates
21 with physician assistants.

22 ~~(7)~~ (5) “Collaboration” means overseeing the activities of the medical services rendered
23 by a physician’s assistant. Constant physical presence of the collaborating physician is not
24 required as long as the collaborating physician and physician’s assistant are, or can be, easily in
25 contact with one another by telecommunication. Collaboration does not require the personal
26 presence of the collaborating physician at the place or places where services are rendered.

27 ~~(8)~~ (6) “Endorsement” means a summer camp or volunteer endorsement authorized under
28 this article.

29 ~~(9)~~ (7) “Health care facility” means any licensed hospital, nursing home, extended care
30 facility, state health or mental institution, clinic, or physician’s office.

31 ~~(10)~~ “Hospital” means a facility licensed pursuant to ~~§16-5B-1 et seq.~~ of this code and any
32 acute care facility operated by the state government that primarily provides inpatient diagnostic,
33 treatment, or rehabilitative services to injured, disabled, or sick persons under the supervision of
34 physicians and includes psychiatric hospitals.

35 ~~(11)~~ (8) “License” means a license issued by either of the boards pursuant to the provisions
36 of this article.

37 ~~(12)~~ (9) “Licensee” means a person licensed pursuant to the provisions of this article.

38 ~~(13)~~ (10) “Physician” means a doctor of allopathic or osteopathic medicine who is fully
39 licensed pursuant to the provisions of either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code to
40 practice medicine and surgery in this state.

41 ~~(14)~~ (11) “Physician’s assistant” means a person who meets the qualifications set forth in
42 this article and is licensed pursuant to this article to practice medicine ~~under~~ with a collaboration
43 collaborating physician.

44 ~~(15)~~ “Practice agreement” means a document that is executed between a collaborating
45 physician and a physician assistant pursuant to the provisions of this article, and is filed with and
46 approved by the appropriate licensing board.

47 ~~(16)~~ (12) “Practice notification” means a written notice to the appropriate licensing board
48 that a physician’s assistant will practice in collaboration with one or more collaborating physicians
49 ~~in a hospital~~ in the state of West Virginia.

§30-3E-2. Powers and duties of the boards.

1 In addition to the powers and duties set forth in this code for the boards, the boards shall:

2 (1) Establish the requirements for licenses and temporary licenses pursuant to this article;

3 (2) Establish the procedures for submitting, approving, and rejecting applications for
4 licenses and temporary licenses;

5 (3) Propose rules for legislative approval in accordance with the provisions of ~~article three,~~
6 ~~chapter twenty nine~~ a §29A-3-1 *et seq.* of this code to implement the provisions of this article;

7 (4) Compile and publish an annual report that includes a list of currently licensed physician
8 assistants ~~their collaborating physicians~~ and their primary practice locations in the state; and

9 (5) Take all other actions necessary and proper to effectuate the purposes of this article.

§30-3E-3. Rulemaking.

1 (a) The boards shall propose rules for legislative approval in accordance with the
2 provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this article, including:

3 (1) The extent to which physician assistants may practice in this state;

4 (2) The extent to which physician assistants may pronounce death;

5 (3) Requirements for licenses and temporary licenses;

6 (4) Requirements for ~~practice agreements~~ and practice notifications;

7 (5) Requirements for continuing education;

8 (6) Conduct of a licensee for which discipline may be imposed;

9 (7) The eligibility and extent to which a physician's assistant may prescribe, including: A
10 state formulary classifying those categories of drugs which may not be prescribed by a physician's
11 assistant, including, but not limited to, Schedules I and II of the Uniform Controlled Substances
12 Act, antineoplastics, radiopharmaceuticals, and general anesthetics.: Provided, That a
13 physician's assistant may prescribe no more than a three-day supply, without refill, of a drug listed
14 in the Uniform Controlled Substances Act as a Schedule II drug. Drugs listed under Schedule III
15 shall be limited to a 30-day supply without refill. In addition to the above referenced provisions
16 and restrictions and pursuant to a ~~practice agreement~~ or practice notification as set forth in this
17 article, the rules shall permit the prescribing of an annual supply of any drug, with the exception
18 of controlled substances, which is prescribed for the treatment of a chronic condition, other than
19 chronic pain management. For the purposes of this section, a chronic condition is a condition
20 which lasts three months or more, generally cannot be prevented by vaccines, can be controlled
21 but not cured by medication, and does not generally disappear. These conditions, with the
22 exception of chronic pain, include, but are not limited to, arthritis, asthma, cardiovascular disease,
23 cancer, diabetes, epilepsy and seizures, and obesity;

24 ~~(8) The authority a collaborating physician may delegate for prescribing, dispensing, and~~
25 ~~administering of controlled substances, prescription drugs, or medical devices if the practice~~
26 ~~agreement includes:~~

27 ~~(A) A notice of intent to delegate prescribing of controlled substances, prescription drugs,~~
28 ~~or medical devices;~~

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

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

33 ~~(D) An attestation that all prescriptions shall include the physician assistant's name and~~
34 ~~the collaborating physician's name, business address, and business telephone number legibly~~
35 ~~written or printed; and~~

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

40 ~~(9) (8) A fee schedule; and~~

41 ~~(10) (9) Any other rules necessary to effectuate the provisions of this article.~~

42 (b) The boards may propose emergency rules pursuant to §29A-3-1 *et seq.* of this code
43 to ensure conformity with this article.

§30-3E-4. License to practice as a physician's assistant.

1 (a) A person seeking licensure as a physician's assistant shall apply to the Board of
2 Medicine or to the Board of Osteopathic Medicine. The appropriate board shall issue a license to
3 practice as a physician's assistant with the collaboration of that board's licensed physicians or
4 podiatrists.

5 (b) A license may be granted to a person who:

6 (1) Files a complete application;

7 (2) Pays the applicable fees;

8 (3) Demonstrates to the board's satisfaction that he or she:

9 (A) Obtained a baccalaureate or master's degree from an accredited program of
10 instruction for physician assistants;

11 (B) Prior to July 1, 1994, graduated from an approved program of instruction in primary
12 health care or surgery; or

13 (C) Prior to July 1, 1983, was certified by the Board of Medicine as a physician's assistant
14 then classified as Type B;

15 (4) Has passed the Physician Assistant National Certifying Examination administered by
16 the National Commission on Certification of Physician Assistants;

17 (5) Has a current certification from the National Commission on Certification of Physician
18 Assistants or has a current license in good standing from a state that does not require a
19 physician's assistant to maintain national certification;

20 (6) Is mentally and physically able to engage safely in practice as a physician's assistant;

21 (7) Has not had a physician's assistant license, certification, or registration in any
22 jurisdiction suspended or revoked;

23 (8) Is not currently subject to any limitation, restriction, suspension, revocation, or
24 discipline concerning a physician's assistant license, certification, or registration in any
25 jurisdiction: *Provided*, That if a board is made aware of any problems with a physician's assistant
26 license, certification, or registration and agrees to issue a license, certification, or registration
27 notwithstanding the provisions of this subdivision or subdivision (7) of this subsection;

28 (9) Is of good moral character; and

29 (10) Has fulfilled any other requirement specified by the appropriate board.

30 (c) A board may deny an application for a physician's assistant license to any applicant
31 determined to be unqualified by the board.

§30-3E-9. Practice requirements.

1 (a) A physician's assistant may not practice independent of a collaborating physician.

2 ~~(b) A physician assistant may practice in a hospital in collaboration with physicians after~~
3 ~~filing a practice notification with the appropriate board. A physician's assistant may practice in~~
4 collaboration with physicians in any practice setting pursuant to a practice notification which has
5 been filed with, and activated by, the appropriate board in accordance with §30-3E-10a of this
6 code: *Provided*, That a physician's assistant who is currently practicing in collaboration with
7 physicians pursuant to a practice agreement which was authorized by a board prior to June 1,

8 2021 may continue to practice under that authorization until the practice agreement terminates or
9 until June 1, 2022, whichever is sooner.

10 ~~(c) Except as set forth in subsection (b) of this section, before a licensed physician~~
11 ~~assistant may practice and before a collaborating physician may delegate medical acts to a~~
12 ~~physician assistant, the collaborating physician, and the physician assistant shall:~~

13 ~~(1) File a practice agreement with the appropriate licensing board, including any~~
14 ~~designated alternate collaborating physicians;~~

15 ~~(2) Pay the applicable fees; and~~

16 ~~(3) Receive written authorization from the appropriate licensing board to commence~~
17 ~~practicing as a physician assistant pursuant to the practice agreement.~~

18 ~~(d) A physician applying to collaborate with a physician assistant shall affirm that:~~

19 ~~(1) The medical services set forth in the practice agreement are consistent with the skills~~
20 ~~and training of the collaborating physician and the physician assistant; and~~

21 ~~(2) The activities delegated to a physician assistant are consistent with sound medical~~
22 ~~practice and will protect the health and safety of the patient.~~

23 ~~(e) A collaborating physician may enter into practice agreements with up to five full-time~~
24 ~~physician assistants at any one time.~~

25 ~~(f) A physician may collaborate with physician assistants in a hospital as approved by the~~
26 ~~hospital.~~

27 (c) Notwithstanding any other provision of this code to the contrary, and to the degree
28 permitted by federal law, physician assistants shall be considered providers and shall not be
29 reimbursed at rates lower than other providers who render similar health services by health
30 insurers as well as health plans operated or paid for by the state.

§30-3E-10. Practice agreement requirements.

[Repealed.]

§30-3E-10a. Practice notification requirements.

1 ~~(a) A physician assistant shall collaborate with physicians in a hospital only after the~~
2 ~~physician assistant is notified by the appropriate licensing board that a complete practice~~
3 ~~notification has been filed with the board. Before a licensed physician's assistant may practice in~~
4 ~~collaboration with physicians, the physician's assistant and a health care facility shall:~~

5 ~~(1) File a practice notification with the appropriate licensing board;~~

6 ~~(2) Pay the applicable fee; and~~

7 ~~(3) Receive written notice from the appropriate licensing board that the practice notification~~
8 ~~is complete and active.~~

9 (b) The licensing boards shall promulgate emergency rules to establish the content and
10 criteria for submission of practice notifications ~~for physician assistant hospital practice.~~

11 (c) A physician's assistant shall notify the board, in writing, within 10 days of the
12 termination of a practice notification. Failure to provide timely notice of the termination constitutes
13 unprofessional conduct and disciplinary proceedings may be instituted by the appropriate
14 licensing board.

§30-3E-11. Collaboration with physician's assistants.

1 ~~(a) A licensed physician or podiatrist may collaborate with a physician assistant:~~

2 ~~(1) As a collaborating physician in accordance with an authorized practice agreement;~~

3 ~~(2) As an alternate collaborating physician who:~~

4 ~~(A) Collaborates in accordance with an authorized practice agreement;~~

5 ~~(B) Has been designated an alternate collaborating physician in the authorized practice~~
6 ~~agreement; and~~

7 ~~(C) Only delegates those medical acts that have been authorized by the practice~~
8 ~~agreement and are within the scope of practice of both the primary collaborating physician and~~
9 ~~the alternate collaborating physician; or~~

10 ~~(3) In a hospital pursuant to a practice notification.~~

11 (a) Unless otherwise prohibited by a health care facility, a physician who practices
12 medicine or podiatry at a health care facility may collaborate with any physician's assistant who
13 holds an active practice notification with the same facility.

14 ~~(b) A collaborating physician~~ When collaborating with physician assistants, collaborating
15 physicians shall observe, direct, and evaluate the physician assistant's work, records, and
16 practices ~~including collaborating with the physician assistant in the care and treatment of a patient~~
17 ~~in a health care facility~~ as necessary for appropriate and meaningful collaboration.

18 (c) A health care facility is only legally responsible for the actions or omissions of a
19 physician's assistant when the physician's assistant is employed by or on behalf of the facility.

20 (d) Every licensed physician's assistant shall be individually responsible and liable for the
21 care they provide. This article does not relieve physician assistants or collaborating physicians of
22 responsibility and liability which otherwise may exist for acts and omissions occurring during
23 collaboration.

§30-3E-12. Scope of practice.

1 (a) A license issued to a physician's assistant by the appropriate state licensing board
2 shall authorize the physician's assistant to perform medical acts: commensurate with their
3 education, training, and experience and which they are competent to perform, consistent with the
4 rules of the boards. Medical acts include prescribing, dispensing, and administering of controlled
5 substances, prescription drugs, or medical devices.

6 ~~(1) Pursuant to a practice notification or delegated to the physician assistant as part of an~~
7 ~~authorized practice agreement~~

8 ~~(2) Appropriate to the education, training, and experience of the physician assistant;~~

9 ~~(3) Customary to the practice of the collaborating physician; and~~

10 ~~(4) Consistent with the laws of this state and rules of the boards.~~

11 (b) A physician's assistant shall provide only those medical services for which they have
12 been prepared by their education, training, and experience and are competent to perform,

13 consistent with sound medical practice and that will protect the health and safety of the patient.
14 This may occur in any health care setting, both hospital and outpatient in accordance with their
15 practice notification.

16 (c) A physician's assistant with an active practice notification may perform medical acts
17 and/or procedures in collaboration with physicians which are consistent with the physician
18 assistant's education, training and experience, the collaborating physician's scope of practice,
19 and any credentialing requirements of the health care facility where the physician's assistant holds
20 an active practice notification.

21 (b) (d) This article does not authorize a physician's assistant to perform any specific
22 function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental
23 hygienists, optometrists, or pharmacists, or certified as nurse anesthetists.

§30-3E-13. Identification.

1 (a) While practicing, a physician's assistant shall wear a name tag that identifies him or
2 her as a physician's assistant.

3 (b) A physician's assistant shall keep his or her license and current ~~practice agreement or~~
4 practice notification available for inspection at his or her place of practice.

§30-3E-17. Complaint process.

1 (a) All hearings and procedures related to denial of a license, and all complaints,
2 investigations, hearings, and procedures regarding a physician's assistant license and the
3 discipline accorded thereto, shall be in accordance with the processes and procedures set forth
4 in either §30-3-1 et seq. or articles three and/or fourteen §30-14-1 et seq. of this chapter code,
5 depending on which board licenses the physician's assistant.

6 (b) The boards may impose the same discipline, restrictions, and/or limitations upon the
7 license of a physician's assistant as they are authorized to impose upon physicians and/or
8 podiatrists.

9 (c) The boards shall direct to the appropriate licensing board a complaint against a

10 physician's assistant and/or ~~a collaborating physician and/or an alternate~~ a collaborating
11 physician.

12 (d) In the event that independent complaint processes are warranted by the boards with
13 respect to the professional conduct of a physician's assistant or a collaborating ~~and/or alternate~~
14 ~~collaborating~~ physician, the boards are authorized to work cooperatively and to disclose to one
15 another information which may assist the recipient appropriate licensing board in its disciplinary
16 process. The determination of what information, if any, to disclose shall be at the discretion of the
17 disclosing board.

18 (e) A physician's assistant licensed under this article may not be disciplined for providing
19 expedited partner therapy in accordance with ~~article four-f, chapter sixteen~~ §16-4F-1 et seq. of
20 this code.