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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991



ENROLLED

SENATE BILL NO. 624

(By Senator Pritt, et al)



PASSED March 8, 1991

In Effect 90 days from Passage

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Senate Bill No. 624

(BY SENATORS PRITT, BLATNIK AND HOLLIDAY)

[Passed March 8, 1991; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article fourteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to osteopathic physician assistants; promulgation of rules by the board of osteopathy; certification of osteopathic physician assistants; supervising physicians and employing health care facilities; reporting of disciplinary procedures; identification; fees; continuing medical education; criminal penalties; and limited prescriptive authority.

Be it enacted by the Legislature of West Virginia:

That section one, article fourteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 14A. ASSISTANTS TO OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14A-1. Osteopathic physician assistant to osteopathic physicians and surgeons; definitions; board of osteopathy rules; certification; temporary certification; recertification; job description required; revocation or suspension of certification; 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) "Osteopathic physician assistant" means an
3 assistant to an osteopathic physician who is a graduate
4 of an approved program of instruction in primary care
5 or surgery, has passed the national certification
6 examination and is qualified to perform direct patient
7 care services under the supervision of an osteopathic
8 physician;

9 (2) "Supervising physician" means a doctor of
10 osteopathy permanently licensed in this state who
11 assumes legal and supervising responsibility for the
12 work or training of any osteopathic physician assistant
13 under his or her supervision;

14 (3) "Approved program" means an educational
15 program for osteopathic physician assistants approved
16 and accredited by the committee on allied health
17 education and accreditation;

18 (4) "Health care facility" means any licensed hospi-
19 tal, nursing home, extended care facility, state health
20 or mental institution, clinic or physician's office; and

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

24 (b) The board shall promulgate rules governing the
25 extent to which osteopathic physician assistants may
26 function in this state. Such rules shall provide that the
27 osteopathic physician assistant is limited to the perfor-
28 mance of those services for which he or she is trained
29 and that he or she performs only under the supervi-
30 sion and control of an osteopathic physician perman-
31 ently licensed in this state, but such supervision and

32 control does not require the personal presence of the
33 supervising physician at the place or places where
34 services are rendered if the osteopathic physician
35 assistant's normal place of employment is on the
36 premises of the supervising physician. The supervising
37 physician may send the osteopathic physician assistant
38 off the premises to perform duties under his or her
39 direction, but a separate place of work for the osteo-
40 pathic physician assistant shall not be established. In
41 promulgating such rules, the board may allow the
42 osteopathic physician assistant to perform those proce-
43 dures and examinations and in the case of authorized
44 osteopathic physician assistants to prescribe at the
45 direction of his or her supervising physician in accor-
46 dance with subsection (1) of this section those catego-
47 ries of drugs submitted to it in the job description
48 required by subsection (e) of this section. The board
49 shall compile and publish an annual report that
50 includes a list of currently certified osteopathic
51 physician assistants and their employers and location
52 in the state.

53 (c) The board shall certify as an osteopathic physi-
54 cian assistant any person who files an application and
55 furnishes satisfactory evidence to it that he or she has
56 met the following standards:

57 (1) He or she is a graduate of an approved program
58 of instruction in primary health care or surgery;

59 (2) He or she has passed the examination for a
60 primary care physician assistant or surgery adminis-
61 tered by the national board of medical examiners on
62 behalf of the national commission on certification of
63 physician assistants; and

64 (3) He or she is of good moral character.

65 (d) When any graduate of an approved program
66 submits an application to the board, accompanied by a
67 job description in conformity with subsection (e) of
68 this section, for an osteopathic physician assistant
69 certificate, the board may issue to such applicant a
70 temporary certificate allowing such applicant to
71 function as an osteopathic physician assistant for the

72 period of one year. Said temporary certificate may be
73 renewed for one additional year upon the request of
74 the supervising physician. An osteopathic physician
75 assistant who has not been certified as such by the
76 national board of medical examiners on behalf of the
77 national commission on certification of physician
78 assistants will be restricted to work under the direct
79 supervision of the supervising physician.

80 (e) Any osteopathic physician applying to the board
81 to supervise an osteopathic physician assistant shall
82 provide a job description that sets forth the range of
83 medical services to be provided by such assistant.
84 Before an osteopathic physician assistant can be
85 employed or otherwise use his or her skills, the
86 supervising physician must obtain approval of the job
87 description from the board. The board may revoke or
88 suspend any certification of an assistant to a physician
89 for cause, after giving such person an opportunity to
90 be heard in the manner provided by sections eight and
91 nine, article one of this chapter.

92 (f) The supervising physician is responsible for
93 observing, directing and evaluating the work records
94 and practices of each osteopathic physician assistant
95 performing under his or her supervision. He or she
96 shall notify the board in writing of any termination of
97 his or her supervisory relationship with an osteopathic
98 physician assistant within ten days of his or her
99 termination. The legal responsibility for any osteo-
100 pathic physician assistant remains with the supervis-
101 ing physician at all times, including occasions when
102 the assistant, under his or her direction and supervi-
103 sion, aids in the care and treatment of a patient in a
104 health care facility. In his or her absence, a supervis-
105 ing physician must designate an alternate supervising
106 physician; however, the legal responsibility remains
107 with the supervising physician at all times. A health
108 care facility is not legally responsible for the actions or
109 omissions of an osteopathic physician assistant unless
110 the osteopathic physician assistant is an employee of
111 the facility.

112 (g) The acts or omissions of an osteopathic physician

113 assistant employed by health care facilities providing
114 inpatient services shall be the legal responsibility of
115 said facilities. Osteopathic physician assistants
116 employed by such facilities in staff positions shall be
117 supervised by a permanently licensed physician.

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

135 (i) When functioning as an osteopathic physician
136 assistant, the osteopathic physician assistant shall wear
137 a name tag that identifies him or her as a physician
138 assistant.

139 (j) (1) A supervising physician shall not supervise at
140 any time more than two osteopathic physician assis-
141 tants, except that a physician may supervise up to four
142 hospital-employed osteopathic physician assistants:
143 *Provided*, That an alternative supervisor has been
144 designated for each.

145 (2) An osteopathic physician assistant shall not
146 perform any service that his or her supervising
147 physician is not qualified to perform.

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

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

159 (k) Each job description submitted by a licensed
160 osteopathic supervising physician shall be accompan-
161 ied by a fee of one hundred dollars. A fee of fifty
162 dollars shall be charged for the annual renewal of the
163 certificate. A fee of twenty-five dollars shall be
164 charged for any change of supervising physician.

165 (l) As a condition of renewal of osteopathic physician
166 assistant certification, each osteopathic physician
167 assistant shall provide written documentation satisfac-
168 tory to the board of participation in and successful
169 completion during the preceding one-year period of a
170 minimum of twenty hours of continuing education in
171 courses approved by the board of osteopathy for the
172 purposes of continuing education of osteopathic physi-
173 cian assistants. Notwithstanding any provision of this
174 chapter to the contrary, failure to timely submit such
175 required written documentation shall result in the
176 automatic suspension of any certification as an osteo-
177 pathic physician assistant until such time as the
178 written documentation is submitted to and approved
179 by the board.

180 (m) It is unlawful for any person who is not certified
181 by the board as an osteopathic physician assistant to
182 use the title of "osteopathic physician assistant" or to
183 represent to any other person that he or she is an
184 osteopathic physician assistant. Any person who
185 violates the provisions of this subsection is guilty of a
186 misdemeanor, and, upon conviction thereof, shall be
187 fined not more than two thousand dollars.

188 (n) It is unlawful for any osteopathic physician
189 assistant to represent to any person that he or she is
190 a physician. Any person who violates the provisions of
191 this subsection is guilty of a felony, and, upon convic-

192 tion thereof, shall be imprisoned in the penitentiary
193 for not less than one, nor more than two years, or be
194 fined not more than two thousand dollars, or both
195 fined and imprisoned.

196 (o) An osteopathic physician assistant providing
197 primary care outpatient services in a medically under-
198 served area or other area of need, both as defined by
199 the board, may write or sign prescriptions or transmit
200 prescriptions by word of mouth, telephone or other
201 means of communication at the direction of his or her
202 supervising physician. The board shall promulgate
203 rules and regulations governing the eligibility and
204 extent to which such an osteopathic physician assistant
205 may prescribe at the direction of the supervising
206 physician. The regulations shall provide for a state
207 formulary classifying pharmacologic categories of
208 drugs which may be prescribed by such an osteopathic
209 physician assistant. In classifying such pharmacologic
210 categories, those categories of drugs which shall be
211 excluded shall include, but not be limited to, Sche-
212 dules I and II of the uniform controlled substances act,
213 anticoagulants, antineoplastics, antipsychotics, radio-
214 pharmaceuticals, general anesthetics and radiographic
215 contrast materials. Drugs listed under Schedule III
216 shall be limited to a forty-eight hour supply without
217 refill. The regulations shall provide that all pharmaco-
218 logical categories of drugs to be prescribed by an
219 osteopathic physician assistant shall be listed in each
220 job description submitted to the board as required in
221 subsection (e) of this section. The regulations shall
222 provide the maximum dosage an osteopathic physician
223 assistant may prescribe.

224 The regulations shall also provide that to be eligible
225 for such prescription privileges, an osteopathic physi-
226 cian assistant must submit an application to the board
227 for such privileges. The regulations shall also provide
228 that an osteopathic physician assistant shall have
229 performed patient care services for a minimum of two
230 years immediately preceding the submission to the
231 board of said application for prescription privileges
232 and shall have successfully completed an accredited

233 course of instruction in clinical pharmacology
234 approved by the board. The regulations shall also
235 provide that to maintain prescription privileges, an
236 osteopathic physician assistant shall continue to main-
237 tain national certification as an osteopathic physician
238 assistant, and in meeting such national certification
239 requirements shall complete a minimum of ten hours
240 of continuing education in rational drug therapy in
241 each certification period. Nothing in this subsection
242 shall be construed to permit an osteopathic physician
243 assistant to independently prescribe or dispense drugs.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Homer Seck
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Harrell E. Holmes
.....
Clerk of the Senate

Donald L. Hoop
.....
Clerk of the House of Delegates

Will S. Smith
.....
President of the Senate

Bob Cole
.....
Speaker House of Delegates

The within *is approved* this the *29th*
day of *March*, 1991.

Yaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/18/91

Time 3:00 pm