WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

ENROLLED

SENATE BILL NO. 159

(By Senator Manchin, et al.)

PASSED March 12, 1994
In Effect from Passage
ENROLLED
Senate Bill No. 159
(BY SENATORS MANCHIN, ANDERSON, GRUBB AND MINARD)

[Passed March 12, 1994; in effect from passage.]

AN ACT to amend and reenact sections eight, ten, eleven, sixteen, eighteen, nineteen, and thirty-one, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto six new sections, designated sections thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, and forty-one, all relating generally to the promulgation of administrative rules and regulations by the various executive or administrative agencies and the procedures relating thereto; the legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to
promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the board of examiners to promulgate legislative rules relating to the board of examiners in counseling, licensing, as modified; authorizing the board of dental examiners to promulgate legislative rules relating to the West Virginia board of dental examiners, as modified; authorizing the board of embalmers and funeral directors to promulgate legislative rules relating to the West Virginia board of embalmers and funeral directors, as modified; authorizing the board of medicine to promulgate legislative rules relating to licensing, disciplinary and complaint procedures, physicians, podiatrists, as modified; authorizing the board of examiners for registered professional nurses to promulgate legislative rules relating to disciplinary action, as modified; authorizing the board of examiners for registered professional nurses to promulgate legislative rules relating to standards for professional nursing practice, as modified; authorizing the nursing home administrators licensing board to promulgate legislative rules relating to rules and regulations of the nursing home administrators licensing board, as modified; authorizing the real estate appraiser licensing and certification board to promulgate legislative rules relating to requirements for licensure and certification, as modified; authorizing the board of osteopathy to promulgate legislative rules relating to osteopathic physician assistants, as amended; authorizing the board of osteopathy to promulgate legislative rules relating to licensing, disciplinary and complaint procedures for osteopathic physicians, as modified; authorizing the board of physical therapy to promulgate legislative rules relating to general provisions, as modified; authorizing the board of examiners for speech-language pathology and audiology to promulgate legislative rules relating to the licensure of speech-language pathology and audiology, as modified; authorizing the board of examiners for speech-language pathology and audiology to promulgate legislative rules relating to licensure of speech-language pathology and audiology
assistants, as modified; authorizing the commercial hazardous waste management facility siting board to promulgate legislative rules relating to the commercial hazardous waste management facility siting board certification requirements, as modified; authorizing the family protection services board to promulgate legislative rules relating to operation of the family protection services board and licensure and funding of domestic violence programs, as modified and amended; authorizing the board of investments to promulgate legislative rules relating to the rules for the administration of the consolidated pension fund, as modified; and authorizing the board of investments to promulgate legislative rules relating to the administration of the consolidated fund of the state board of investments.

Be it enacted by the Legislature of West Virginia:

That sections eight, ten, eleven, sixteen, eighteen, nineteen, and thirty-one, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended be amended and reenacted; that said article be further amended by adding thereto six new sections, designated sections thirty-six, thirty-seven, thirty-eight, thirty-nine, thirty-nine, forty and forty-one, all to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-8. West Virginia board of examiners in counseling.

(a) The legislative rules filed in the state register on the twentieth day of March, one thousand nine hundred eighty-nine, modified by the West Virginia board of examiners in counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of September, one thousand nine hundred eighty-nine, relating to the West Virginia board of examiners in counseling (licensing), are authorized.

(b) The legislative rules filed in the state register on the eighteenth day of July, one thousand nine hundred
ninety-one, modified by the board of examiners in counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixth day of December, one thousand nine hundred ninety-one, relating to the board of examiners in counseling (licensing), are authorized.

(c) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the board of examiners in counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of January, one thousand nine hundred ninety-four, relating to the board of examiners in counseling (licensing), are authorized.

§64-9-10. West Virginia board of dental examiners.

(a) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred eighty-nine, modified by the West Virginia board of dental examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of October, one thousand nine hundred eighty-nine, relating to the West Virginia board of dental examiners (rules and regulations of the West Virginia board of dental examiners), are authorized.

(b) The legislative rules filed in the state register on the twenty-seventh day of July, one thousand nine hundred ninety, modified by the West Virginia board of dental examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of August, one thousand nine hundred ninety, relating to the West Virginia board of dental examiners (rules and regulations of the West Virginia board of dental examiners), are authorized.

(c) The legislative rules filed in the state register on the twenty-third day of August, one thousand nine hundred
ninety-three, modified by the board of dental examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of October, one thousand nine hundred ninety-three, relating to the board of dental examiners (rules and regulations of the West Virginia board of dental examiners), are authorized.


(a) The legislative rules filed in the state register on the twenty-seventh day of July, one thousand nine hundred eighty-four, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the board of embalmers and funeral directors (apprenticeship), are authorized.

(b) The legislative rules filed in the state register on the sixteenth day of October, one thousand nine hundred eighty-five, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of July, one thousand nine hundred eighty-six, relating to the board of embalmers and funeral directors (governing the board of embalmers and funeral directors), are authorized.

(c) The legislative rules filed in the state register on the sixth day of May, one thousand nine hundred ninety-three, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of November, one thousand nine hundred ninety-three, relating to the board of embalmers and funeral directors (rules of the West Virginia Board of embalmers and funeral directors), are authorized.

§64-9-16. Board of medicine.

(a) The legislative rules filed in the state register on the
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2 twelfth day of May, one thousand nine hundred
3 eighty-three, relating to the board of medicine (licensing,
4 disciplinary and complaint procedures; podiatry;
5 physicians assistants), are authorized with the modifica-
6 tions set forth below:
7
8 "§24.12.
9 (b) It shall be the responsibility of the supervising
10 physician to obtain consent in writing from the patient
11 before Type A physician assistants employed in a
12 satellite clinic may render general medical or surgical
13 services, except in emergencies.
14 §24.16.
15 (a) No physician assistant shall render nonemergency
16 outpatient medical services until the patient has been
17 informed that the individual providing care is a physi-
18 cian assistant."
19 (b) The legislative rules filed in the state register on the
20 twenty-sixth day of November, one thousand nine
21 hundred eighty-five, modified by the board of medicine
22 to meet the objections of the legislative rule-making
23 review committee and refiled in the state register on the
24 seventeenth day of January, one thousand nine hundred
25 eighty-six, relating to the board of medicine (licensing,
26 disciplinary and complaint procedures; podiatry;
27 physicians assistants), are authorized.
28 (c) The legislative rules filed in the state register on the
29 eighth day of March, one thousand nine hundred
30 eighty-five, modified by the West Virginia board of
31 medicine to meet the objections of the legislative
32 rule-making review committee and refiled in the state
33 register on the eighteenth day of December, one
34 thousand nine hundred eighty-five, relating to the West
35 Virginia board of medicine (rules governing the approval
36 of medical schools not accredited by the liaison
37 committee on medical education), are authorized.
38 (d) The legislative rules filed in the state register on the
third day of June, one thousand nine hundred eighty-seven, relating to the board of medicine (fees for services rendered by the board of medicine), are authorized.

(e) The legislative rules filed in the state register on the sixteenth day of September, one thousand nine hundred eighty-eight, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-nine, relating to the board of medicine (dispensing of legend drugs by physicians and podiatrists), are authorized with the following amendments:

Section 2.6 to read as follows: "Dispense means to deliver a legend drug to an ultimate user or research subject by or pursuant to the lawful order of a physician or podiatrist, including the prescribing, packaging, labeling, administration or compounding necessary to prepare the drug for that delivery."

And,

Section 3.3 to read as follows: "Physicians or podiatrists who are not registered with the Board as dispensing physicians may not dispense legend drugs. However, the following activities by a physician or podiatrist shall be exempt from the requirements of sections 5 through 8 applicable to dispensing physicians:

a. Legend drugs administered to the patient, which are not controlled substances when an appropriate record is made in the patient's chart;

b. Professional samples distributed free of charge by a physician or podiatrist or certified physician assistant under his or her supervision to the patient when an appropriate record is made in the patient's chart; or

c. Legend drugs which are not controlled substances provided by free clinics or under West Virginia state authorized programs, including the Medicaid, family planning, maternal and child health, and early and
provided, That all labeling provisions of section 8 shall be applicable except the requirements of section 8.3 (a)."

(f) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of October, one thousand nine hundred ninety, relating to the board of medicine (fees for services rendered by the board of medicine), are authorized.

(g) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of January, one thousand nine hundred ninety-one, relating to the board of medicine (licensing and disciplinary and complaint procedures: physicians; podiatrists), are authorized.

(h) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of January, one thousand nine hundred ninety-one, relating to the board of medicine (certification, disciplinary and complaint procedures: physician assistants), are authorized.

(i) The legislative rules filed in the state register on the tenth day of July, one thousand nine hundred ninety-one, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of September, one thousand nine hundred ninety-one, relating to the board of medicine (continuing education for physicians and podiatrists), are authorized.
(j) The legislative rules filed in the state register on the twenty-fifth day of March, one thousand nine hundred ninety-two, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of May, one thousand nine hundred ninety-two, relating to the board of medicine (licensing, disciplinary and complaint procedures: physicians, podiatrists), are authorized.

(k) The legislative rules filed in the state register on the seventeenth day of September, one thousand nine hundred ninety-two, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of November, one thousand nine hundred ninety-two, relating to the board of medicine (certification, disciplinary and complaint procedures, continuing education, physician assistants), are authorized, with the following amendment:

On page six, section 11-1B-2, subsection 2.8 (c), after the words “in writing” and the comma, by striking out the words “prior to” and inserting in lieu thereof the words “within ten days of”.

(l) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of October, one thousand nine hundred ninety-three, relating to the board of medicine (licensing, disciplinary and complaint procedures, physicians; podiatrists), are authorized.

§64-9-18. Board of examiners for registered professional nurses.

(a) The legislative rules filed in the state register on the thirteenth day of September, one thousand nine hundred eighty-three, relating to the board of examiners for
registered professional nurses (qualifications of graduates of foreign nursing schools for admission to the professional nurse licensing examination), are authorized.

(b) The legislative rules filed in the state register on the third day of August, one thousand nine hundred ninety, modified by the board of examiners for registered professional nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of September, one thousand nine hundred ninety, relating to the board of examiners for registered professional nurses (announcement of advanced nursing practice), are authorized.

(c) The legislative rules filed in the state register on the tenth day of September, one thousand nine hundred ninety-two, modified by the board of examiners for registered professional nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of January, one thousand nine hundred ninety-three, relating to the board of examiners for registered professional nurses (limited prescriptive authority for nurses in advanced practice), are authorized.

(d) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the board of examiners for registered professional nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of January, one thousand nine hundred ninety-four, relating to the board of examiners for registered professional nurses (disciplinary action), are authorized.

(e) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the board of examiners for registered professional nurses to meet the objections of the legislative rule-making review committee and refiled

(a) The legislative rules filed in the state register on the eighteenth day of October, one thousand nine hundred eighty-five, modified by the nursing home administrators licensing board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the nursing home administrators licensing board (governing nursing home administrators), are authorized.

(b) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the nursing home administrators licensing board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred ninety-three, relating to the nursing home administrators licensing board (rules and regulations of the nursing home administrators licensing board), are authorized.

§64-9-31. Real estate appraiser licensing and certification board.

(a) The legislative rules filed in the state register on the eighteenth day of July, one thousand nine hundred ninety-one, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the real estate appraiser licensing and certification board (rules and regulations of the real estate appraiser licensing and certification board), are authorized.
(b) The legislative rules filed in the state register on the eighteenth day of July, one thousand nine hundred ninety-one, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the real estate appraiser licensing and certification board (requirements of licensure and certification), are authorized.

(c) The legislative rules filed in the state register on the eighteenth day of July, one thousand nine hundred ninety-one, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the real estate appraiser licensing and certification board (renewal of licensure or certification), are authorized.

(d) The legislative rules filed in the state register on the seventh day of July, one thousand nine hundred ninety-two, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of August, one thousand nine hundred ninety-two, relating to the real estate appraiser licensing and certification board (requirements of licensure and certification), are authorized.

(e) The legislative rules filed in the state register on the twenty-eighth day of May, one thousand nine hundred ninety-three, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of July, one thousand nine hundred ninety-three, relating to the real estate appraiser licensing and certification board
§64-9-36. Board of osteopathy.

(a) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred ninety-three, relating to the board of osteopathy (osteopathic physician assistants), are authorized with amendment set forth below:

On page one by striking out the entire rule and inserting in lieu thereof the following:

§11-1B-1. General.

1.1. Scope. — W. Va. Code §30-14A-1 requires the Board of Osteopathy to adopt rules governing the extent to which osteopathic physician assistants may function in this State.


1.3. Filing Date. —

1.4. Effective Date. —

§11-1B-2. Rules For Osteopathic physician Assistants.

2.1. For purposes of this section, the following definitions are in effect:

2.1.1. Licensure — The approval of individuals by the Board to serve as osteopathic physician assistants. It also means the approval of programs by the Board for the training and education of osteopathic physician assistants.

2.1.2. Crimes involving moral turpitude. — Those crimes which have dishonesty as a fundamental and necessary element; including, but not limited to, crimes involving theft, embezzlement, false swearing perjury, fraud or misrepresentation.

2.1.3. NCCPA. — The National Commission on the Certification of Physician Assistants.
2.1.4. Protocol. — Written treatment instructions prepared by a supervising osteopathic physician for use by a osteopathic physician assistant. Such instructions should be flexible, in accordance with the setting where the osteopathic physician assistant is employed.

2.1.5. Satellite operation. — An office or clinic separate and apart from the office of the supervising osteopathic physician, established by the osteopathic physician and manned in part by a osteopathic physician assistant.

2.1.6. Supervision. — The opportunity or ability of the osteopathic physician to provide or exercise control and direction over the services of osteopathic physician assistants. Constant physical presence of the supervising osteopathic physician of a osteopathic physician assistant certified by the NCCPA is not required so long as the supervising osteopathic physician and the osteopathic physician assistant are or can easily be in contact with each other by radio, telephone or telecommunication. Supervision requires the availability of the supervising osteopathic physician. An appropriate degree of supervision includes:

   a. Personal supervision by the osteopathic physician of a minimum of twenty-five percent of the weekly hours worded by each osteopathic physician assistant;

   b. The active and continuing overview of the osteopathic physician assistant’s activities to determine that the supervising osteopathic physician’s directions are being implemented;

   c. The availability of the supervising osteopathic physician to the osteopathic physician assistant for all necessary consultations;

   d. Personal and regular (at least monthly) review by the supervising osteopathic physician of selected patient records upon which entries are made by the osteopathic physician assistant. Patient records shall be selected for review on the basis of written criteria established by the supervising osteopathic physician and the osteopathic
15 physician assistant and shall be of sufficient number to
69 assure adequate review of the osteopathic physician
70 assistant's scope of practice, and;
71 e. Periodic (at least monthly) education and review
72 sessions discussing specific conditions, protocols, pro-
73 cedures and specific patients, held by the supervising
74 osteopathic physician for the osteopathic physician
75 assistant under his or her supervision.
76 In the case of a osteopathic physician assistant who has
77 not been certified by the NCCPA, the presence of the
78 supervising osteopathic physician or alternate supervis-
79 ing osteopathic physician is required on the premises
80 where the noncertified osteopathic physician assistant
81 performs delegated medical tasks.
82 2.2. Employment of osteopathic physician assistants by
83 licensed osteopathic physician; services that may be
84 performed by osteopathic physician assistants.
85 2.2.1. A osteopathic physician fully licensed under W.
86 Va. Code §30-14-1 et. seq. may submit a job description
87 to the Board to employ a osteopathic physician assistant.
88 2.2.2. The delegation of certain acts to a osteopathic
89 physician assistant shall be stated on the job description
90 in a manner consistent with sound medical practice and
91 with the protection of the health and safety of the
92 patient in mind. The services shall be limited to those
93 which are educational, diagnostic, therapeutic or
94 preventive in nature and may, according to the standards
95 set by his or her supervising osteopathic physician, allow
96 the osteopathic physician assistant to formulate a
97 provisional diagnosis and treatment plan which may be
98 set by standard protocols of his or her supervising
99 osteopathic physician and are under his or her direction.
100 2.3. Submission of application; job description. — An
101 application completed by the applicant and a job
102 description written and signed by the supervising
103 osteopathic physician listing in numerical order the
104 duties which will be performed by the assistant must be
in the office of the Board of Osteopathy, thirty (30) days prior to a Board meeting. The filing of an application and job description does not entitle a osteopathic physician assistant to licensure. The only legal authority for such approval must be given by the Board.

2.4. Biennial report of osteopathic physician assistant’s performance; biennial report of the Board. — Osteopathic physician assistants and their supervising osteopathic physicians must submit biennial signed reports either individually or combined, on the professional conduct, capabilities and performance of the osteopathic physician assistant. The report must accompany each application for licensure and must be submitted to the office of the Board by April 1. In addition thereto, the Board shall compile and publish a biennial report that includes a list of currently licensed osteopathic physician assistants, their employers and location in the state and a list of approved programs in West Virginia, the number of graduates per year of the approved programs and the number of osteopathic physician assistants from other states’ approved programs practicing in West Virginia.

2.5. Supervision and control of osteopathic physician assistant. — The osteopathic physician assistant, whether employed by a health care facility or the supervising osteopathic physician, shall perform only under the supervision and control of the supervising osteopathic physician. Supervision and control of a osteopathic physician assistant certified by the NCCPA requires the availability of a osteopathic physician for consultation and direction of the actions of the assistant, but does not necessarily require the personal presence of the supervising osteopathic physician at the place or places where services are rendered, if the osteopathic physician assistant certified by the NCCPA is performing (specified) duties at the direction of the supervising osteopathic physician. In the case of a osteopathic physician assistant who has not been certified by the NCCPA, the presence of the supervising osteopathic
physician or alternate supervising osteopathic physician on the premises where the noncertified assistant performs delegated medical tasks is required. The osteopathic physician assistant may function in any setting within which the supervising osteopathic physician routinely practices, but in no instance shall a separate place of work for the osteopathic physician assistant be established. The supervising osteopathic physician shall be a osteopathic physician permanently licensed in this State.

2.6. Limitations on employment and scope of duties of osteopathic physician assistants.

2.6.1. A supervising osteopathic physician shall not employ at any one time more than two (2) osteopathic physician assistants.

2.6.2. A osteopathic physician assistant shall not sign prescriptions except in the case of certain osteopathic physician assistants authorized to do so by the Board in accordance with the provisions of 2.13 of this rule.

2.6.3. A osteopathic physician assistant shall not perform any services which his or her supervising osteopathic physician is not qualified to perform.

2.6.4. A osteopathic physician assistant may sign orders to be countersigned later by his or her supervising osteopathic physician: Provided, That they are not in conflict with hospital regulations.

2.6.5. A osteopathic physician assistant shall not perform any services which are not included in his or her job description and approved by the Board.

2.6.6. No osteopathic physician assistant shall be supervised by and work for more than three supervising osteopathic physicians at one time.

2.7. Identification of osteopathic physician assistant. — When functioning as a osteopathic physician assistant, the osteopathic physician assistant shall wear a name tag which identifies the osteopathic physician assistant as a
2.8. Supervising osteopathic physician; responsibilities.

2.8.1. The supervising osteopathic physician is responsible for observing, directing and evaluating the work, records and practices performed by the osteopathic physician assistant.

2.8.2. The supervising osteopathic physician shall notify the Board in writing of any termination of the employment of his or her osteopathic physician assistant within ten (10) days of the termination.

2.8.3. The legal responsibility for any osteopathic physician assistant remains that of his or her supervising osteopathic physician at all times, except in temporary situations not to exceed twenty one days, in cases when a licensed and fully qualified osteopathic physician assistant is substituting for another licensed osteopathic physician assistant, the acts and omissions of the substituting osteopathic physician assistant are the legal responsibility of the absent osteopathic physician assistant's designated supervising osteopathic physician.

The temporary change in supervisory responsibility shall be provided to the Board in writing, within ten (10) days of the effective date of the substitution, signed by the affected supervising osteopathic physicians and osteopathic physician assistants, and clearly specifying the dates of substitution.

2.9. The license of a osteopathic physician assistant shall be restricted, suspended or revoked by the Board in accordance with all the alternatives set out at W. Va. Code §30-14A-1 when, after due notice and a hearing in accordance with the manner and form prescribed by the contested case hearing procedure, W. Va. Code §29A-5-1 et seq. and regulations of the Board set out at 24 CSR 1 if it is found:

2.9.1. That the assistant has held himself or herself out or permitted another person to represent him or her as a licensed osteopathic physician;
2.9.2. That the assistant has in fact performed other than at the direction and under the supervision of a supervising osteopathic physician licensed by the Board;

2.9.3. That the assistant has been delegated and performed a task or tasks beyond his or her competence and not in accordance with his or her job description as approved by the Board;

2.9.4. That the assistant is a habitual user of intoxicants or drugs to such an extent that he or she is unable to safely perform as an assistant to the osteopathic physician;

2.9.5. That the assistant has been convicted in any court, state or federal, of any felony or other criminal offense involving moral turpitude;

2.9.6. That the assistant has been adjudicated a mental incompetent or his or her mental condition renders him or her unable to safely perform as an assistant to a osteopathic physician;

2.9.7. That the assistant has failed to comply with any of the provisions of this rule or W. Va. Code §30-14-1 et seq.; and

2.9.8. That the assistant is guilty of unprofessional conduct which includes, but is not limited to, the following:

a. Misrepresentation or concealment of any material fact in obtaining any certificate or license or a reinstatement thereof;

b. The commission of an offense against any provision of state law related to the practice of osteopathic physician assistants, or any rule or regulation promulgated thereunder;

c. The commission of any act involving moral turpitude, dishonesty or corruption, when the act directly or indirectly affects the health, welfare or safety of citizens of this State. If the act constitutes a crime, conviction
thereof in a criminal proceeding is not a condition precedent to disciplinary action;

d. Conviction of a felony, as defined under the laws of this State or under the laws of any other state, territory or country;

e. Misconduct in his or her practice as a osteopathic physician assistant or performing tasks fraudulently, beyond his or her authorized scope, with incompetence or with negligence on a particular occasion or negligence on repeated occasions;

f. Performing tasks as a osteopathic physician assistant while the ability to do so is impaired by alcohol, drugs, physical disability or mental instability;

g. Impersonation of a licensed osteopathic physician or another certified or licensed osteopathic physician assistant;

h. Offering, undertaking or agreeing to cure or treat disease by a secret method, procedure, treatment or medicine; treating or prescribing for any human condition by a method, means or procedure which the osteopathic physician assistant refuses to divulge upon demand of the Board; or using such methods or treatment processes not accepted by a reasonable segment of the medical profession;

i. Prescribing a prescription drug, including any controlled substance under state or federal law, other than in good faith and a therapeutic manner in accordance with accepted medical standards;

j. Prescribing a controlled substance under state or federal law, to or for himself or herself, or to or for any member of his or her immediate family; and

k. Prescribing a prescription drug, including any controlled substance under state or federal law, which is not included in the approved job description for that osteopathic physician assistant or which is not included in the approved state formulary for osteopathic
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physician assistants.

2.10. Denial of licensure of osteopathic physician assistant. Whenever the Board determines that an applicant has failed to satisfy the Board that he or she should be licensed, the Board shall immediately notify the applicant of its decision and indicate in what respect the applicant has failed to satisfy the Board. The applicant shall be given a formal hearing before the Board upon request of the applicant filed with or mailed by registered or certified mail to the Secretary of the Board, which request must be filed within thirty (30) days after receipt of the Board's decision, stating the reasons for the request. The Board shall within twenty (20) days of receipt of the request, notify the applicant of the time and place of a public hearing, which shall be held within a reasonable time. The burden of satisfying the Board of his or her qualifications for licensure is upon the applicant. Following the hearing, the Board shall determine on the basis of this rule whether the applicant is qualified to be licensed, and this decision of the Board is final as to that application.

2.11. Disciplinary procedures. — The disciplinary process and procedures set forth in the contested case hearing procedure, W. Va. Code §29A-5-1 et seq. and in regulations of the Board set out at 24 CSR 1 also apply to disciplinary actions instituted against osteopathic physician assistants with the same provisions regarding the appeal of decisions made to circuit courts.


2.12.1. The osteopathic physician assistant shall, under appropriate direction and supervision by a osteopathic physician, augment the osteopathic physician's data gathering abilities in order to assist the supervising osteopathic physician in reaching decisions and instituting care plans for the osteopathic physician's patients. A osteopathic physician assistant shall have, as a minimum, the knowledge and competency to perform the following functions and may under appropriate
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supervision perform them; this list is not intended to be specific or all-inclusive:

a. Screen patients to determine the need for medical attention;
b. Review patient records to determine health status;
c. Take a patient history;
d. Perform a physical examination;
e. Perform development screening examinations on children;
f. Record pertinent patient data;
g. Make decisions regarding data gathering and appropriate management and treatment of patients being seen for the initial evaluation of a problem or the follow-up evaluation of a previously diagnosed and stabilized condition;
h. Prepare patient summaries;
i. Initiate requests for commonly performed initial laboratory studies;
j. Collect specimens for and carry out commonly performed blood, urine and stool analyses and cultures;
k. Identify normal and abnormal findings in history physical examination and commonly performed laboratory studies;
l. Initiate appropriate evaluation and emergency management for emergency situations; for example, cardiac arrest, respiratory distress, injuries, burns and hemorrhage;
m. Perform clinical procedures such as:
A. Venipuncture;
B. Electrocardiogram;
C. Care and suturing of minor lacerations;
D. Casting and splinting;
E. Control of external hemorrhage;
F. Application of dressings and bandages;
G. Removal of superficial foreign bodies;
H. Cardiopulmonary resuscitation;
I. Audiometry screening;
J. Visual screening; and
K. Aseptic and isolation techniques; and
n. Provide counseling and instruction regarding common patient problems.

2.12.2. The tasks a osteopathic physician assistant may perform are those which require technical skill, execution of standing orders, routine patient care tasks and such diagnostic and therapeutic procedures as the supervising osteopathic physician may wish to delegate to the osteopathic physician assistant after the supervising osteopathic physician has satisfied himself or herself as to the ability and competence of the osteopathic physician assistant. The supervising osteopathic physician may, with due regard for the safety of the patient and in keeping with sound medical practice, delegate to the osteopathic physician assistant such medical procedures and other tasks as are usually performed within the normal scope of the supervising osteopathic physician's practice, subject to the limitations set forth in this section and W. Va. Code §30-14-1 et seq., and the training and expertise of the osteopathic physician assistant.

2.12.3. A supervising osteopathic physician shall not permit a osteopathic physician assistant to independently practice medicine. Supervision must be maintained at all times.

2.12.4. A osteopathic physician assistant shall not:

a. Maintain or manage an office separate and apart
from the supervising osteopathic physician's primary office for treating patients, unless the Board has granted the supervising osteopathic physician specific permission to establish a satellite operation;

b. Independently bill patients for services provided;

c. Independently delegate a task assigned to him or her by his or her supervising osteopathic physician to another individual;

d. Perform acupuncture in any form; or

e. Pronounce a patient dead, except in a setting where state or federal government regulations permit a registered nurse or a osteopathic physician assistant to do so.

2.12.5. The supervising osteopathic physician shall monitor and supervise the activities of the osteopathic physician assistant and require documentation, including organized medical records with symptoms, pertinent physical findings, impressions and treatment plans indicated. The supervising osteopathic physician may also provide written protocols for the use of the osteopathic physician assistant in the performance of delegated tasks. The established protocols shall be available for public inspection upon request and may be reviewed by the Board as required.

2.12.6. If the supervising osteopathic physician absents himself or herself in such a manner or to such an extent that he or she is unavailable to aid the osteopathic physician assistant when required, the supervising osteopathic physician shall not delegate patient care to his or her osteopathic physician assistant unless he or she has made appropriate arrangements for an alternate supervising osteopathic physician. The legal responsibility for the acts and omissions of the osteopathic physician assistant remains with the supervising osteopathic physician at all times.

2.12.7. It is the responsibility of the supervising
osteopathic physician to ensure that supervision is maintained in his or her absence.

2.12.8. No osteopathic physician assistant may be utilized in an office or clinic separate and apart from the supervising osteopathic physician's primary place for meeting patients unless the supervising osteopathic physician has obtained specific approval from the Board. A supervising osteopathic physician may supervise only two (2) satellite operations. The criteria for granting approval is that the supervising osteopathic physician demonstrate the following to the satisfaction of the Board:

a. That the osteopathic physician assistant will be utilized in a designated manpower shortage area or an area of medical need as defined by the Board;

b. That there is adequate provision for direct communication between the osteopathic physician assistant and the supervising osteopathic physician and that the distance between the main office and the satellite operation is not so great as to prohibit or impede appropriate emergency services;

c. That provision is made for the supervising osteopathic physician to see each regular patient periodically; for example, every third visit; and

d. That the supervising osteopathic physician visit the remote office at least once every fourteen days and demonstrate that he or she spends enough time on site to provide supervision and personal and regular review of the selected records upon which entries are made by the osteopathic physician assistant. Patient records shall be selected on the basis of written criteria established by the supervising osteopathic physician and the osteopathic physician assistant and shall be of sufficient number to assure adequate review of the osteopathic physician assistant's scope of practice.

2.12.9. Appropriate records of supervisory contact must be maintained and made available for Board review
if required. Failure to maintain the standards required for such an operation may result in the loss of the privilege to maintain a satellite operation.

2.12.10. Designated representatives of the Board will be authorized to make on-site visits to the offices of supervising osteopathic physicians and medical care facilities utilizing osteopathic physician assistants to review the following:

a. The supervision of osteopathic physician assistants;

b. The maintenance of and compliance with, any protocols;

c. Utilization in conformity with the provisions of this section;

d. Identification of osteopathic physician assistants; and

e. Compliance with licensure and registration requirements.

2.12.11. The Board reserves the right to review osteopathic physician assistant utilization without prior notice to either the osteopathic physician assistant or the supervising osteopathic physician. It is a violation of this rule for a supervising osteopathic physician or a osteopathic physician assistant to refuse to undergo a review by the Board.

2.12.12. The provisions of this section shall not be construed to require medical care facilities to accept osteopathic physician assistants or to use them within their premises. It is appropriate for the osteopathic physician assistant to provide services to the hospitalized patients of his or her supervising osteopathic physician under the supervision of the osteopathic physician, if the medical care facility permits it.

2.12.13. Osteopathic physician assistants employed directly by medical care facilities shall perform services only under the supervision of a clearly identified
supervising osteopathic physician, and the osteopathic
physician shall supervise no more than two (2) osteo-
pathic physician assistants, except that a supervising
osteopathic physician may supervise up to four (4)
hospital employed osteopathic physician assistants.

2.12.14. So long as the facility permits, a osteopathic
physician assistant may:

a. Assess and record the patient’s progress within the
parameters of an established protocol or regimen and
report the patient’s progress to the supervising osteo-
pathic physician; and

b. Make entries in medical records and patient charts
so long as an appropriate mechanism is established for
authentication by the supervising osteopathic physician
through countersignature.

2.12.15. A osteopathic physician assistant may provide
medical care or services in an emergency department so
long as he or she has training in emergency medicine,
functions under specific protocols which govern his or
her performance and is under the supervision of a
osteopathic physician with whom he or she has ready
contact and who is willing to assume full responsibility
for the osteopathic physician assistant’s performance.

2.12.16. No osteopathic physician assistant shall render
nonemergency outpatient medical services until the
patient has been informed that the individual providing
care is a osteopathic physician assistant.

2.12.17. It is the supervising osteopathic physician’s
responsibility to be alert to patient complaints concern-
ing the type or quality of services provided by the
osteopathic physician assistant.

2.12.18. In the supervising osteopathic physician’s
office and any satellite operation, a notice plainly visible
to all patients shall be posted in a prominent place
explaining the meaning of the term “Osteopathic
physician Assistant”. The osteopathic physician
assistant’s license must be prominently displayed in the office and any satellite operation in which he or she may function. Duplicate licenses may be obtained from the Board if required.

2.12.19. The osteopathic physician assistant is required to notify the Board of changes in his or her employment within thirty (30) days. The osteopathic physician assistant must provide the Board with his or her new address and telephone number of residence, address and telephone number of employment and name of supervising osteopathic physician.

2.12.20. The supervising osteopathic physician is required to notify the Board of any changes in his or her supervision of a osteopathic physician assistant within ten (10) days.


2.13.1. A osteopathic physician assistant may be authorized by the Board to issue written or oral prescriptions for certain medicinal drugs at the direction of his or her supervising osteopathic physician if all of the following conditions are met:

a. The osteopathic physician assistant has performed patient care services for a minimum of two (2) years immediately preceding the submission to the Board of the job description requesting limited prescriptive privileges;

b. The osteopathic physician assistant has successfully completed an accredited course of instruction in clinical pharmacology approved by the Board of not less than four (4) semester hours;

c. The osteopathic physician assistant obtains Board approval of his or her job description which includes the categories of drugs the osteopathic physician assistant proposes to prescribe at the direction of his or her supervising osteopathic physician.
d. The osteopathic physician assistant continues to maintain national certification as an osteopathic physician assistant, and in meeting such national certification requirements, completes a minimum of ten (10) hours of continuing education in rational drug therapy in each certification period.

2.13.2. Evidence of completion of all conditions for the granting of limited prescriptive privileges shall be included with the osteopathic physician assistant's biennial renewal application and report to the Board.

2.13.3. The Board shall approve a formulary classifying pharmacologic categories of all drugs which may be prescribed by an osteopathic physician assistant authorized by the Board to prescribe drugs. The formulary shall exclude Schedules I and II of the Uniform Controlled Substances Act, anticoagulants, antineoplastics, radiopharmaceuticals, general anesthetics and radiographic contrast materials. The formulary may be revised annually, and shall include the following designated sections:

a. Section a. — A choice of drugs commonly used in primary care outpatient settings to be prescribable by osteopathic physician assistants who have completed an additional accredited course of study in clinical pharmacology approved by the Board of not less than four (4) semester hours; and

b. Section b. — Additional drugs used less commonly in primary care outpatient settings to be prescribable by osteopathic physician assistants who have satisfied the requirements set forth under Section 2.13.3.a of this rule. In addition, Section b. drugs may be prescribed by osteopathic physician assistants only under the following limited situations:

A. On a direct order from the supervising osteopathic physician to the osteopathic physician assistant during consultation at the time of the patient's examination by the osteopathic physician assistant, and specifically
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608 noted in the patient's chart; or
609 B. On a refill prescription for a previously diagnosed
610 and stable patient whose prescription was initiated by
611 the supervising osteopathic physician.

612 2.13.4. A prescription drug not included in the
613 approved formulary shall not be contained in the job
614 description of any osteopathic physician assistant.

615 2.13.5. Prescriptions issued by a osteopathic physician
616 assistant shall be issued consistent with the supervising
617 osteopathic physician's directions or treatment protocol
618 provided to his or her osteopathic physician assistant.
619 The maximum dosage shall be indicated in the protocol
620 and in no case may the dosage exceed the manufacturer's
621 recommended average therapeutic dose for that drug.

622 2.13.6. Each prescription and subsequent refills given
623 by the osteopathic physician assistant shall be entered
624 on the patient's chart.

625 2.13.7. The prescription form utilized by a osteopathic
626 physician assistant approved for limited prescriptive
627 privileges shall be imprinted with the name of the
628 supervising osteopathic physician, the name of the
629 approved osteopathic physician assistant, the address of
630 the health care facility, the telephone number of the
631 health care facility, the categories of drugs or drugs
632 within a category which the assistant may prescribe and
633 the statement, "Osteopathic physician Assistant Pre-
634 scription—it is a violation of state law to dispense drugs
635 not imprinted on this prescription." The osteopathic
636 physician assistant shall write the name of the patient,
637 the patient's address and the date on each prescription
638 form. The osteopathic physician assistant shall sign his
639 or her name to each prescription followed by the letters
640 "PA-C." The supervising osteopathic physician must
641 provide the Board with a copy of the prescription form
642 utilized by his or her osteopathic physician assistant
643 prior to its use. A copy of this prescription form shall be
644 provided by the osteopathic physician assistant to area
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pharmacies where the osteopathic physician assistant may issue a prescription by word of mouth, telephone or other means of communication in his or her name at the direction of the supervising osteopathic physician.

2.13.8. Osteopathic physician assistants authorized to issue prescriptions for Schedules III through V controlled substances shall write on the prescription form the Federal Drug Enforcement Administration number issued to that osteopathic physician assistant. Prescriptions written for Schedule III drugs shall be limited to a seventy-two (72) hour supply and may not authorize a refill. The maximum amount of Schedule IV or Schedule V drugs shall be no more than ninety (90) dosage units or a thirty (30) day supply, whichever is less.

2.13.9. Other prescription drugs shall not be prescribed or refillable for a period exceeding six (6) months.

2.13.10. The Board of Osteopathy shall provide the Board of Pharmacy with a list of osteopathic physician assistants with limited prescriptive privileges and shall update the list within ten (10) days after additions or deletions are made.

2.13.11. Nothing in this rule shall be construed to permit any osteopathic physician assistant to independently prescribe or dispense drugs.


2.14.1. Each osteopathic physician assistant, as a condition of biennial renewal of osteopathic physician assistant license, shall provide written documentation of participation in and successful completion during the preceding two (2) year period of a minimum of twenty (20) hours of continuing education in courses approved by the Board for the purposes of continuing education of osteopathic physician assistants.

2.14.2. All written documentation must be submitted to and received by the Board, with the completed biennial renewal form, prior to the first day of April of the year.
2.14.3. Failure to timely submit written documentation as set forth in subsection 2.14.3 of this rule shall result in the automatic suspension of the license of a osteopathic physician assistant until such time as the written documentation is submitted to and approved by the Board.


If any provision of these rules or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect the provisions or application of this rules which can be given effect without the invalid provisions or application and to this end the provisions of this rule are declared to be severable.

(b) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred ninety-three, modified by the board of osteopathy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of January, one thousand nine hundred ninety-four, relating to the board of osteopathy (licensing, disciplinary and complaint procedures for osteopathic physicians), are authorized.

§64-9-37. Board of physical therapy.

1 The legislative rules filed in the state register on the nineteenth day of July, one thousand nine hundred ninety-three, modified by the board of physical therapy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of October, one thousand nine hundred ninety-three, relating to the board of physical therapy (general provisions), are authorized.

§64-9-38. Board of examiners for speech-language pathology and audiology.

1 (a) The legislative rules filed in the state register on the
fourteenth day of July, one thousand nine hundred ninety-three, modified by the board of examiners for speech-language pathology and audiology to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of September, one thousand nine hundred ninety-three, relating to the board of examiners for speech-language pathology and audiology (licensure of speech-language pathology and audiology), are authorized.

(b) The legislative rules filed in the state register on the fourteenth day of July, one thousand nine hundred ninety-three, modified by the board of examiners for speech-language pathology and audiology to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of September, one thousand nine hundred ninety-three, relating to the board of examiners for speech-language pathology and audiology (licensure of speech-language pathology and audiology assistants), are authorized.


The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the commercial hazardous waste management facility siting board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-four, relating to the commercial hazardous waste management facility siting board (commercial hazardous waste management facility siting board certification requirements), are authorized.

§64-9-40. Family protection services board.

The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-three, modified by the family protection services
board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of October, one thousand nine hundred ninety-three, relating to the family protection services board (operation of the family protection services board and licensure and funding of domestic violence programs), are authorized with the amendment set forth below:

On page twelve, section 5.5.3, after the word "suspended" by striking out the word "or" and inserting in lieu thereof the following words "but the board shall provide funds to a shelter/program".

§64-9-41. Board of investments.

(a) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the board of investments to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of January, one thousand nine hundred ninety-four, relating to the board of investments (administration of the consolidated pension fund), are authorized.

(b) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, relating to the board of investments (administration of the consolidated fund by the West Virginia state board of investments), are authorized.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the day of, 1994.

Governor