

SB 133

**WEST VIRGINIA LEGISLATURE**

REGULAR SESSION, 1996

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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*COMMITTEE SUBSTITUTE FOR*  
SENATE BILL NO. 133

(By Senator MANCHIN, ET AL)

PASSED MARCH 9, 1996  
In Effect NINETY DAYS FROM Passage

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## ENROLLED

COMMITTEE SUBSTITUTE  
FOR

### Senate Bill No. 133

(SENATORS MANCHIN, MILLER, ROSS, SCOTT,  
OLIVERIO AND PLYMALE, *original sponsors*)

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[Passed March 9, 1996; in effect ninety days from passage.]

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AN ACT to amend and reenact section sixteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licensure procedures for physician assistants; requiring approval of educational programs for physician assistants by the successor organization to the committee on allied health education and accreditation of the American medical association; requiring rules promulgated by the board of medicine to be pursuant to the provisions of chapter twenty-nine-a; changing biennial report to an annual report and eliminating certain report requirements; adding current certification by the national commission on certification of physician assistants for

licensure; changing the name of the certifying examination for physician assistants; changing requirements for temporary licensure; terminating temporary licensure upon failure of the national commission on certification of physician assistants examination; requiring notice to the board of medicine of reports of performance on certifying examination within thirty days of receipt of same; deleting conflicting language regarding criminal penalties for misrepresentation as a physician assistant; and making technical changes.

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

That section sixteen, article three, 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 3. WEST VIRGINIA MEDICAL PRACTICE ACT.**

**§30-3-16. Physician assistants; definitions; board of medicine rules; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure; responsibilities of supervising physician; legal responsibility for physician assistants; reporting by health care facilities; identification; limitations on employment and duties; fees; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.**

1 (a) As used in this section:

2 (1) "Physician assistant" means an assistant to a  
3 physician who is a graduate of an approved program of  
4 instruction in primary health care or surgery, has  
5 attained a baccalaureate or master's degree, has passed  
6 the national certification examination and is qualified to  
7 perform direct patient care services under the supervi-  
8 sion of a physician;

9 (2) "Physician assistant-midwife" means a physician  
10 assistant who meets all qualifications set forth under  
11 subdivision (1) of this subsection and fulfills the require-

12 ments set forth in subsection (d) of this section; is subject  
13 to all provisions of this section; and assists in the man-  
14 agement and care of a woman and her infant during the  
15 prenatal, delivery and postnatal periods;

16 (3) "Supervising physician" means a doctor or doctors  
17 of medicine or podiatry permanently licensed in this  
18 state who assume legal and supervisory responsibility for  
19 the work or training of any physician assistant under his  
20 or her supervision;

21 (4) "Approved program" means an educational pro-  
22 gram for physician assistants approved and accredited  
23 by the committee on allied health education and accredi-  
24 tation on behalf of the American medical association or  
25 its successor; and

26 (5) "Health care facility" means any licensed hospital,  
27 nursing home, extended care facility, state health or  
28 mental institution, clinic or physician's office.

29 (b) The board shall promulgate rules pursuant to the  
30 provisions of article three, chapter twenty-nine-a of this  
31 code governing the extent to which physician assistants  
32 may function in this state. The rules shall provide that  
33 the physician assistant is limited to the performance of  
34 those services for which he or she is trained and that he  
35 or she performs only under the supervision and control  
36 of a physician permanently licensed in this state, but  
37 that supervision and control does not require the per-  
38 sonal presence of the supervising physician at the place  
39 or places where services are rendered if the physician  
40 assistant's normal place of employment is on the pre-  
41 mises of the supervising physician. The supervising  
42 physician may send the physician assistant off the  
43 premises to perform duties under his or her direction,  
44 but a separate place of work for the physician assistant  
45 shall not be established. In promulgating the rules, the  
46 board shall allow the physician assistant to perform  
47 those procedures and examinations and in the case of  
48 certain authorized physician assistants to prescribe at  
49 the direction of his or her supervising physician in

50 accordance with subsection (l) of this section those  
51 categories of drugs submitted to it in the job description  
52 required by subsection (g) of this section. The board  
53 shall compile and publish an annual report that includes  
54 a list of currently licensed physician assistants and their  
55 employers and location in the state.

56 (c) The board shall license as a physician assistant any  
57 person who files an application and furnishes satisfac-  
58 tory evidence to it that he or she has met the following  
59 standards:

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

62 (2) He or she has passed the certifying examination for  
63 a primary care physician assistant administered by the  
64 national commission on certification of physician  
65 assistants and has maintained certification by that  
66 commission so as to be currently certified;

67 (3) He or she is of good moral character; and

68 (4) He or she has attained a baccalaureate or master's  
69 degree.

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

74 (1) He or she is a graduate of a school of midwifery  
75 accredited by the American college of nurse-midwives;

76 (2) He or she has passed an examination approved by  
77 the board;

78 (3) He or she practices midwifery under the supervision  
79 of a board certified obstetrician, gynecologist or a board  
80 certified family practice physician who routinely prac-  
81 tices obstetrics.

82 (e) The board may license as a physician assistant any  
83 person who files an application and furnishes satisfac-  
84 tory evidence that he or she is of good moral character

85 and meets either of the following standards:

86 (1) He or she is a graduate of an approved program of  
87 instruction in primary health care or surgery prior to the  
88 first day of July, one thousand nine hundred ninety-four,  
89 and has passed the certifying examination for a physi-  
90 cian assistant administered by the national commission  
91 on certification of physician assistants and has main-  
92 tained certification by that commission so as to be  
93 currently certified; or

94 (2) He or she had been certified by the board as a  
95 physician assistant then classified as "Type B", prior to  
96 the first day of July, one thousand nine hundred eighty-  
97 three.

98 Licensure of an assistant to a physician practicing the  
99 specialty of ophthalmology is permitted under this  
100 section: *Provided*, That a physician assistant may not  
101 dispense a prescription for a refraction.

102 (f) When any graduate of an approved program, within  
103 two years of graduation, submits an application to the  
104 board for a physician assistant license, accompanied by  
105 a job description in conformity with subsection (g) of this  
106 section, the board shall issue to that applicant a tempo-  
107 rary license allowing that applicant to function as a  
108 physician assistant until the applicant successfully  
109 passes the national commission on certification of  
110 physician assistants' certifying examination: *Provided*,  
111 That the applicant shall sit for and obtain a passing  
112 score on the next offered examination within one year of  
113 issuance of the temporary license. A physician assistant  
114 who has not been certified by the national board of  
115 medical examiners on behalf of the national commission  
116 on certification of physician assistants will be restricted  
117 to work under the direct supervision of the supervising  
118 physician.

119 A physician assistant who has been issued a temporary  
120 license shall, within thirty days of receipt of written  
121 notice from the national commission on certification of

122 physician assistants of his or her performance on the  
123 certifying examination, notify the board in writing of his  
124 or her results. In the event of failure of that examina-  
125 tion, the temporary license shall expire and terminate  
126 automatically, and the board shall so notify the physi-  
127 cian assistant in writing.

128 (g) Any physician applying to the board to supervise a  
129 physician assistant shall provide a job description that  
130 sets forth the range of medical services to be provided by  
131 the assistant. Before a physician assistant can be  
132 employed or otherwise use his or her skills, the supervis-  
133 ing physician must obtain approval of the job description  
134 from the board. The board may revoke or suspend any  
135 license of an assistant to a physician for cause, after  
136 giving that assistant an opportunity to be heard in the  
137 manner provided by article five of chapter twenty-nine-a  
138 of this code and as set forth in rules duly adopted by the  
139 board.

140 (h) The supervising physician is responsible for observ-  
141 ing, directing and evaluating the work, records and  
142 practices of each physician assistant performing under  
143 his or her supervision. He or she shall notify the board  
144 in writing of any termination of his or her supervisory  
145 relationship with a physician assistant within ten days of  
146 the termination. The legal responsibility for any physi-  
147 cian assistant remains with the supervising physician at  
148 all times, including occasions when the assistant under  
149 his or her direction and supervision, aids in the care and  
150 treatment of a patient in a health care facility. In his or  
151 her absence, a supervising physician must designate an  
152 alternate supervising physician, however, the legal  
153 responsibility remains with the supervising physician at  
154 all times. A health care facility is not legally responsible  
155 for the actions or omissions of the physician assistant  
156 unless the physician assistant is an employee of the  
157 facility.

158 (i) The acts or omissions of a physician assistant  
159 employed by health care facilities providing inpatient or

160 outpatient services shall be the legal responsibility of the  
161 facilities. Physician assistants employed by facilities in  
162 staff positions shall be supervised by a permanently  
163 licensed physician.

164 (j) A health care facility shall report in writing to the  
165 board within sixty days after the completion of the  
166 facility's formal disciplinary procedure, and also after  
167 the commencement, and again after the conclusion, of  
168 any resulting legal action, the name of any physician  
169 assistant practicing in the facility whose privileges at the  
170 facility have been revoked, restricted, reduced or termi-  
171 nated for any cause including resignation, together with  
172 all pertinent information relating to the action. The  
173 health care facility shall also report any other formal  
174 disciplinary action taken against any physician assistant  
175 by the facility relating to professional ethics, medical  
176 incompetence, medical malpractice, moral turpitude or  
177 drug or alcohol abuse. Temporary suspension for failure  
178 to maintain records on a timely basis or failure to attend  
179 staff or section meetings need not be reported.

180 (k) When functioning as a physician assistant, the  
181 physician assistant shall wear a name tag that identifies  
182 him or her as a physician assistant. A two and one-half  
183 by three and one-half inch card of identification shall be  
184 furnished by the board upon licensure of the physician  
185 assistant.

186 (l) A physician assistant may write or sign prescrip-  
187 tions or transmit prescriptions by word of mouth,  
188 telephone or other means of communication at the  
189 direction of his or her supervising physician. The board  
190 shall promulgate rules pursuant to the provisions of  
191 article three, chapter twenty-nine-a of this code govern-  
192 ing the eligibility and extent to which a physician  
193 assistant may prescribe at the direction of the supervis-  
194 ing physician. The rules shall include, but not be limited  
195 to, the following:

196 (1) Provisions for approving a state formulary classify-  
197 ing pharmacologic categories of drugs that may be



198 prescribed by a physician assistant.

199 (A) The following categories of drugs shall be excluded  
200 from the formulary: Schedules I and II of the uniform  
201 controlled substances act, anticoagulants, anti-  
202 neoplastics, radiopharmaceuticals, general anesthetics  
203 and radiographic contrast materials.

204 (B) Drugs listed under schedule III shall be limited to  
205 a seventy-two hour supply without refill.

206 (C) Categories of other drugs may be excluded as  
207 determined by the board;

208 (2) All pharmacological categories of drugs to be  
209 prescribed by a physician assistant shall be listed in each  
210 job description submitted to the board as required in  
211 subsection (g) of this section;

212 (3) The maximum dosage a physician assistant may  
213 prescribe;

214 (4) A requirement that to be eligible for prescription  
215 privileges, a physician assistant shall have performed  
216 patient care services for a minimum of two years imme-  
217 diately preceding the submission to the board of the job  
218 description containing prescription privileges and shall  
219 have successfully completed an accredited course of  
220 instruction in clinical pharmacology approved by the  
221 board; and

222 (5) A requirement that to maintain prescription  
223 privileges, a physician assistant shall continue to main-  
224 tain national certification as a physician assistant, and  
225 in meeting the national certification requirements shall  
226 complete a minimum of ten hours of continuing educa-  
227 tion in rational drug therapy in each certification period.  
228 Nothing in this subsection shall be construed to permit  
229 a physician assistant to independently prescribe or  
230 dispense drugs.

231 (m) A supervising physician shall not supervise at any  
232 one time more than two physician assistants, except that  
233 a physician may supervise up to four hospital-employed

234 physician assistants.

235 A physician assistant shall not sign any prescription,  
236 except in the case of an authorized physician assistant at  
237 the direction of his or her supervising physician in  
238 accordance with the provisions of subsection (l) of this  
239 section. A physician assistant shall not perform any  
240 service that his or her supervising physician is not  
241 qualified to perform. A physician assistant shall not  
242 perform any service that is not included in his or her job  
243 description and approved by the board as provided for in  
244 this section.

245 The provisions of this section do not authorize any  
246 physician assistant to perform any specific function or  
247 duty delegated by this code to those persons licensed as  
248 chiropractors, dentists, dental hygienists, optometrists or  
249 pharmacists or certified as nurse anesthetists.

250 (n) Each application for licensure submitted by a  
251 licensed supervising physician under this section is to be  
252 accompanied by a fee of one hundred dollars. A fee of  
253 fifty dollars is to be charged for the biennial renewal of  
254 the license. A fee of twenty-five dollars is to be charged  
255 for any change of supervising physician.

256 (o) Beginning with the biennial renewal forms com-  
257 pleted by physician assistants and submitted to the  
258 board in the year one thousand nine hundred ninety-  
259 three, as a condition of renewal of physician assistant  
260 license, each physician assistant shall provide written  
261 documentation pursuant to rules promulgated by the  
262 board in accordance with chapter twenty-nine-a of this  
263 code of participation in and successful completion  
264 during the preceding two-year period of a minimum of  
265 forty hours of continuing education designated as  
266 category I by the American medical association, Ameri-  
267 can academy of physician assistants or the academy of  
268 family physicians, and sixty hours of continuing educa-  
269 tion designated as category II by the association or either  
270 academy. Notwithstanding any provision of this chapter  
271 to the contrary, failure to timely submit the required

272 written documentation shall result in the automatic  
273 suspension of any license as a physician assistant until  
274 the written documentation is submitted to and approved  
275 by the board.

276 (p) It is unlawful for any physician assistant to repre-  
277 sent to any person that he or she is a physician, surgeon  
278 or podiatrist. Any person who violates the provisions of  
279 this subsection is guilty of a felony, and, upon conviction  
280 thereof, shall be imprisoned in the penitentiary for not  
281 less than one nor more than two years, or be fined not  
282 more than two thousand dollars, or both fined and  
283 imprisoned.

284 (q) All physician assistants holding valid certificates  
285 issued by the board prior to the first day of July, one  
286 thousand nine hundred ninety-two, shall be considered  
287 to be licensed under this section.

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

*Ray Schoonover*  
.....  
Chairman Senate Committee

*Rudy Seacrest*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage

*Carroll Adams*  
.....  
Clerk of the Senate

*Bryson M. King*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Will Calder*  
.....  
Speaker House of Delegates

The within *is approved* this the *1st*  
day of *April*, 1996.

*Gaston Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/46

Time 10:16 am