WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED

SENATE BILL NO. 233

(By Senator HUNTER, ET AL.)

PASSED FEBRUARY 23, 1998
In Effect NINETY DAYS FROM PASSAGE
ENROLLED

Senate Bill No. 233

(By Senators Hunter, Ross, Craigo, Sharpe, Walker, Minear, Helmick, Anderson, Ball, Scott and Kessler)

[Passed February 23, 1998; in effect ninety days from passage.]

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 certain authorized physician assistants being permitted to pronounce death in accordance with rules promulgated by the board of medicine; requiring a proposed job description to be filed with application for licensure; changing requirements for temporary licensure; changing requirements of physician applying to board to supervise physician assistant; and changing the limitations on supervising physicians.

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.

(a) As used in this section:

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

(2) "Physician assistant-midwife" means a physician assistant who meets all qualifications set forth under subdivision (1) of this subsection and fulfills the requirements set forth in subsection (d) of this section; is subject to all provisions of this section; and assists in the management and care of a woman and her infant during the prenatal, delivery and postnatal periods;

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

(4) "Approved program" means an educational program
for physician assistants approved and accredited by the
committee on allied health education and accreditation on
behalf of the American medical association or its succes-
sor; and

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

(b) The board shall promulgate rules pursuant to the
provisions of article three, chapter twenty-nine-a of this
code governing the extent to which physician assistants
may function in this state. The rules shall provide that the
physician assistant is limited to the performance of those
services for which he or she is trained and that he or she
performs only under the supervision and control of a
physician permanently licensed in this state, but that
supervision and control does not require the personal
presence of the supervising physician at the place or
places where services are rendered if the physician
assistant's normal place of employment is on the premises
of the supervising physician. The supervising physician
may send the physician assistant off the premises to
perform duties under his or her direction, but a separate
place of work for the physician assistant may not be
established. In promulgating the rules, the board shall
allow the physician assistant to perform those procedures
and examinations and in the case of certain authorized
physician assistants to prescribe at the direction of his or
her supervising physician in accordance with subsection
(i) of this section those categories of drugs submitted to it
in the job description required by this section. Certain
authorized physician assistants may pronounce death in
accordance with the rules proposed by the board which
receive legislative approval. The board shall compile and
publish an annual report that includes a list of currently
licensed physician assistants and their employers and
location in the state.
The board shall license as a physician assistant any person who files an application together with a proposed job description and furnishes satisfactory evidence to it that he or she has met the following standards:

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

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

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

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

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

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

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

(3) He or she practices midwifery under the supervision of a board certified obstetrician, gynecologist or a board certified family practice physician who routinely practices obstetrics.

The board may license as a physician assistant any person who files an application together with a proposed job description and furnishes satisfactory evidence that he or she is of good moral character and meets either of the following standards:

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

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

Licensure of an assistant to a physician practicing the specialty of ophthalmology is permitted under this section:

Provided, That a physician assistant may not dispense a prescription for a refraction.

(f) When any graduate of an approved program submits an application to the board for a physician assistant license, accompanied by a job description as referenced by this section, the board shall issue to that applicant a temporary license allowing that applicant to function as a physician assistant until the applicant successfully passes the national commission on certification of physician assistants' certifying examination: Provided, That the applicant shall sit for and obtain a passing score on the examination next offered following graduation from the approved program. No applicant shall receive a temporary license who, following graduation from an approved program, has sat for and not obtained a passing score on the examination. A physician assistant who has not been certified by the national board of medical examiners on behalf of the national commission on certification of physician assistants will be restricted to work under the direct supervision of the supervising physician.

A physician assistant who has been issued a temporary license shall, within thirty days of receipt of written notice from the national commission on certification of physician assistants of his or her performance on the certifying
examination, notify the board in writing of his or her results. In the event of failure of that examination, the temporary license shall expire and terminate automatically, and the board shall so notify the physician assistant in writing.

(g) Any physician applying to the board to supervise a physician assistant shall affirm that the range of medical services set forth in the physician assistant’s job description are consistent with the skills and training of the supervising physician and the physician assistant. Before a physician assistant can be employed or otherwise use his or her skills, the supervising physician and the physician assistant must obtain approval of the job description from the board. The board may revoke or suspend any license of an assistant to a physician for cause, after giving that assistant an opportunity to be heard in the manner provided by article five, chapter twenty-nine-a of this code and as set forth in rules duly adopted by the board.

(h) The supervising physician is responsible for observing, directing and evaluating the work, records and practices of each physician assistant performing under his or her supervision. He or she shall notify the board in writing of any termination of his or her supervisory relationship with a physician assistant within ten days of the termination. The legal responsibility for any physician assistant remains with the supervising physician at all times, including occasions when the assistant under his or her direction and supervision, aids in the care and treatment of a patient in a health care facility. In his or her absence, a supervising physician must designate an alternate supervising physician, however, the legal responsibility remains with the supervising physician at all times. A health care facility is not legally responsible for the actions or omissions of the physician assistant unless the physician assistant is an employee of the facility.
(i) The acts or omissions of a physician assistant employed by health care facilities providing inpatient or outpatient services shall be the legal responsibility of the facilities. Physician assistants employed by facilities in staff positions shall be supervised by a permanently licensed physician.

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

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

(l) A physician assistant may write or sign prescriptions or transmit prescriptions by word of mouth, telephone or other means of communication at the direction of his or her supervising physician. The board shall promulgate rules pursuant to the provisions of article three, chapter twenty-nine-a of this code governing the eligibility and extent to which a physician assistant may prescribe at the direction of the supervising physician. The rules shall
include, but not be limited to, the following:

(1) Provisions for approving a state formulary classifying pharmacologic categories of drugs that may be prescribed by a physician assistant:

(A) The following categories of drugs shall be excluded from the formulary: Schedules I and II of the uniform controlled substances act, anticoagulants, antineoplastic, radiopharmaceuticals, general anesthetics and radiographic contrast materials;

(B) Drugs listed under Schedule III shall be limited to a seventy-two hour supply without refill;

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

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

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

(4) A requirement that to be eligible for prescription privileges, a physician assistant shall have performed patient care services for a minimum of two years immediately preceding the submission to the board of the job description containing prescription privileges and shall have successfully completed an accredited course of instruction in clinical pharmacology approved by the board; and

(5) A requirement that to maintain prescription privileges, a physician assistant shall continue to maintain national certification as a physician assistant, and in meeting the national certification requirements shall complete a minimum of ten hours of continuing education in rational drug therapy in each certification period.

Nothing in this subsection shall be construed to permit a
physician assistant to independently prescribe or dispense
drugs.

(m) A supervising physician may not supervise at any
one time more than three full-time physician assistants or
their equivalent, except that a physician may supervise up
to four hospital-employed physician assistants. No
physician shall supervise more than four physician
assistants at any one time.

A physician assistant may not sign any prescription,
except in the case of an authorized physician assistant at
the direction of his or her supervising physician in accor-
dance with the provisions of subsection (l) of this section.
A physician assistant may not perform any service that his
or her supervising physician is not qualified to perform.
A physician assistant may not perform any service that is
not included in his or her job description and approved by
the board as provided for in this section.

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

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

(o) Beginning with the biennial renewal forms completed
by physician assistants and submitted to the board in the
year one thousand nine hundred ninety-three, as a condi-
tion of renewal of physician assistant license, each physi-
cian assistant shall provide written documentation
pursuant to rules promulgated by the board in accordance
with chapter twenty-nine-a of this code of participation
in and successful completion during the preceding
two-year period of a minimum of forty hours of continuing education designated as Category I by the American medical association, American academy of physician assistants or the academy of family physicians, and sixty hours of continuing education designated as Category II by the association or either academy. Notwithstanding any provision of this chapter to the contrary, failure to timely submit the required written documentation shall result in the automatic suspension of any license as a physician assistant until the written documentation is submitted to and approved by the board.

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

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

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ............... this the ............... day of .........., 19......

Governor
PRESENTED TO THE
GOVERNOR
Date: 3/2/98
Time: 3:10 P.M.