

SB233

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998

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SENATE BILL NO. 233

(By Senator HUNTER, ET AL)

PASSED FEBRUARY 23, 1998

In Effect NINETY DAYS FROM Passage

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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 licensure; 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 physi-
3 cian who is a graduate of an approved program of instruc-
4 tion in primary health care or surgery, has attained a
5 baccalaureate or master's degree, has passed the national
6 certification examination and is qualified to perform
7 direct patient care services under the supervision of a
8 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 manage-
14 ment 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 of
17 medicine or podiatry permanently licensed in this state
18 who assume legal and supervisory responsibility for the
19 work or training of any physician assistant under his or
20 her supervision;

21 (4) "Approved program" means an educational program

22 for physician assistants approved and accredited by the
23 committee on allied health education and accreditation on
24 behalf of the American medical association or its succes-
25 sor; 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 the
33 physician assistant is limited to the performance of those
34 services for which he or she is trained and that he or she
35 performs only under the supervision and control of a
36 physician permanently licensed in this state, but that
37 supervision and control does not require the personal
38 presence of the supervising physician at the place or
39 places where services are rendered if the physician
40 assistant's normal place of employment is on the premises
41 of the supervising physician. The supervising physician
42 may send the physician assistant off the premises to
43 perform duties under his or her direction, but a separate
44 place of work for the physician assistant may not be
45 established. In promulgating the rules, the board shall
46 allow the physician assistant to perform those procedures
47 and examinations and in the case of certain authorized
48 physician assistants to prescribe at the direction of his or
49 her supervising physician in accordance with subsection
50 (l) of this section those categories of drugs submitted to it
51 in the job description required by this section. Certain
52 authorized physician assistants may pronounce death in
53 accordance with the rules proposed by the board which
54 receive legislative approval. The board shall compile and
55 publish an annual report that includes a list of currently
56 licensed physician assistants and their employers and
57 location in the state.

58 (c) The board shall license as a physician assistant any
59 person who files an application together with a proposed
60 job description and furnishes satisfactory evidence to it
61 that he or she has met the following standards:

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

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

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

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

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

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

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

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

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

89 (1) He or she is a graduate of an approved program of
90 instruction in primary health care or surgery prior to the

91 first day of July, one thousand nine hundred ninety-four,
92 and has passed the certifying examination for a physician
93 assistant administered by the national commission on
94 certification of physician assistants and has maintained
95 certification by that commission so as to be currently
96 certified; or

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

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

104 (f) When any graduate of an approved program submits
105 an application to the board for a physician assistant
106 license, accompanied by a job description as referenced by
107 this section, the board shall issue to that applicant a
108 temporary license allowing that applicant to function as
109 a physician assistant until the applicant successfully
110 passes the national commission on certification of physi-
111 cian assistants' certifying examination: *Provided*, That
112 the applicant shall sit for and obtain a passing score on
113 the examination next offered following graduation from
114 the approved program. No applicant shall receive a
115 temporary license who, following graduation from an
116 approved program, has sat for and not obtained a passing
117 score on the examination. A physician assistant who has
118 not been certified by the national board of medical
119 examiners on behalf of the national commission on
120 certification of physician assistants will be restricted to
121 work under the direct supervision of the supervising
122 physician.

123 A physician assistant who has been issued a temporary
124 license shall, within thirty days of receipt of written notice
125 from the national commission on certification of physician
126 assistants of his or her performance on the certifying

127 examination, notify the board in writing of his or her
128 results. In the event of failure of that examination, the
129 temporary license shall expire and terminate automati-
130 cally, and the board shall so notify the physician assistant
131 in writing.

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

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

163 (i) The acts or omissions of a physician assistant em-
164 ployed by health care facilities providing inpatient or
165 outpatient services shall be the legal responsibility of the
166 facilities. Physician assistants employed by facilities in
167 staff positions shall be supervised by a permanently
168 licensed physician.

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

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

191 (l) A physician assistant may write or sign prescriptions
192 or transmit prescriptions by word of mouth, telephone or
193 other means of communication at the direction of his or
194 her supervising physician. The board shall promulgate
195 rules pursuant to the provisions of article three, chapter
196 twenty-nine-a of this code governing the eligibility and
197 extent to which a physician assistant may prescribe at the
198 direction of the supervising physician. The rules shall

199 include, but not be limited to, the following:

200 (1) Provisions for approving a state formulary classify-
201 ing pharmacologic categories of drugs that may be pre-
202 scribed by a physician assistant:

203 (A) The following categories of drugs shall be excluded
204 from the formulary: Schedules I and II of the uniform
205 controlled substances act, anticoagulants, antineoplastic,
206 radiopharmaceuticals, general anesthetics and radio-
207 graphic contrast materials;

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

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

212 (2) All pharmacological categories of drugs to be pre-
213 scribed by a physician assistant shall be listed in each job
214 description submitted to the board as required in subsec-
215 tion (g) of this section;

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

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

226 (5) A requirement that to maintain prescription privi-
227 leges, a physician assistant shall continue to maintain
228 national certification as a physician assistant, and in
229 meeting the national certification requirements shall
230 complete a minimum of ten hours of continuing education
231 in rational drug therapy in each certification period.
232 Nothing in this subsection shall be construed to permit a

233 physician assistant to independently prescribe or dispense
234 drugs.

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

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

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

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

261 (o) Beginning with the biennial renewal forms completed
262 by physician assistants and submitted to the board in the
263 year one thousand nine hundred ninety-three, as a condi-
264 tion of renewal of physician assistant license, each physi-
265 cian assistant shall provide written documentation
266 pursuant to rules promulgated by the board in accordance
267 with chapter twenty-nine-a of this code of participation

268 in and successful completion during the preceding
269 two-year period of a minimum of forty hours of continu-
270 ing education designated as Category I by the American
271 medical association, American academy of physician
272 assistants or the academy of family physicians, and sixty
273 hours of continuing education designated as Category II
274 by the association or either academy. Notwithstanding
275 any provision of this chapter to the contrary, failure to
276 timely submit the required written documentation shall
277 result in the automatic suspension of any license as a
278 physician assistant until the written documentation is
279 submitted to and approved by the board.

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

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

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

Ray Schoover
.....
Chairman Senate Committee

Nick Fontana
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Carroll R. Stone
.....
Clerk of the Senate

Gregory M. Burt
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Frank
.....
Speaker House of Delegates

The within *approved* this the *6th*
March
day of, 1998.

Jeff Abernethy
.....
Governor

PRESENTED TO THE

GOVERNOR

Date: 3/2/98

Time: 3:10 pm