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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

## House Bill No. 4108

(By Delegates Browning, Staton, Long and Michael)



Passed March 11, 2006

In Effect Ninety Days from Passage

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AN ACT to amend and reenact §30-14A-1 of the Code of West Virginia, 1931 as amended, relating to osteopathic physician assistants; allowing an osteopathic physician and surgeon to supervise up to three physician assistants generally; and providing for legislative and emergency rule-making authority.

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

That §30-14A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 14A. ASSISTANTS TO OSTEOPATHIC PHYSICIANS AND SURGEONS.**

**§30-14A-1. Osteopathic physician assistant to osteopathic physicians and surgeons; definitions; board of osteopathy rules; certification; temporary certification; recertification; job description required; revoca-**

**tion or suspension of certification; responsibilities of the supervising physician; legal responsibility for osteopathic physician assistants; reporting of disciplinary procedures; identification; limitation on employment and duties; fees; unlawful use of the title of “osteopathic physician assistant”; unlawful representation of an osteopathic physician assistant as a physician; criminal penalties.**

1 (a) As used in this section:

2 (1) “Osteopathic physician assistant” means an assistant to  
3 an osteopathic physician who is a graduate of an approved  
4 program of instruction in primary care or surgery, has passed  
5 the national certification examination and is qualified to  
6 perform direct patient care services under the supervision of an  
7 osteopathic physician;

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

12 (3) “Approved program” means an educational program for  
13 osteopathic physician assistants approved and accredited by the  
14 committee on allied health education and accreditation or its  
15 successor;

16 (4) “Health care facility” means any licensed hospital,  
17 nursing home, extended care facility, state health or mental  
18 institution, clinic or physician’s office; and

19 (5) “Direct supervision” means the presence of the super-  
20 vising physician at the site where the osteopathic physician  
21 assistant performs medical duties.

22 (b) The board shall promulgate legislative and emergency  
23 rules governing the extent to which osteopathic physician  
24 assistants may function in this state. Such rules shall provide  
25 that the osteopathic physician assistant is limited to the perfor-  
26 mance of those services for which he or she is trained and that  
27 he or she performs only under the supervision and control of an  
28 osteopathic physician permanently licensed in this state, but  
29 such supervision and control does not require the personal  
30 presence of the supervising physician at the place or places  
31 where services are rendered if the osteopathic physician  
32 assistant's normal place of employment is on the premises of  
33 the supervising physician. The supervising physician may send  
34 the osteopathic physician assistant off the premises to perform  
35 duties under his or her direction, but a separate place of work  
36 for the osteopathic physician assistant shall not be established.  
37 In promulgating such rules, the board may allow the osteopathic  
38 physician assistant to perform those procedures and examina-  
39 tions and in the case of authorized osteopathic physician  
40 assistants to prescribe at the direction of his or her supervising  
41 physician in accordance with subsection (o) of this section  
42 those categories of drugs submitted to it in the job description  
43 required by subsection (e) of this section. The board shall  
44 compile and publish an annual report that includes a list of  
45 currently certified osteopathic physician assistants and their  
46 employers and location in the state.

47 (c) The board shall certify as an osteopathic physician  
48 assistant any person who files an application and furnishes  
49 satisfactory evidence to it that he or she has met the following  
50 standards:

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

53 (2) He or she has passed the examination for a primary care  
54 physician assistant or surgery administered by the national

55 board of medical examiners on behalf of the national commis-  
56 sion on certification of physician assistants; and

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

58 (d) When any graduate of an approved program submits an  
59 application to the board, accompanied by a job description in  
60 conformity with subsection (e) of this section, for an osteo-  
61 pathic physician assistant certificate, the board may issue to  
62 such applicant a temporary certificate allowing such applicant  
63 to function as an osteopathic physician assistant for the period  
64 of one year. Said temporary certificate may be renewed for one  
65 additional year upon the request of the supervising physician.  
66 An osteopathic physician assistant who has not been certified  
67 as such by the national board of medical examiners on behalf of  
68 the national commission on certification of physician assistants  
69 will be restricted to work under the direct supervision of the  
70 supervising physician.

71 (e) Any osteopathic physician applying to the board to  
72 supervise an osteopathic physician assistant shall provide a job  
73 description that sets forth the range of medical services to be  
74 provided by such assistant. Before an osteopathic physician  
75 assistant can be employed or otherwise use his or her skills, the  
76 supervising physician must obtain approval of the job descrip-  
77 tion from the board. The board may revoke or suspend any  
78 certification of an assistant to a physician for cause, after giving  
79 such person an opportunity to be heard in the manner provided  
80 by sections eight and nine, article one of this chapter.

81 (f) The supervising physician is responsible for observing,  
82 directing and evaluating the work records and practices of each  
83 osteopathic physician assistant performing under his or her  
84 supervision. He or she shall notify the board in writing of any  
85 termination of his or her supervisory relationship with an  
86 osteopathic physician assistant within ten days of his or her

87 termination. The legal responsibility for any osteopathic  
88 physician assistant remains with the supervising physician at all  
89 times, including occasions when the assistant, under his or her  
90 direction and supervision, aids in the care and treatment of a  
91 patient in a health care facility. In his or her absence, a super-  
92 vising physician must designate an alternate supervising  
93 physician; however, the legal responsibility remains with the  
94 supervising physician at all times. A health care facility is not  
95 legally responsible for the actions or omissions of an osteo-  
96 pathic physician assistant unless the osteopathic physician  
97 assistant is an employee of the facility.

98 (g) The acts or omissions of an osteopathic physician  
99 assistant employed by health care facilities providing inpatient  
100 services shall be the legal responsibility of said facilities.  
101 Osteopathic physician assistants employed by such facilities in  
102 staff positions shall be supervised by a permanently licensed  
103 physician.

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

119 (i) When functioning as an osteopathic physician assistant,  
120 the osteopathic physician assistant shall wear a name tag that  
121 identifies him or her as a physician assistant.

122 (j) (1) A supervising physician shall not supervise at any  
123 time more than three osteopathic physician assistants, except  
124 that a physician may supervise up to four hospital-employed  
125 osteopathic physician assistants: *Provided*, That an alternative  
126 supervisor has been designated for each.

127 (2) An osteopathic physician assistant shall not perform any  
128 service that his or her supervising physician is not qualified to  
129 perform.

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

133 (4) The provisions of this section do not authorize an  
134 osteopathic physician assistant to perform any specific function  
135 or duty delegated by this code to those persons licensed as  
136 chiropractors, dentists, registered nurses, licensed practical  
137 nurses, dental hygienists, optometrists or pharmacists or  
138 certified as nurse anesthetists.

139 (k) Each job description submitted by a licensed osteo-  
140 pathic supervising physician shall be accompanied by a fee of  
141 one hundred dollars. A fee of fifty dollars shall be charged for  
142 the annual renewal of the certificate. A fee of twenty-five  
143 dollars shall be charged for any change of supervising physi-  
144 cian.

145 (l) As a condition of renewal of osteopathic physician  
146 assistant certification, each osteopathic physician assistant shall  
147 provide written documentation satisfactory to the board of  
148 participation in and successful completion of continuing  
149 education in courses approved by the board of osteopathy for

150 the purposes of continuing education of osteopathic physician  
151 assistants. The osteopathy board shall promulgate legislative  
152 rules for minimum continuing hours necessary for certification  
153 renewal. These rules shall provide for minimum hours equal to  
154 or more than the hours necessary for national certification.  
155 Notwithstanding any provision of this chapter to the contrary,  
156 failure to timely submit such required written documentation  
157 shall result in the automatic suspension of any certification as  
158 an osteopathic physician assistant until such time as the written  
159 documentation is submitted to and approved by the board.

160 (m) It is unlawful for any person who is not certified by the  
161 board as an osteopathic physician assistant to use the title of  
162 "osteopathic physician assistant" or to represent to any other  
163 person that he or she is an osteopathic physician assistant. Any  
164 person who violates the provisions of this subsection is guilty  
165 of a misdemeanor, and, upon conviction thereof, shall be fined  
166 not more than two thousand dollars.

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

174 (o) An osteopathic physician assistant providing primary  
175 care outpatient services in a medically underserved area or  
176 other area of need, both as defined by the board, may write or  
177 sign prescriptions or transmit prescriptions by word of mouth,  
178 telephone or other means of communication at the direction of  
179 his or her supervising physician. The board shall promulgate  
180 rules and regulations governing the eligibility and extent to  
181 which such an osteopathic physician assistant may prescribe at  
182 the direction of the supervising physician. The regulations shall

183 provide for a state formulary classifying pharmacologic  
184 categories of drugs which may be prescribed by such an  
185 osteopathic physician assistant. In classifying such pharmaco-  
186 logic categories, those categories of drugs which shall be  
187 excluded shall include, but not be limited to, Schedules I and II  
188 of the uniform controlled substances act, anticoagulants,  
189 antineoplastics, antipsychotics, radiopharmaceuticals, general  
190 anesthetics and radiographic contrast materials. Drugs listed  
191 under Schedule III shall be limited to a forty-eight hour supply  
192 without refill. The regulations shall provide that all pharmaco-  
193 logical categories of drugs to be prescribed by an osteopathic  
194 physician assistant shall be listed in each job description  
195 submitted to the board as required in subsection (e) of this  
196 section. The regulations shall provide the maximum dosage an  
197 osteopathic physician assistant may prescribe.

198       The regulations shall also provide that to be eligible for  
199 such prescription privileges, an osteopathic physician assistant  
200 must submit an application to the board for such privileges. The  
201 regulations shall also provide that an osteopathic physician  
202 assistant shall have performed patient care services for a  
203 minimum of two years immediately preceding the submission  
204 to the board of said application for prescription privileges and  
205 shall have successfully completed an accredited course of  
206 instruction in clinical pharmacology approved by the board.  
207 The regulations shall also provide that to maintain prescription  
208 privileges, an osteopathic physician assistant shall continue to  
209 maintain national certification as an osteopathic physician  
210 assistant, and in meeting such national certification require-  
211 ments shall complete a minimum of ten hours of continuing  
212 education in rational drug therapy in each certification period.  
213 Nothing in this subsection shall be construed to permit an  
214 osteopathic physician assistant to independently prescribe or  
215 dispense drugs.

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

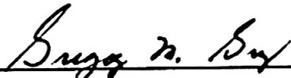
  
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Chairman Senate Committee

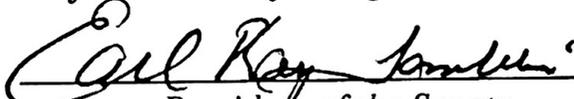
  
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Chairman House Committee

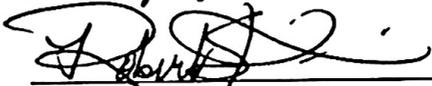
Originating in the House.

In effect ninety days from passage.

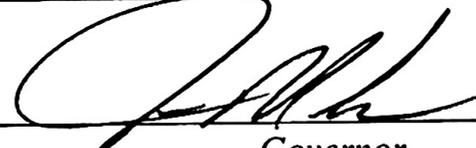
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 31<sup>st</sup>  
day of May 2006.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 29 2006

Time 10:30am