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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

1

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H. B. 4108

(BY DELEGATES BROWNING, STATON, LONG AND MICHAEL)

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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.



Chairman Senate Committee



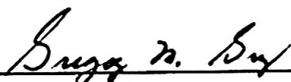
Chairman House Committee

Originating in the House.

In effect ninety days from passage.



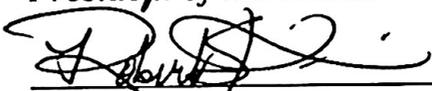
Clerk of the Senate



Clerk of the House of Delegates

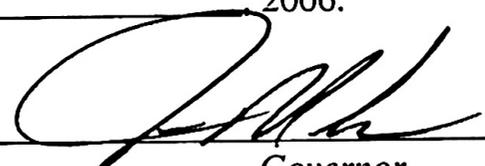


President of the Senate



Speaker of the House of Delegates

The within is approved this the 31st
day of May 2006.



Governor

PRESENTED TO THE
GOVERNOR

MAR 29 2006

Time 10:30 am