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
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.

(a) As used in this section:

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

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

(3) "Approved program" means an educational program for osteopathic physician assistants approved and accredited by the committee on allied health education and accreditation or its successor;

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

(5) "Direct supervision" means the presence of the supervising physician at the site where the osteopathic physician assistant performs medical duties.
(b) The board shall promulgate legislative and emergency rules governing the extent to which osteopathic physician assistants may function in this state. Such rules shall provide that the osteopathic 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 an osteopathic physician permanently licensed in this state, but such supervision and control does not require the personal presence of the supervising physician at the place or places where services are rendered if the osteopathic physician assistant’s normal place of employment is on the premises of the supervising physician. The supervising physician may send the osteopathic physician assistant off the premises to perform duties under his or her direction, but a separate place of work for the osteopathic physician assistant shall not be established. In promulgating such rules, the board may allow the osteopathic physician assistant to perform those procedures and examinations and in the case of authorized osteopathic physician assistants to prescribe at the direction of his or her supervising physician in accordance with subsection (o) of this section those categories of drugs submitted to it in the job description required by subsection (e) of this section. The board shall compile and publish an annual report that includes a list of currently certified osteopathic physician assistants and their employers and location in the state.

(c) The board shall certify as an osteopathic physician assistant any person who files an application 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 examination for a primary care physician assistant or surgery administered by the national
(3) He or she is of good moral character.

(d) When any graduate of an approved program submits an application to the board, accompanied by a job description in conformity with subsection (e) of this section, for an osteopathic physician assistant certificate, the board may issue to such applicant a temporary certificate allowing such applicant to function as an osteopathic physician assistant for the period of one year. Said temporary certificate may be renewed for one additional year upon the request of the supervising physician. An osteopathic physician assistant who has not been certified as such 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.

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

(f) The supervising physician is responsible for observing, directing and evaluating the work records and practices of each osteopathic 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 an osteopathic physician assistant within ten days of his or her
termination. The legal responsibility for any osteopathic 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 an osteopathic physician assistant unless the osteopathic physician assistant is an employee of the facility.

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

(h) 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 osteopathic 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 such action. The health care facility shall also report any other formal disciplinary action taken against any osteopathic 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.
(i) When functioning as an osteopathic physician assistant, the osteopathic physician assistant shall wear a name tag that identifies him or her as a physician assistant.

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

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

(3) An osteopathic physician assistant shall 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.

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

(k) Each job description submitted by a licensed osteopathic supervising physician shall be accompanied by a fee of one hundred dollars. A fee of fifty dollars shall be charged for the annual renewal of the certificate. A fee of twenty-five dollars shall be charged for any change of supervising physician.

(l) As a condition of renewal of osteopathic physician assistant certification, each osteopathic physician assistant shall provide written documentation satisfactory to the board of participation in and successful completion of continuing education in courses approved by the board of osteopathy for
the purposes of continuing education of osteopathic physician assistants. The osteopathy board shall promulgate legislative rules for minimum continuing hours necessary for certification renewal. These rules shall provide for minimum hours equal to or more than the hours necessary for national certification. Notwithstanding any provision of this chapter to the contrary, failure to timely submit such required written documentation shall result in the automatic suspension of any certification as an osteopathic physician assistant until such time as the written documentation is submitted to and approved by the board.

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

(n) It is unlawful for any osteopathic physician assistant to represent to any person that he or she is a physician. 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.

(o) An osteopathic physician assistant providing primary care outpatient services in a medically underserved area or other area of need, both as defined by the board, 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 and regulations governing the eligibility and extent to which such an osteopathic physician assistant may prescribe at the direction of the supervising physician. The regulations shall
provide for a state formulary classifying pharmacologic categories of drugs which may be prescribed by such an osteopathic physician assistant. In classifying such pharmacologic categories, those categories of drugs which shall be excluded shall include, but not be limited to, Schedules I and II of the uniform controlled substances act, anticoagulants, antineoplastics, antipsychotics, radiopharmaceuticals, general anesthetics and radiographic contrast materials. Drugs listed under Schedule III shall be limited to a forty-eight hour supply without refill. The regulations shall provide that all pharmacological categories of drugs to be prescribed by an osteopathic physician assistant shall be listed in each job description submitted to the board as required in subsection (e) of this section. The regulations shall provide the maximum dosage an osteopathic physician assistant may prescribe.

The regulations shall also provide that to be eligible for such prescription privileges, an osteopathic physician assistant must submit an application to the board for such privileges. The regulations shall also provide that an osteopathic physician assistant shall have performed patient care services for a minimum of two years immediately preceding the submission to the board of said application for prescription privileges and shall have successfully completed an accredited course of instruction in clinical pharmacology approved by the board. The regulations shall also provide that to maintain prescription privileges, an osteopathic physician assistant shall continue to maintain national certification as an osteopathic physician assistant, and in meeting such 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 an osteopathic physician assistant to independently prescribe or 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 November 2006.

Governor
PRESENTED TO THE GOVERNOR

MAR 29 2006

Time 10:30 am