

HB 4144

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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4144**

(By Delegates Morgan, Martin, Higgins and Long)



Passed March 6, 2008

In Effect Ninety Days from Passage

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(BY DELEGATES MORGAN, MARTIN, HIGGINS AND LONG)

[Passed March 6, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §30-3-16 of the Code of West Virginia, 1931, as amended, relating to physician assistants; updating language to conform to national changes; requiring supervising physicians to be fully licensed without restriction or limitation; permitting graduates of an approved program who have passed the national certifying examination for physician assistants to obtain temporary licenses; requiring a physician assistant who fails a recertifying examination to immediately notify the supervising physician and the board of Medicine and immediately cease practice and requiring automatic license expiration until passage of the examination; raising fees and adding fees for temporary license and prescriptive writing privileges.

Be it enacted by the Legislature of West Virginia:

That §30-3-16 of the Code of West Virginia, 1931, 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.

1 (a) As used in this section:

2 (1) "Approved program" means an educational program
3 for physician assistants approved and accredited by the
4 Committee on Accreditation of Allied Health Education
5 Programs or its successor;

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

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

15 (4) "Physician assistant-midwife" means a physician
16 assistant who meets all qualifications set forth under
17 subdivision (3) of this subsection and fulfills the
18 requirements set forth in subsection (d) of this section, is
19 subject to all provisions of this section and assists in the

20 management and care of a woman and her infant during the
21 prenatal, delivery and postnatal periods; and

22 (5) "Supervising physician" means a doctor or doctors of
23 medicine or podiatry permanently and fully licensed in this
24 state without restriction or limitation who assume legal and
25 supervisory responsibility for the work or training of any
26 physician assistant under his or her supervision.

27 (b) The board shall promulgate rules pursuant to the
28 provisions of article three, chapter twenty-nine-a of this code
29 governing the extent to which physician assistants may
30 function in this state. The rules shall provide that the
31 physician assistant is limited to the performance of those
32 services for which he or she is trained and that he or she
33 performs only under the supervision and control of a
34 physician permanently licensed in this state, but that
35 supervision and control does not require the personal
36 presence of the supervising physician at the place or places
37 where services are rendered if the physician assistant's
38 normal place of employment is on the premises of the
39 supervising physician. The supervising physician may send
40 the physician assistant off the premises to perform duties
41 under his or her direction, but a separate place of work for the
42 physician assistant may not be established. In promulgating
43 the rules, the board shall allow the physician assistant to
44 perform those procedures and examinations and in the case
45 of certain authorized physician assistants to prescribe at the
46 direction of his or her supervising physician in accordance
47 with subsection (r) of this section those categories of drugs
48 submitted to it in the job description required by this section.
49 Certain authorized physician assistants may pronounce death
50 in accordance with the rules proposed by the board which
51 receive legislative approval. The board shall compile and
52 publish an annual report that includes a list of currently
53 licensed physician assistants and their supervising
54 physician(s) and location in the state.

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

59 (1) Is a graduate of an approved program of instruction in
60 primary health care or surgery;

61 (2) Has passed the certifying examination for a primary
62 care physician assistant administered by the National
63 Commission on Certification of Physician Assistants and has
64 maintained certification by that commission so as to be
65 currently certified;

66 (3) Is of good moral character; and

67 (4) Has attained a baccalaureate or master's degree.

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

72 (1) Is a graduate of a school of midwifery accredited by
73 the American college of nurse-midwives;

74 (2) Has passed an examination approved by the board;
75 and

76 (3) Practices midwifery under the supervision of a
77 board-certified obstetrician, gynecologist or a board-certified
78 family practice physician who routinely practices obstetrics.

79 (e) The board may license as a physician assistant any
80 person who files an application together with a proposed job
81 description and furnishes satisfactory evidence that he or she

82 is of good moral character and meets either of the following
83 standards:

84 (1) He or she is a graduate of an approved program of
85 instruction in primary health care or surgery prior to the first
86 day of July, one thousand nine hundred ninety-four, and has
87 passed the certifying examination for a physician assistant
88 administered by the National Commission on Certification of
89 Physician Assistants and has maintained certification by that
90 commission so as to be currently certified; or

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

94 (f) Licensure of an assistant to a physician practicing the
95 specialty of ophthalmology is permitted under this section:
96 *Provided*, That a physician assistant may not dispense a
97 prescription for a refraction.

98 (g) When a graduate of an approved program who has
99 successfully passed the national commission on certification
100 of physician assistants' certifying examination submits an
101 application to the board for a physician assistant license,
102 accompanied by a job description as referenced by this
103 section, and a fifty dollar temporary license fee, and the
104 application is complete, the board shall issue to that applicant
105 a temporary license allowing that applicant to function as a
106 physician assistant.

107 (h) When a graduate of an approved program submits an
108 application to the board for a physician assistant license,
109 accompanied by a job description as referenced by this
110 section, and a fifty dollar temporary license fee, and the
111 application is complete, the board shall issue to that applicant
112 a temporary license allowing that applicant to function as a

113 physician assistant until the applicant successfully passes the
114 national commission on certification of physician assistants'
115 certifying examination: *Provided*, That the applicant shall sit
116 for and obtain a passing score on the examination next
117 offered following graduation from the approved program.

118 (i) No applicant may receive a temporary license who,
119 following graduation from an approved program, has sat for
120 and not obtained a passing score on the examination.

121 (j) A physician assistant who has not been certified by the
122 national commission on certification of physician assistants
123 will be restricted to work under the direct supervision of the
124 supervising physician.

125 (k) A physician assistant who has been issued a
126 temporary license shall, within thirty days of receipt of
127 written notice from the national commission on certification
128 of physician assistants of his or her performance on the
129 certifying examination, notify the board in writing of his or
130 her results. In the event of failure of that examination, the
131 temporary license shall expire and terminate automatically
132 and the board shall so notify the physician assistant in
133 writing.

134 (l) In the event that a physician assistant fails a
135 recertification examination of the National Commission on
136 Certification of Physician Assistants and is no longer
137 certified, the physician assistant shall immediately notify his
138 or her supervising physician or physicians and the board in
139 writing. The physician assistant shall immediately cease
140 practicing, the license shall expire and terminate
141 automatically, and the physician assistant is not eligible for
142 reinstatement until he or she has obtained a passing score on
143 the examination.

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

157 (n) The supervising physician is responsible for
158 observing, directing and evaluating the work, records and
159 practices of each physician assistant performing under his or
160 her supervision. He or she shall notify the board in writing
161 of any termination of his or her supervisory relationship with
162 a physician assistant within ten days of the termination. The
163 legal responsibility for any physician assistant remains with
164 the supervising physician at all times, including occasions
165 when the assistant under his or her direction and supervision,
166 aids in the care and treatment of a patient in a health care
167 facility. In his or her absence, a supervising physician must
168 designate an alternate supervising physician, however, the
169 legal responsibility remains with the supervising physician at
170 all times. A health care facility is not legally responsible for
171 the actions or omissions of the physician assistant unless the
172 physician assistant is an employee of the facility.

173 (o) The acts or omissions of a physician assistant
174 employed by health care facilities providing inpatient or
175 outpatient services shall be the legal responsibility of the
176 facilities. Physician assistants employed by facilities in staff
177 positions shall be supervised by a permanently licensed
178 physician.

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

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

199 (r) A physician assistant may write or sign prescriptions
200 or transmit prescriptions by word of mouth, telephone or
201 other means of communication at the direction of his or her
202 supervising physician. A fee of fifty dollars will be charged
203 for prescription writing privileges. The board shall
204 promulgate rules pursuant to the provisions of article three,
205 chapter twenty-nine-a of this code governing the eligibility
206 and extent to which a physician assistant may prescribe at the
207 direction of the supervising physician. The rules shall
208 include, but not be limited to, the following:

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

212 (A) The following categories of drugs shall be excluded
213 from the formulary: Schedules I and II of the Uniform
214 Controlled Substances Act, anticoagulants, antineoplastic,
215 radiopharmaceuticals, general anesthetics and radiographic
216 contrast materials;

217 (B) Drugs listed under Schedule III shall be limited to a
218 72-hour supply without refill; and

219 (C) Categories of other drugs may be excluded as
220 determined by the board.

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

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

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

234 (5) A requirement that to maintain prescription privileges,
235 a physician assistant shall continue to maintain National
236 Certification as a Physician Assistant and, in meeting the
237 national certification requirements, shall complete a
238 minimum of ten hours of continuing education in rational
239 drug therapy in each certification period. Nothing in this
240 subsection shall be construed to permit a physician assistant
241 to independently prescribe or dispense drugs.

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

247 (t) A physician assistant may not sign any prescription,
248 except in the case of an authorized physician assistant at the
249 direction of his or her supervising physician in accordance
250 with the provisions of subsection (r) of this section. A
251 physician assistant may not perform any service that his or
252 her supervising physician is not qualified to perform. A
253 physician assistant may not perform any service that is not
254 included in his or her job description and approved by the
255 board as provided for in this section.

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

261 (v) Each application for licensure submitted by a
262 licensed supervising physician under this section is to be
263 accompanied by a fee of two hundred dollars. A fee of one
264 hundred dollars is to be charged for the biennial renewal of
265 the license. A fee of fifty dollars is to be charged for any
266 change or addition of supervising physician, or change or
267 addition of job location. A fee of fifty dollars will be charged
268 for prescriptive writing privileges.

269 (w) As a condition of renewal of physician assistant
270 license, each physician assistant shall provide written
271 documentation of participation in and successful completion
272 during the preceding two-year period of continuing
273 education, in the number of hours specified by the board by

274 rule, designated as Category I by the American Medical
275 Association, American Academy of Physician Assistants or
276 the Academy of Family Physicians and continuing education,
277 in the number of hours specified by the board by rule,
278 designated as Category II by the association or either
279 academy.

280 (x) Notwithstanding any provision of this chapter to the
281 contrary, failure to timely submit the required written
282 documentation shall result in the automatic expiration of any
283 license as a physician assistant until the written
284 documentation is submitted to and approved by the board.

285 (y) If a license is automatically expired and reinstatement
286 is sought within one year of the automatic expiration, the
287 former licensee shall:

288 (1) Provide certification with supporting written
289 documentation of the successful completion of the required
290 continuing education;

291 (2) Pay a renewal fee; and

292 (3) Pay a reinstatement fee equal to fifty percent of the
293 renewal fee.

294 (z) If a license is automatically expired and more than
295 one year has passed since the automatic expiration, the
296 former licensee shall:

297 (1) Apply for a new license;

298 (2) Provide certification with supporting written
299 documentation of the successful completion of the required
300 continuing education; and

301 (3) Pay such fees as determined by the board.

302 (aa) It is unlawful for any physician assistant to represent
303 to any person that he or she is a physician, surgeon or
304 podiatrist. Any person who violates the provisions of this
305 subsection is guilty of a felony and, upon conviction thereof,
306 shall be imprisoned in a state correctional facility for not less
307 than one nor more than two years, or be fined not more than
308 two thousand dollars, or both fined and imprisoned.

309 (bb) All physician assistants holding valid certificates
310 issued by the board prior to the first day of July, one
311 thousand nine hundred ninety-two, shall be considered to be
312 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

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 27th
day of March, 2008.


Governor

PRESENTED TO THE
GOVERNOR

MAR 1 8 2008

Time 9:30am