

FILED

2010 MAR 22 PM 4:37

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-NINTH LEGISLATURE**  
**REGULAR SESSION, 2010**

WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 618**

(SENATOR FOSTER, *original sponsor*)

[Passed March 11, 2010; in effect ninety days from passage.]

SB 618



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

**§30-14A-1. Osteopathic physician assistant to osteopathic physicians and surgeons; definitions; board of osteopathy rules; licensure; temporary licensure; renewal of license; job description required; revocation or suspension of license; 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) “Approved program” means an educational program  
3 for osteopathic physician assistants approved and accred-  
4 ited by the Committee on Allied Health Education and  
5 Accreditation or its successor.

6 (2) “Board” means the Board of Osteopathy established  
7 under the provisions of article fourteen, chapter thirty of  
8 this code.

9 (3) “Direct supervision” means the presence of the  
10 supervising physician at the site where the osteopathic  
11 physician assistant performs medical duties.

12 (4) “Health care facility” means any licensed hospital,  
13 nursing home, extended care facility, state health or  
14 mental institution, clinic or physician’s office.

15 (5) “License” means a certificate issued to an osteo-  
16 pathic physician assistant who has passed the examination  
17 for a primary care or surgery physician assistant adminis-  
18 tered by the National Board of Medical Examiners on

19 behalf of the National Commission on Certification of  
20 Physician Assistants. All osteopathic physician assistants  
21 holding valid certificates issued by the board prior to  
22 March 31, 2010, shall be considered to be licensed under  
23 the provisions of this article: *Provided*, That a person  
24 holding a certificate issued prior to March 31, 2010, must  
25 renew the license pursuant to the provisions of this article.

26 (6) "Osteopathic physician assistant" means an assistant  
27 to an osteopathic physician who is a graduate of an  
28 approved program of instruction in primary care or  
29 surgery, has passed the national certification examination  
30 and is qualified to perform direct patient care services  
31 under the supervision of an osteopathic physician.

32 (7) "Supervising physician" means a doctor of osteopa-  
33 thy permanently licensed in this state who assumes legal  
34 and supervising responsibility for the work or training of  
35 any osteopathic physician assistant under his or her  
36 supervision.

37 (b) The board shall propose emergency and legislative  
38 rules for legislative approval pursuant to the provisions of  
39 article three, chapter twenty-nine-a of this code, govern-  
40 ing the extent to which osteopathic physician assistants  
41 may function in this state. The rules shall provide that:

42 (1) The osteopathic physician assistant is limited to the  
43 performance of those services for which he or she is  
44 trained;

45 (2) The osteopathic physician assistant performs only  
46 under the supervision and control of an osteopathic  
47 physician permanently licensed in this state, but such  
48 supervision and control does not require the personal  
49 presence of the supervising physician at the place or places  
50 where services are rendered if the osteopathic physician  
51 assistant's normal place of employment is on the premises  
52 of the supervising physician. The supervising physician

53 may send the osteopathic physician assistant off the  
54 premises to perform duties under his or her direction, but  
55 a separate place of work for the osteopathic physician  
56 assistant may not be established; and

57 (3) The board may allow the osteopathic physician  
58 assistant to perform those procedures and examinations  
59 and in the case of authorized osteopathic physician  
60 assistants to prescribe at the direction of his or her  
61 supervising physician in accordance with subsections (p)  
62 and (q) of this section those categories of drugs submitted  
63 to it in the job description required by subsection (f) of  
64 this section.

65 (c) The board shall compile and publish an annual report  
66 that includes a list of currently licensed osteopathic  
67 physician assistants and their employers and location in  
68 the state.

69 (d) The board shall license as an osteopathic physician  
70 assistant any person who files an application together with  
71 a proposed job description and furnishes satisfactory  
72 evidence that he or she has met the following standards:

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

75 (2) Has passed the examination for a primary care or  
76 surgery physician assistant administered by the National  
77 Board of Medical Examiners on behalf of the National  
78 Commission on Certification of Physician Assistants; and

79 (3) Is of good moral character.

80 (e) When any graduate of an approved program submits  
81 an application to the board, accompanied by a job descrip-  
82 tion in conformity with this section, for an osteopathic  
83 physician assistant license, the board may issue to the  
84 applicant a temporary license allowing the applicant to  
85 function as an osteopathic physician assistant for the

86 period of one year. The temporary license may be renewed  
87 for one additional year upon the request of the supervising  
88 physician. An osteopathic physician assistant who has not  
89 been certified as such by the National Board of Medical  
90 Examiners on behalf of the National Commission on  
91 Certification of Physician Assistants will be restricted to  
92 work under the direct supervision of the supervising  
93 physician.

94 (f) Any osteopathic physician applying to the board to  
95 supervise an osteopathic physician assistant shall provide  
96 a job description that sets forth the range of medical  
97 services to be provided by the assistant. Before an osteo-  
98 pathic physician assistant can be employed or otherwise  
99 use his or her skills, the supervising physician must obtain  
100 approval of the job description from the board. The board  
101 may revoke or suspend any license of an assistant to a  
102 physician for cause, after giving such person an opportu-  
103 nity to be heard in the manner provided by sections eight  
104 and nine, article one of this chapter.

105 (g) The supervising physician is responsible for observ-  
106 ing, directing and evaluating the work records and prac-  
107 tices of each osteopathic physician assistant performing  
108 under his or her supervision. He or she shall notify the  
109 board in writing of any termination of his or her supervi-  
110 sory relationship with an osteopathic physician assistant  
111 within ten days of his or her termination. The legal  
112 responsibility for any osteopathic physician assistant  
113 remains with the supervising physician at all times,  
114 including occasions when the assistant, under his or her  
115 direction and supervision, aids in the care and treatment  
116 of a patient in a health care facility. In his or her absence,  
117 a supervising physician must designate an alternate  
118 supervising physician; however, the legal responsibility  
119 remains with the supervising physician at all times. A  
120 health care facility is not legally responsible for the  
121 actions or omissions of an osteopathic physician assistant

122 unless the osteopathic physician assistant is an employee  
123 of the facility.

124 (h) The acts or omissions of an osteopathic physician  
125 assistant employed by health care facilities providing  
126 inpatient services are the legal responsibility of the  
127 facilities. Osteopathic physician assistants employed by  
128 such facilities in staff positions shall be supervised by a  
129 permanently licensed physician.

130 (i) A health care facility shall report in writing to the  
131 board within sixty days after the completion of the facil-  
132 ity's formal disciplinary procedure, and also after the  
133 commencement, and again after the conclusion, of any  
134 resulting legal action, the name of any osteopathic physi-  
135 cian assistant practicing in the facility whose privileges at  
136 the facility have been revoked, restricted, reduced or  
137 terminated for any cause including resignation, together  
138 with all pertinent information relating to such action. The  
139 health care facility shall also report any other formal  
140 disciplinary action taken against any osteopathic physi-  
141 cian assistant by the facility relating to professional  
142 ethics, medical incompetence, medical malpractice, moral  
143 turpitude or drug or alcohol abuse. Temporary suspension  
144 for failure to maintain records on a timely basis or failure  
145 to attend staff or section meetings need not be reported.

146 (j) When functioning as an osteopathic physician assis-  
147 tant, the osteopathic physician assistant shall wear a name  
148 tag that identifies him or her as a physician assistant.

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

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

157 (3) An osteopathic physician assistant shall not perform  
158 any service that is not included in his or her job descrip-  
159 tion and approved by the board as provided in this section.

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

166 (l) An application for license or renewal of license shall  
167 be accompanied by payment of a fee which shall be  
168 established by legislative rule of the Board of Osteopathy  
169 pursuant to the provisions of article three, chapter twenty-  
170 nine-a of this code.

171 (m) As a condition of renewal of an osteopathic physician  
172 assistant license, each osteopathic physician assistant shall  
173 provide written documentation satisfactory to the board of  
174 participation in and successful completion of continuing  
175 education in courses approved by the board of osteopathy  
176 for the purposes of continuing education of osteopathic  
177 physician assistants. The osteopathy board shall propose  
178 legislative rules for minimum continuing hours necessary  
179 for the renewal of a license. These rules shall provide for  
180 minimum hours equal to or more than the hours necessary  
181 for national certification. Notwithstanding any provision  
182 of this chapter to the contrary, failure to timely submit the  
183 required written documentation shall result in the auto-  
184 matic suspension of any license as an osteopathic physician  
185 assistant until such time as the written documentation is  
186 submitted to and approved by the board.

187 (n) It is unlawful for any person who is not licensed by the  
188 board as an osteopathic physician assistant to use the title  
189 of "osteopathic physician assistant" or to represent to any  
190 other person that he or she is an osteopathic physician  
191 assistant. Any person who violates the provisions of this

192 subsection is guilty of a misdemeanor and, upon conviction  
193 thereof, shall be fined not more than \$2,000.

194 (o) It is unlawful for any osteopathic physician assistant  
195 to represent to any person that he or she is a physician.  
196 Any person who violates the provisions of this subsection  
197 is guilty of a felony, and, upon conviction thereof, shall be  
198 imprisoned in a state correctional facility for not less than  
199 one, nor more than two years, or be fined not more than  
200 \$2,000, or both fined and imprisoned.

201 (p) An osteopathic physician assistant may write or sign  
202 prescriptions or transmit prescriptions by word of mouth,  
203 telephone or other means of communication at the direction  
204 of his or her supervising physician. The board shall  
205 propose rules for legislative approval in accordance with  
206 the provisions of article three, chapter twenty-nine-a of  
207 this code governing the eligibility and extent to which such  
208 an osteopathic physician assistant may prescribe at the  
209 direction of the supervising physician. The rules shall  
210 provide for a state formulary classifying pharmacologic  
211 categories of drugs which may be prescribed by such an  
212 osteopathic physician assistant. In classifying such phar-  
213 macologic categories, those categories of drugs which shall  
214 be excluded shall include, but not be limited to, Schedules  
215 I and II of the Uniform Controlled Substances Act, antico-  
216 agulants, antineoplastics, radiopharmaceuticals, general  
217 anesthetics and radiographic contrast materials. Drugs  
218 listed under Schedule III are limited to a seventy-two hour  
219 supply without refill. The rules shall provide that all  
220 pharmacological categories of drugs to be prescribed by an  
221 osteopathic physician assistant shall be listed in each job  
222 description submitted to the board as required in this  
223 section. The rules shall provide the maximum dosage an  
224 osteopathic physician assistant may prescribe.

225 (q) The rules shall also provide that to be eligible for such  
226 prescription privileges, an osteopathic physician assistant

227 must submit an application to the board for such privileges.  
228 The rules shall also provide that an osteopathic physician  
229 assistant shall have performed patient care services for a  
230 minimum of two years immediately preceding the submis-  
231 sion to the board of said application for prescription  
232 privileges and shall have successfully completed an accred-  
233 ited course of instruction in clinical pharmacology approved  
234 by the board. The rules shall also provide that to maintain  
235 prescription privileges, an osteopathic physician assistant  
236 shall continue to maintain national certification as an  
237 osteopathic physician assistant, and in meeting such na-  
238 tional certification requirements shall complete a minimum  
239 of ten hours of continuing education in rational drug  
240 therapy in each licensing period. Nothing in this subsection  
241 may be construed to permit an osteopathic physician  
242 assistant to independently prescribe or dispense drugs.

**§30-14A-2. Approval and licensure by board of osteopathy.**

1 Approval of a job description and establishment of qualifi-  
2 cations for employment as an assistant to an osteopathic  
3 physician and surgeon must be obtained from the Board of  
4 Osteopathy. The Board of Osteopathy shall license each  
5 qualified applicant for employment as an assistant to an  
6 osteopathic physician and surgeon upon submission of a job  
7 description, and shall provide for biennial renewal of the  
8 license. The board has the power to revoke or suspend any  
9 license of an assistant to an osteopathic physician and  
10 surgeon, for cause, after having given the person an opportu-  
11 nity to be heard in the manner provided by sections eight and  
12 nine, article one of this chapter.

**§30-14A-3. Rulemaking.**

1 (a) The Board of Osteopathy shall propose rules for  
2 legislative approval in accordance with the provisions of  
3 article three, chapter twenty-nine-a of this code, to imple-  
4 ment the provisions of this article, including:

5 (1) Establishing fees; and

6 (2) Any other rules necessary to effectuate the provisions of  
7 this article.

8 (b) The fees in effect on the effective date of the  
9 reenactment of this section during the regular session of the  
10 Legislature in 2010 will remain in effect until modified by  
11 legislative rule.

**§30-14A-4. Limitation on scope of duties.**

1 Assistants to osteopathic physicians and surgeons may not  
2 sign prescriptions or perform any service which his or her  
3 employing osteopathic physician and surgeon is not qualified  
4 to perform.

**§30-14A-5. Special volunteer osteopathic physician assistant  
license; civil immunity for voluntary services  
rendered to indigents.**

1 (a) There is established a special volunteer osteopathic  
2 physician assistant license for osteopathic physician assis-  
3 tants retired or retiring from the active practice of osteopathy  
4 who wish to donate their expertise for the medical care and  
5 treatment of indigent and needy patients in the clinic setting  
6 of clinics organized, in whole or in part, for the delivery of  
7 health care services without charge. The special volunteer  
8 osteopathic physician assistant license shall be issued by the  
9 West Virginia Board of Osteopathy to osteopathic physician  
10 assistants licensed or otherwise eligible for licensure under  
11 this article and the legislative rules promulgated hereunder  
12 without the payment of an application fee, license fee or  
13 renewal fee, shall be issued for and the remainder of the  
14 licensing period and renewed consistent with the boards  
15 other licensing requirements. The board shall develop  
16 application forms for the special license provided in this  
17 subsection which shall contain the osteopathic physician  
18 assistant's acknowledgment that:

19 (1) The osteopathic physician assistant's practice under the  
20 special volunteer osteopathic physician assistant license will  
21 be exclusively devoted to providing osteopathic care to needy  
22 and indigent persons in West Virginia;

23 (2) The osteopathic physician assistant will not receive any  
24 payment or compensation, either direct or indirect, or have  
25 the expectation of any payment or compensation, for any  
26 osteopathic services rendered under the special volunteer  
27 osteopathic physician assistant license;

28 (3) The osteopathic physician assistant will supply any  
29 supporting documentation that the board may reasonably  
30 require; and

31 (4) The osteopathic physician assistant agrees to continue  
32 to participate in continuing education as required by the  
33 board for a special volunteer osteopathic physician assistant  
34 license.

35 (b) Any osteopathic physician assistant who renders any  
36 osteopathic service to indigent and needy patients of a clinic  
37 organized, in whole or in part, for the delivery of health care  
38 services without charge under a special volunteer osteopathic  
39 physician assistant license authorized under subsection (a) of  
40 this section without payment or compensation or the expecta-  
41 tion or promise of payment or compensation, is immune from  
42 liability for any civil action arising out of any act or omission  
43 resulting from the rendering of the osteopathic service at the  
44 clinic unless the act or omission was the result of the osteo-  
45 pathic physician assistant's gross negligence or willful  
46 misconduct. In order for the immunity under this subsection  
47 to apply, there must be a written agreement between the  
48 osteopathic physician assistant and the clinic pursuant to  
49 which the osteopathic physician assistant will provide  
50 voluntary uncompensated medical services under the control  
51 of the clinic to patients of the clinic before the rendering of  
52 any services by the osteopathic physician assistant at the  
53 clinic: *Provided*, That any clinic entering into such written

54 agreement is required to maintain liability coverage of not  
55 less than \$1 million per occurrence.

56 (c) Notwithstanding the provisions of subsection (b) of this  
57 section, a clinic organized, in whole or in part, for the  
58 delivery of health care services without charge is not relieved  
59 from imputed liability for the negligent acts of an osteopathic  
60 physician assistant rendering voluntary medical services at  
61 or for the clinic under a special volunteer osteopathic  
62 physician assistant license authorized under subsection (a) of  
63 this section.

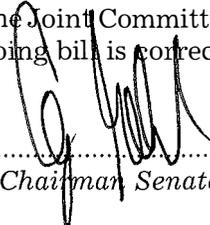
64 (d) For purposes of this section, “otherwise eligible for  
65 licensure” means the satisfaction of all the requirements for  
66 licensure set out in this article and in the legislative rules  
67 promulgated thereunder. The term does not include the fee  
68 requirement set out in this article or legislative rules promul-  
69 gated by the board relating to fees.

70 (e) Nothing in this section may be construed as requiring  
71 the board to issue a special volunteer osteopathic physician  
72 assistant license to any osteopathic physician assistant whose  
73 certificate, license or other authorization to practice is or has  
74 been subject to any disciplinary action, or to any osteopathic  
75 physician assistant who has surrendered an osteopathic  
76 physician assistant certificate, license or other authorization  
77 to practice, or caused such certificate, license or other  
78 authorization to practice to lapse, expire and become invalid  
79 in lieu of having a complaint initiated or other action taken  
80 against his or her certificate, license or other authorization to  
81 practice, or who has elected to place an osteopathic physician  
82 assistant certificate, license or other authorization to practice  
83 in inactive status in lieu of having a complaint initiated or  
84 other action taken against his or her certificate, license or  
85 other authorization to practice, or who has been denied a  
86 certificate, license or other authorization to practice as an  
87 osteopathic physician assistant in any jurisdiction.

88 (f) Any policy or contract of liability insurance providing  
89 coverage for liability sold, issued or delivered in this state to  
90 any osteopathic physician assistant covered under the  
91 provisions of this article, shall be read so as to contain a  
92 provision or endorsement whereby the company issuing such  
93 policy waives or agrees not to assert as a defense on behalf of  
94 the policyholder or any beneficiary thereof, to any claim  
95 covered by the terms of such policy within the policy limits,  
96 the immunity from liability of the insured by reason of the  
97 care and treatment of needy and indigent patients by an  
98 osteopathic physician assistant who holds a special volunteer  
99 osteopathic physician assistant license.

Enr. Com. Sub. for Com. Sub. for S. B. No. 618] 14

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

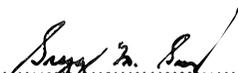
  
.....  
Chairman Senate Committee

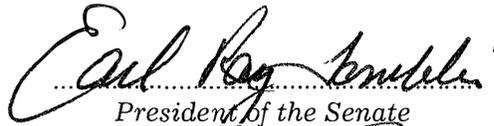
  
.....  
Chairman House Committee

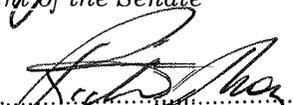
Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *22nd*  
Day of *March* ....., 2010.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 19 2010

Time 4:00 p