WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2010

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 618

(Senator Foster, original sponsor)

[Passed March 11, 2010; in effect ninety days from passage.]
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AN ACT to amend and reenact §30-14A-1, §30-14A-2, §30-14A-3, §30-14A-4 and §30-14A-5 of the Code of West Virginia, 1931, as amended, all relating to osteopathic physician assistants; updating definitions; clarifying use of the term “license” in lieu of “certificate”; modifying the authorization to prescribe drugs; modifying the classes of pharmaceuticals that may be prescribed by an osteopathic physician assistant; changing the amount of certain drugs that may be prescribed; and authorizing fees to be set by legislative rule.

Be it enacted by the Legislature of West Virginia:

That §30-14A-1, §30-14A-2, §30-14A-3, §30-14A-4 and §30-14A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all 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; 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.

(a) As used in this section:

(1) "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.

(2) "Board" means the Board of Osteopathy established under the provisions of article fourteen, chapter thirty of this code.

(3) "Direct supervision" means the presence of the supervising physician at the site where the osteopathic physician assistant performs medical duties.

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

(5) "License" means a certificate issued to an osteopathic physician assistant who has passed the examination for a primary care or surgery physician assistant administered by the National Board of Medical Examiners on
behalf of the National Commission on Certification of Physician Assistants. All osteopathic physician assistants holding valid certificates issued by the board prior to March 31, 2010, shall be considered to be licensed under the provisions of this article: Provided, That a person holding a certificate issued prior to March 31, 2010, must renew the license pursuant to the provisions of this article.

(6) "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.

(7) "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.

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

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

(2) The osteopathic physician assistant 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 may not be established; and

(3) 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 subsections (p)
and (q) of this section those categories of drugs submitted
to it in the job description required by subsection (f) of
this section.

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

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

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

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

(3) Is of good moral character.

(e) When any graduate of an approved program submits
an application to the board, accompanied by a job descrip-
tion in conformity with this section, for an osteopathic
physician assistant license, the board may issue to the
applicant a temporary license allowing the applicant to
function as an osteopathic physician assistant for the
period of one year. The temporary license 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.

(f) 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 the 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 license 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.

(g) 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...
122 unless the osteopathic physician assistant is an employee of the facility.

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

130 (i) 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.

146 (j) 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.

149 (k) (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.

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

160 (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.

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

171 (m) As a condition of renewal of an osteopathic physician assistant license, 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 propose legislative rules for minimum continuing hours necessary for the renewal of a license. 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 the required written documentation shall result in the automatic suspension of any license as an osteopathic physician assistant until such time as the written documentation is submitted to and approved by the board.

187 (n) It is unlawful for any person who is not licensed 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 $2,000.

(o) 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 a state correctional facility for not less than one, nor more than two years, or be fined not more than $2,000, or both fined and imprisoned.

(p) An osteopathic physician assistant 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 propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the eligibility and extent to which such an osteopathic physician assistant may prescribe at the direction of the supervising physician. The rules 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, radiopharmaceuticals, general anesthetics and radiographic contrast materials. Drugs listed under Schedule III are limited to a seventy-two hour supply without refill. The rules 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 this section. The rules shall provide the maximum dosage an osteopathic physician assistant may prescribe.

(q) The rules 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 rules 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 rules 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 licensing period. Nothing in this subsection may be construed to permit an osteopathic physician 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 qualifications for employment as an assistant to an osteopathic physician and surgeon must be obtained from the Board of Osteopathy. The Board of Osteopathy shall license each qualified applicant for employment as an assistant to an osteopathic physician and surgeon upon submission of a job description, and shall provide for biennial renewal of the license. The board has the power to revoke or suspend any license of an assistant to an osteopathic physician and surgeon, for cause, after having given the person an opportunity to be heard in the manner provided by sections eight and nine, article one of this chapter.


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

(1) Establishing fees; and

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

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

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

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

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

(a) There is established a special volunteer osteopathic physician assistant license for osteopathic physician assistants retired or retiring from the active practice of osteopathy who wish to donate their expertise for the medical care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer osteopathic physician assistant license shall be issued by the West Virginia Board of Osteopathy to osteopathic physician assistants licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, shall be issued for and the remainder of the licensing period and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the osteopathic physician assistant’s acknowledgment that:
(1) The osteopathic physician assistant's practice under the special volunteer osteopathic physician assistant license will be exclusively devoted to providing osteopathic care to needy and indigent persons in West Virginia;

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

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

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

(b) Any osteopathic physician assistant who renders any osteopathic service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer osteopathic physician assistant license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation, is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the osteopathic service at the clinic unless the act or omission was the result of the osteopathic physician assistant's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the osteopathic physician assistant and the clinic pursuant to which the osteopathic physician assistant will provide voluntary uncompensated medical services under the control of the clinic to patients of the clinic before the rendering of any services by the osteopathic physician assistant at the clinic: Provided, That any clinic entering into such written
agreement is required to maintain liability coverage of not less than $1 million per occurrence.

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

(d) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure set out in this article and in the legislative rules promulgated thereunder. The term does not include the fee requirement set out in this article or legislative rules promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer osteopathic physician assistant license to any osteopathic physician assistant whose certificate, license or other authorization to practice is or has been subject to any disciplinary action, or to any osteopathic physician assistant who has surrendered an osteopathic physician assistant certificate, license or other authorization to practice, or caused such certificate, license or other authorization to practice to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her certificate, license or other authorization to practice, or who has elected to place an osteopathic physician assistant certificate, license or other authorization to practice in inactive status in lieu of having a complaint initiated or other action taken against his or her certificate, license or other authorization to practice, or who has been denied a certificate, license or other authorization to practice as an osteopathic physician assistant in any jurisdiction.
(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any osteopathic physician assistant covered under the provisions of this article, shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by an osteopathic physician assistant who holds a special volunteer osteopathic physician assistant license.
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 _________________________, 2010.

Governor
PRESENTED TO THE GOVERNOR

MAR 19 2010

Time 4:00 pm