WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 12

(Senator Stollings, original sponsor)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-4F-1, §16-4F-2, §16-4F-3, §16-4F-4 and §16-4F-5; to amend and reenact §30-3-14 and §30-3-16 of said code; to amend and reenact §30-5-3 of said code; to amend and reenact §30-7-15a of said code; to amend and reenact §30-14-11 of said code; and to amend and reenact §30-14A-1 of said code, all relating to treatment for a sexually transmitted disease; defining terms; permitting prescribing of antibiotics to sexual partners of a patient without a prior examination of the partner; requiring patient counseling; establishing counseling criteria; requiring information materials be prepared by the Department of Health and Human Resources; providing limited liability for providing expedited partnership therapy; requiring legislative rules regarding what is considered a sexually transmitted disease; and providing that physicians, physician assistants, pharmacists and advanced nurse practitioners are not subject to disciplinary action for providing certain treatment for sexually transmitted diseases for sexual partners of a patient.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-4F-1, §16-4F-2, §16-4F-3, §16-4F-4 and §16-4F-5; that §30-3-14 and §30-3-16 of said code be amended and reenacted; that §30-5-3 of said code be amended and reenacted; that §30-7-15a of said code be amended and reenacted; that §30-14-11 of said code be amended and reenacted; and that §30-14A-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4F. EXPEDITED PARTNER THERAPY.

§16-4F-1. Definitions.

As used in this article, unless the context otherwise indicates, the following terms have the following meanings:

(1) "Department" means the West Virginia Department of Health and Human Resources.

(2) "Expedited partner therapy" means prescribing, dispensing, furnishing or otherwise providing prescription antibiotic drugs to the sexual partner or partners of a person clinically diagnosed as infected with a sexually transmitted disease without physical examination of the partner or partners.

(3) "Health care professional" means:

(A) An allopathic physician licensed pursuant to the provisions of article three, chapter thirty of this code;

(B) An osteopathic physician licensed pursuant to article fourteen, chapter thirty of this code;
(C) A physician assistant licensed pursuant to the provisions of section sixteen, article three, chapter thirty of this code or article fourteen-a, chapter thirty of this code; 

(D) An advanced practice registered nurse authorized with prescriptive authority pursuant to the provisions of section fifteen-a, article seven, chapter thirty of this code; or 

(E) A pharmacist licensed pursuant to the provisions of article five, chapter thirty of this code. 

(4) “Sexually transmitted disease” means a disease that may be treated by expedited partner therapy as determined by rule of the department.

§16-4F-2. Expedited partner therapy. 

(a) Notwithstanding any other provision of law to the contrary, a health care professional who makes a clinical diagnosis of a sexually transmitted disease may, but is not required to, provide expedited partner therapy for the treatment of the sexually transmitted disease if in the judgment of the health care professional the sexual partner is unlikely or unable to present for comprehensive health care, including evaluation, testing and treatment for sexually transmitted diseases. Expedited partner therapy is limited to a sexual partner who may have been exposed to a sexually transmitted disease within the previous sixty days and who is able to be contacted by the patient. 

(b) Any health care professional who provides expedited partner therapy shall comply with all necessary provisions of article four of this chapter. 

(c) A health care professional who provides expedited partner therapy shall provide counseling for the patient,
including advice that all women and symptomatic persons,
and in particular women with symptoms suggestive of pelvic
inflammatory disease, are encouraged to seek medical
attention. The health care professional shall also provide in
written or electronic format materials provided by the
department to be given by the patient to his or her sexual
partner.

§16-4F-3. Informational materials.

(a) The department shall provide information and
technical assistance as appropriate to health care
professionals who provide expedited partner therapy. The
department shall develop and disseminate in electronic and
other formats the following written materials:

(1) Informational materials for sexual partners, as
described in subsection (c), section two of this article;

(2) Informational materials for persons who are
repeatedly diagnosed with sexually transmitted diseases; and

(3) Guidance for health care professionals on the safe and
effective provision of expedited partner therapy.

(b) The department may offer educational programs about
expedited partner therapy for health care professionals.

§16-4F-4. Limitation of liability; no requirement to fill
improper prescriptions.

(a) A health care professional who provides expedited
partner therapy in good faith without fee or compensation
under this article and provides counseling and written
materials as required in subsection (c), section two of this
article is not subject to civil or professional liability in
connection with the provision of the therapy, counseling and
materials, except in the case of gross negligence or willful
misconduct.

(b) A pharmacist or pharmacy is not required to fill a
prescription that would cause that pharmacist or pharmacy to
violate any provision of the provisions of article five, chapter
thirty of this code.

§16-4F-5. Rulemaking.

The Secretary of the Department of Health and Human
Resources shall propose rules for legislative approval in
accordance with the provisions of article three, chapter
twenty-nine-a of this code to designate certain diseases as
sexually transmitted diseases which may be treated by
expedited partner therapy. The department shall consider the
recommendations and classifications of the federal
Department of Health and Human Services, Centers for
Disease Control and Prevention and other nationally
recognized medical authorities in making these designations.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-14. Professional discipline of physicians and podiatrists;
reporting of information to board pertaining to
medical professional liability and professional
incompetence required; penalties; grounds for
license denial and discipline of physicians and
podiatrists; investigations; physical and mental
examinations; hearings; sanctions; summary
sanctions; reporting by the board; reapplication;
civil and criminal immunity; voluntary limitation
of license; probable cause determinations.
(a) The board may independently initiate disciplinary proceedings as well as initiate disciplinary proceedings based on information received from medical peer review committees, physicians, podiatrists, hospital administrators, professional societies and others.

The board may initiate investigations as to professional incompetence or other reasons for which a licensed physician or podiatrist may be adjudged unqualified based upon criminal convictions; complaints by citizens, pharmacists, physicians, podiatrists, peer review committees, hospital administrators, professional societies or others; or unfavorable outcomes arising out of medical professional liability. The board shall initiate an investigation if it receives notice that three or more judgments, or any combination of judgments and settlements resulting in five or more unfavorable outcomes arising from medical professional liability have been rendered or made against the physician or podiatrist within a five-year period. The board may not consider any judgments or settlements as conclusive evidence of professional incompetence or conclusive lack of qualification to practice.

(b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any physician or podiatrist known to that medical peer review committee. Copies of the requests for information from a medical peer review committee may be provided to the subject physician or podiatrist if, in the discretion of the board, the provision of such copies will not jeopardize the board's investigation. In the event that copies are provided, the subject physician or podiatrist is allowed fifteen days to comment on the requested information and such comments must be considered by the board.
The chief executive officer of every hospital shall, within sixty days after the completion of the hospital's formal disciplinary procedure and also within sixty days after the commencement of and again after the conclusion of any resulting legal action, report in writing to the board the name of any member of the medical staff or any other physician or podiatrist practicing in the hospital whose hospital privileges have been revoked, restricted, reduced or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any physician or podiatrist by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical professional liability, 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. Voluntary cessation of hospital privileges for reasons unrelated to professional competence or ethics need not be reported.

Any managed care organization operating in this state which provides a formal peer review process shall report in writing to the board, within sixty days after the completion of any formal peer review process and also within sixty days after the commencement of and again after the conclusion of any resulting legal action, the name of any physician or podiatrist whose credentialing has been revoked or not renewed by the managed care organization. The managed care organization shall also report in writing to the board any other disciplinary action taken against a physician or podiatrist relating to professional ethics, professional liability, moral turpitude or drug or alcohol abuse within sixty days after completion of a formal peer review process which results in the action taken by the managed care organization. For purposes of this subsection, "managed care organization"
means a plan that establishes, operates or maintains a network of health care providers who have entered into agreements with and been credentialed by the plan to provide health care services to enrollees or insureds to whom the plan has the ultimate obligation to arrange for the provision of or payment for health care services through organizational arrangements for ongoing quality assurance, utilization review programs or dispute resolutions.

Any professional society in this state comprised primarily of physicians or podiatrists which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, medical professional liability, moral turpitude or drug or alcohol abuse shall report in writing to the board within sixty days of a final decision the name of the member, together with all pertinent information relating to the action.

Every person, partnership, corporation, association, insurance company, professional society or other organization providing professional liability insurance to a physician or podiatrist in this state, including the State Board of Risk and Insurance Management, shall submit to the board the following information within thirty days from any judgment or settlement of a civil or medical professional liability action excepting product liability actions: The name of the insured; the date of any judgment or settlement; whether any appeal has been taken on the judgment and, if so, by which party; the amount of any settlement or judgment against the insured; and other information required by the board.

Within thirty days from the entry of an order by a court in a medical professional liability action or other civil action in which a physician or podiatrist licensed by the board is determined to have rendered health care services below the
applicable standard of care, the clerk of the court in which the
order was entered shall forward a certified copy of the order
to the board.

Within thirty days after a person known to be a physician
or podiatrist licensed or otherwise lawfully practicing
medicine and surgery or podiatry in this state or applying to
be licensed is convicted of a felony under the laws of this
state or of any crime under the laws of this state involving
alcohol or drugs in any way, including any controlled
substance under state or federal law, the clerk of the court of
record in which the conviction was entered shall forward to
the board a certified true and correct abstract of record of the
convicting court. The abstract shall include the name and
address of the physician or podiatrist or applicant, the nature
of the offense committed and the final judgment and sentence
of the court.

Upon a determination of the board that there is probable
cause to believe that any person, partnership, corporation,
association, insurance company, professional society or other
organization has failed or refused to make a report required
by this subsection, the board shall provide written notice to
the alleged violator stating the nature of the alleged violation
and the time and place at which the alleged violator shall
appear to show good cause why a civil penalty should not be
imposed. The hearing shall be conducted in accordance with
the provisions of article five, chapter twenty-nine-a of this
code. After reviewing the record of the hearing, if the board
determines that a violation of this subsection has occurred,
the board shall assess a civil penalty of not less than $1,000
nor more than $10,000 against the violator. The board shall
notify any person so assessed of the assessment in writing
and the notice shall specify the reasons for the assessment.
If the violator fails to pay the amount of the assessment to the
board within thirty days, the Attorney General may institute
136 a civil action in the circuit court of Kanawha County to
137 recover the amount of the assessment. In any civil action, the
138 court's review of the board's action shall be conducted in
139 accordance with the provisions of section four, article five,
140 chapter twenty-nine-a of this code. Notwithstanding any
141 other provision of this article to the contrary, when there are
142 conflicting views by recognized experts as to whether any
143 alleged conduct breaches an applicable standard of care, the
144 evidence must be clear and convincing before the board may
145 find that the physician or podiatrist has demonstrated a lack
146 of professional competence to practice with a reasonable
147 degree of skill and safety for patients.

148 Any person may report to the board relevant facts about
149 the conduct of any physician or podiatrist in this state which
150 in the opinion of that person amounts to medical professional
151 liability or professional incompetence.

152 The board shall provide forms for filing reports pursuant
153 to this section. Reports submitted in other forms shall be
154 accepted by the board.

155 The filing of a report with the board pursuant to any
156 provision of this article, any investigation by the board or any
157 disposition of a case by the board does not preclude any
158 action by a hospital, other health care facility or professional
159 society comprised primarily of physicians or podiatrists to
160 suspend, restrict or revoke the privileges or membership of
161 the physician or podiatrist.

162 (c) The board may deny an application for license or
163 other authorization to practice medicine and surgery or
164 podiatry in this state and may discipline a physician or
165 podiatrist licensed or otherwise lawfully practicing in this
166 state who, after a hearing, has been adjudged by the board as
167 unqualified due to any of the following reasons:
(1) Attempting to obtain, obtaining, renewing or attempting to renew a license to practice medicine and surgery or podiatry by bribery, fraudulent misrepresentation or through known error of the board;

(2) Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude or directly relates to the practice of medicine. Any plea of nolo contendere is a conviction for the purposes of this subdivision;

(3) False or deceptive advertising;

(4) Aiding, assisting, procuring or advising any unauthorized person to practice medicine and surgery or podiatry contrary to law;

(5) Making or filing a report that the person knows to be false; intentionally or negligently failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record required by state or federal law; or inducing another person to do any of the foregoing. The reports and records covered in this subdivision mean only those that are signed in the capacity as a licensed physician or podiatrist;

(6) Requesting, receiving or paying directly or indirectly a payment, rebate, refund, commission, credit or other form of profit or valuable consideration for the referral of patients to any person or entity in connection with providing medical or other health care services or clinical laboratory services, supplies of any kind, drugs, medication or any other medical goods, services or devices used in connection with medical or other health care services;

(7) Unprofessional conduct by any physician or podiatrist in referring a patient to any clinical laboratory or pharmacy in
which the physician or podiatrist has a proprietary interest
unless the physician or podiatrist discloses in writing such
interest to the patient. The written disclosure shall indicate that
the patient may choose any clinical laboratory for purposes of
having any laboratory work or assignment performed or any
pharmacy for purposes of purchasing any prescribed drug or
any other medical goods or devices used in connection with
medical or other health care services;

As used in this subdivision, "proprietary interest" does not
include an ownership interest in a building in which space is
leased to a clinical laboratory or pharmacy at the prevailing rate
under a lease arrangement that is not conditional upon the
income or gross receipts of the clinical laboratory or pharmacy;

(8) Exercising influence within a patient-physician
relationship for the purpose of engaging a patient in sexual
activity;

(9) Making a deceptive, untrue or fraudulent representation
in the practice of medicine and surgery or podiatry;

(10) Soliciting patients, either personally or by an agent,
through the use of fraud, intimidation or undue influence;

(11) Failing to keep written records justifying the course of
treatment of a patient, including, but not limited to, patient
histories, examination and test results and treatment rendered,
if any;

(12) Exercising influence on a patient in such a way as to
exploit the patient for financial gain of the physician or
podiatrist or of a third party. Any influence includes, but is
not limited to, the promotion or sale of services, goods,
appliances or drugs;
(13) Prescribing, dispensing, administering, mixing or otherwise preparing a prescription drug, including any controlled substance under state or federal law, other than in good faith and in a therapeutic manner in accordance with accepted medical standards and in the course of the physician’s or podiatrist’s professional practice. A physician who discharges his or her professional obligation to relieve the pain and suffering and promote the dignity and autonomy of dying patients in his or her care and, in so doing, exceeds the average dosage of a pain relieving controlled substance, as defined in Schedules II and III of the Uniform Controlled Substance Act, does not violate this article. A physician licensed under this chapter may not be disciplined for providing expedited partner therapy in accordance with the provisions of article four-f, chapter sixteen of this code;

(14) Performing any procedure or prescribing any therapy that, by the accepted standards of medical practice in the community, would constitute experimentation on human subjects without first obtaining full, informed and written consent;

(15) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the person knows or has reason to know he or she is not competent to perform;

(16) Delegating professional responsibilities to a person when the physician or podiatrist delegating the responsibilities knows or has reason to know that the person is not qualified by training, experience or licensure to perform them;

(17) Violating any provision of this article or a rule or order of the board or failing to comply with a subpoena or subpoena duces tecum issued by the board;
(18) Conspiring with any other person to commit an act or committing an act that would tend to coerce, intimidate or preclude another physician or podiatrist from lawfully advertising his or her services;

(19) Gross negligence in the use and control of prescription forms;

(20) Professional incompetence; or

(21) The inability to practice medicine and surgery or podiatry with reasonable skill and safety due to physical or mental impairment, including deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol. A physician or podiatrist adversely affected under this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that he or she may resume the competent practice of medicine and surgery or podiatry with reasonable skill and safety to patients. In any proceeding under this subdivision, neither the record of proceedings nor any orders entered by the board shall be used against the physician or podiatrist in any other proceeding.

(d) The board shall deny any application for a license or other authorization to practice medicine and surgery or podiatry in this state to any applicant who, and shall revoke the license of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere has
the same effect as a verdict or plea of guilt. Upon application of a physician that has had his or her license revoked because of a drug-related felony conviction, upon completion of any sentence of confinement, parole, probation or other court-ordered supervision and full satisfaction of any fines, judgments or other fees imposed by the sentencing court, the board may issue the applicant a new license upon a finding that the physician is, except for the underlying conviction, otherwise qualified to practice medicine: Provided, That the board may place whatever terms, conditions or limitations it deems appropriate upon a physician licensed pursuant to this subsection.

(e) The board may refer any cases coming to its attention to an appropriate committee of an appropriate professional organization for investigation and report. Except for complaints related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by bribery or fraudulent misrepresentation, any complaint filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of grounds for the complaint shall be dismissed: Provided, That in cases of conduct alleged to be part of a pattern of similar misconduct or professional incapacity that, if continued, would pose risks of a serious or substantial nature to the physician’s or podiatrist’s current patients, the investigating body may conduct a limited investigation related to the physician’s or podiatrist’s current capacity and qualification to practice and may recommend conditions, restrictions or limitations on the physician’s or podiatrist’s license to practice that it considers necessary for the protection of the public. Any report shall contain recommendations for any necessary disciplinary measures and shall be filed with the board within ninety days of any referral. The recommendations shall be considered by the board and the case may be further investigated by the board. The board
after full investigation shall take whatever action it considers appropriate, as provided in this section.

(f) The investigating body, as provided in subsection (e) of this section, may request and the board under any circumstances may require a physician or podiatrist or person applying for licensure or other authorization to practice medicine and surgery or podiatry in this state to submit to a physical or mental examination by a physician or physicians approved by the board. A physician or podiatrist submitting to an examination has the right, at his or her expense, to designate another physician to be present at the examination and make an independent report to the investigating body or the board. The expense of the examination shall be paid by the board. Any individual who applies for or accepts the privilege of practicing medicine and surgery or podiatry in this state is considered to have given his or her consent to submit to all examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication. If a person fails or refuses to submit to an examination under circumstances which the board finds are not beyond his or her control, failure or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry competently and in compliance with the standards of acceptable and prevailing medical practice.

(g) In addition to any other investigators it employs, the board may appoint one or more licensed physicians to act for it in investigating the conduct or competence of a physician.

(h) In every disciplinary or licensure denial action, the board shall furnish the physician or podiatrist or applicant with written notice setting out with particularity the reasons
for its action. Disciplinary and licensure denial hearings shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. However, hearings shall be heard upon sworn testimony and the rules of evidence for trial courts of record in this state shall apply to all hearings. A transcript of all hearings under this section shall be made, and the respondent may obtain a copy of the transcript at his or her expense. The physician or podiatrist has the right to defend against any charge by the introduction of evidence, the right to be represented by counsel, the right to present and cross examine witnesses and the right to have subpoenas and subpoenas duces tecum issued on his or her behalf for the attendance of witnesses and the production of documents. The board shall make all its final actions public. The order shall contain the terms of all action taken by the board.

(i) In disciplinary actions in which probable cause has been found by the board, the board shall, within twenty days of the date of service of the written notice of charges or sixty days prior to the date of the scheduled hearing, whichever is sooner, provide the respondent with the complete identity, address and telephone number of any person known to the board with knowledge about the facts of any of the charges; provide a copy of any statements in the possession of or under the control of the board; provide a list of proposed witnesses with addresses and telephone numbers, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing: Provided, That the board shall not be required to furnish or produce any materials which contain opinion work product information or would be
a violation of the attorney-client privilege. Within twenty
days of the date of service of the written notice of charges,
the board shall disclose any exculpatory evidence with a
continuing duty to do so throughout the disciplinary process.
Within thirty days of receipt of the board’s mandatory
discovery, the respondent shall provide the board with the
complete identity, address and telephone number of any
person known to the respondent with knowledge about the
facts of any of the charges; provide a list of proposed
witnesses with addresses and telephone numbers, to be called
at hearing, with a brief summary of his or her anticipated
testimony; provide disclosure of any trial expert pursuant to
the requirements of Rule 26(b)(4) of the West Virginia Rules
of Civil Procedure; provide inspection and copying of the
results of any reports of physical and mental examinations or
scientific tests or experiments; and provide a list and copy of
any proposed exhibit to be used at the hearing.

(j) Whenever it finds any person unqualified because of
any of the grounds set forth in subsection (c) of this section,
the board may enter an order imposing one or more of the
following:

(1) Deny his or her application for a license or other
authorization to practice medicine and surgery or podiatry;

(2) Administer a public reprimand;

(3) Suspend, limit or restrict his or her license or other
authorization to practice medicine and surgery or podiatry for
not more than five years, including limiting the practice of
that person to, or by the exclusion of, one or more areas of
practice, including limitations on practice privileges;

(4) Revoke his or her license or other authorization to
practice medicine and surgery or podiatry or to prescribe or
(5) Require him or her to submit to care, counseling or treatment designated by the board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry;

(6) Require him or her to participate in a program of education prescribed by the board;

(7) Require him or her to practice under the direction of a physician or podiatrist designated by the board for a specified period of time; and

(8) Assess a civil fine of not less than $1,000 nor more than $10,000.

(k) Notwithstanding the provisions of section eight, article one, chapter thirty of this code, if the board determines the evidence in its possession indicates that a physician’s or podiatrist’s continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may take any of the actions provided in subsection (j) of this section on a temporary basis and without a hearing if institution of proceedings for a hearing before the board are initiated simultaneously with the temporary action and begin within fifteen days of the action. The board shall render its decision within five days of the conclusion of a hearing under this subsection.

(l) Any person against whom disciplinary action is taken pursuant to the provisions of this article has the right to judicial review as provided in articles five and six, chapter twenty-nine-a of this code: Provided, That a circuit judge may also remand the matter to the board if it appears from
competent evidence presented to it in support of a motion for
remand that there is newly discovered evidence of such a
candidate as ought to produce an opposite result at a second
hearing on the merits before the board and:

(1) The evidence appears to have been discovered since
the board hearing; and

(2) The physician or podiatrist exercised due diligence in
asserting his or her evidence and that due diligence would not
have secured the newly discovered evidence prior to the appeal.

A person may not practice medicine and surgery or
podiatry or deliver health care services in violation of any
disciplinary order revoking, suspending or limiting his or her
license while any appeal is pending. Within sixty days, the
board shall report its final action regarding restriction,
limitation, suspension or revocation of the license of a
physician or podiatrist, limitation on practice privileges or
other disciplinary action against any physician or podiatrist
to all appropriate state agencies, appropriate licensed health
facilities and hospitals, insurance companies or associations
writing medical malpractice insurance in this state, the
American Medical Association, the American Podiatry
Association, professional societies of physicians or
podiatrists in the state and any entity responsible for the fiscal
administration of Medicare and Medicaid.

(m) Any person against whom disciplinary action has
been taken under the provisions of this article shall, at
reasonable intervals, be afforded an opportunity to
demonstrate that he or she can resume the practice of
medicine and surgery or podiatry on a general or limited
basis. At the conclusion of a suspension, limitation or
restriction period the physician or podiatrist may resume
practice if the board has so ordered.
(n) Any entity, organization or person, including the board, any member of the board, its agents or employees and any entity or organization or its members referred to in this article, any insurer, its agents or employees, a medical peer review committee and a hospital governing board, its members or any committee appointed by it acting without malice and without gross negligence in making any report or other information available to the board or a medical peer review committee pursuant to law and any person acting without malice and without gross negligence who assists in the organization, investigation or preparation of any such report or information or assists the board or a hospital governing body or any committee in carrying out any of its duties or functions provided by law is immune from civil or criminal liability, except that the unlawful disclosure of confidential information possessed by the board is a misdemeanor as provided in this article.

(o) A physician or podiatrist may request in writing to the board a limitation on or the surrendering of his or her license to practice medicine and surgery or podiatry or other appropriate sanction as provided in this section. The board may grant the request and, if it considers it appropriate, may waive the commencement or continuation of other proceedings under this section. A physician or podiatrist whose license is limited or surrendered or against whom other action is taken under this subsection may, at reasonable intervals, petition for removal of any restriction or limitation on or for reinstatement of his or her license to practice medicine and surgery or podiatry.

(p) In every case considered by the board under this article regarding discipline or licensure, whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to

substantiate charges of disqualification due to any reason set forth in subsection (c) of this section. If probable cause is found to exist, all proceedings on the charges shall be open to the public who are entitled to all reports, records and nondeliberative materials introduced at the hearing, including the record of the final action taken: *Provided, That any medical records, which were introduced at the hearing and which pertain to a person who has not expressly waived his or her right to the confidentiality of the records, may not be open to the public nor is the public entitled to the records.*

(q) If the board receives notice that a physician or podiatrist has been subjected to disciplinary action or has had his or her credentials suspended or revoked by the board, a hospital or a professional society, as defined in subsection (b) of this section, for three or more incidents during a five-year period, the board shall require the physician or podiatrist to practice under the direction of a physician or podiatrist designated by the board for a specified period of time to be established by the board.

(r) Notwithstanding any other provisions of this article, the board may, at any time, on its own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the West Virginia State Bar’s mediator referral service of certified mediators with expertise in professional disciplinary matters. The board and the physician or podiatrist may choose a mediator from that list. If the board and the physician or podiatrist are unable to agree on a mediator, the board shall designate a mediator from the list by neutral rotation. The mediation shall not be considered a proceeding open to the public and any reports and records introduced at the mediation shall not become part of the public record. The mediator and all participants in the mediation shall maintain
and preserve the confidentiality of all mediation proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the disciplinary or licensure matter mediated: Provided, That any confidentiality agreement and any written agreement made and signed by the parties as a result of mediation may be used in any proceedings subsequently instituted to enforce the written agreement. The agreements may be used in other proceedings if the parties agree in writing.

§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.

(a) As used in this section:

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

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

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

(4) "Physician assistant-midwife" means a physician
assistant who meets all qualifications set forth under
subdivision (3) of this subsection and fulfills the requirements
set forth in subsection (d) of this section, is subject to all
provisions of this section and assists in the management and
care of a woman and her infant during the prenatal, delivery
and post-natal periods; and

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

(b) The board shall promulgate rules pursuant to the
provisions of article three, chapter twenty-nine-a of this code
governing the extent to which physician assistants may
function in this state. The rules shall provide that the
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 a
physician permanently licensed in this state but that
supervision and control does not require the personal
presence of the supervising physician at the place or places
where services are rendered if the physician assistant's
normal place of employment is on the premises of the
supervising physician. The supervising physician may send
the physician assistant off the premises to perform duties
under his or her direction but a separate place of work for the
physician assistant may not be established. In promulgating
the rules, the board shall allow the physician assistant to
perform those procedures and examinations and, in the case of certain authorized physician assistants, to prescribe at the direction of his or her supervising physician, in accordance with subsection (r) of this section, those categories of drugs submitted to it in the job description required by this section. Certain authorized physician assistants may pronounce death in accordance with the rules proposed by the board which receive legislative approval. The board shall compile and publish an annual report that includes a list of currently licensed physician assistants and their supervising physician(s) and location in the state.

(c) The board shall license as a physician assistant any person who files an application together with a proposed job description and furnishes satisfactory evidence to it 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 certifying examination for a primary care physician assistant administered by the National Commission on Certification of Physician Assistants and has maintained certification by that commission so as to be currently certified;

(3) Is of good moral character; and

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

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

(1) Is a graduate of a school of midwifery accredited by the American College of Nurse-Midwives;
(2) Has passed an examination approved by the board; and

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

(e) The board may license as a physician assistant any person who files an application together with a proposed job description and furnishes satisfactory evidence that he or she is of good moral character and meets either of the following standards:

(1) He or she is a graduate of an approved program of instruction in primary health care or surgery prior to July 1, 1994, and has passed the certifying examination for a physician assistant administered by the National Commission on Certification of Physician Assistants and has maintained certification by that commission so as to be currently certified; or

(2) He or she had been certified by the board as a physician assistant then classified as Type B prior to July 1, 1983.

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

(g) When a graduate of an approved program who has successfully passed the National Commission on Certification of Physician Assistants' certifying examination submits an application to the board for a physician assistant license, accompanied by a job description as referenced by this section, and a $50 temporary license fee, and the application
is complete, the board shall issue to that applicant a
temporary license allowing that applicant to function as a
physician assistant.

(h) When a graduate of an approved program submits an
application to the board for a physician assistant license,
accompanied by a job description as referenced by this
section, and a $50 temporary license fee, and the application
is complete, the board shall issue to the applicant a temporary
license allowing the applicant to function as a physician
assistant until the applicant successfully passes the National
Commission on Certification of Physician Assistants’
certifying examination so long as the applicant sits for and
obtains a passing score on the examination next offered
following graduation from the approved program.

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

(j) A physician assistant who has not been certified by the
National Commission on Certification of Physician Assistants
will be restricted to work under the direct supervision of the
supervising physician.

(k) A physician assistant who has been issued a
temporary license shall, within thirty days of receipt of
written notice from the National Commission on Certification
of Physician Assistants of his or her performance on the
certifying examination, notify the board in writing of his or
her results. In the event of failure of that examination, the
temporary license shall terminate automatically and the board
shall so notify the physician assistant in writing.

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

(m) A physician applying to the board to supervise a physician assistant shall affirm that the range of medical services set forth in the physician assistant’s job description are consistent with the skills and training of the supervising physician and the physician assistant. Before a physician assistant can be employed or otherwise use his or her skills, the supervising physician and the physician assistant 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 the assistant an opportunity to be heard in the manner provided by article five, chapter twenty-nine-a of this code and as set forth in rules duly adopted by the board.

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

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

(p) 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 after the commencement and conclusion of any resulting legal action, the name of any 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 the action. The health care facility shall also report any other formal disciplinary action taken against any 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.

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

(r) A 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. A fee of $50 will be charged for prescription-writing privileges. The board shall promulgate
rules pursuant to the provisions of article three, chapter
twenty-nine-a of this code governing the eligibility and extent
to which a physician assistant may prescribe at the direction
of the supervising physician. The rules shall include, but not
be limited to, the following:

(1) Provisions and restrictions for approving a state
formulary classifying pharmacologic categories of drugs that
may be prescribed by a physician assistant are as follows:

(A) Schedules I and II of the Uniform Controlled
Substances Act, antineoplastic, radiopharmaceuticals, general
anesthetics and radiographic contrast materials shall be
excluded from the formulary;

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

(C) In addition to the above referenced provisions and
restrictions and at the direction of a supervising physician,
the rules shall permit the prescribing of an annual supply of
any drug, with the exception of controlled substances, which
is prescribed for the treatment of a chronic condition, other
than chronic pain management. For the purposes of this
section, a “chronic condition” is a condition which lasts three
months or more, generally cannot be prevented by vaccines,
can be controlled but not cured by medication and does not
generally disappear. These conditions, with the exception of
chronic pain, include, but are not limited to, arthritis, asthma,
cardiocvascular disease, cancer, diabetes, epilepsy and
seizures and obesity. The prescriber authorized in this
section shall note on the prescription the chronic disease
being treated.

(D) Categories of other drugs may be excluded as
determined by the board.
(2) All pharmacological categories of drugs to be prescribed by a physician assistant shall be listed in each job description submitted to the board as required in subsection (i) of this section;

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

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

(5) A requirement that to maintain prescription privileges, a physician assistant shall continue to maintain national certification as a physician assistant and, in meeting the 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 permits a physician assistant to independently prescribe or dispense drugs; and

(6) A provision that a physician assistant licensed under this chapter may not be disciplined for providing expedited partner therapy in accordance with the provisions of article four-f, chapter sixteen of this code.

(s) A supervising physician may not supervise at any one time more than three full-time physician assistants or their equivalent, except that a physician may supervise up to four hospital-employed physician assistants. No physician shall supervise more than four physician assistants at any one time.
(t) A physician assistant may not sign any prescription, except in the case of an authorized physician assistant at the direction of his or her supervising physician in accordance with the provisions of subsection (r) of this section. A physician assistant may not perform any service that his or her supervising physician is not qualified to perform. A physician assistant may not perform any service that is not included in his or her job description and approved by the board as provided in this section.

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

(v) Each application for licensure submitted by a licensed supervising physician under this section is to be accompanied by a fee of $200. A fee of $100 is to be charged for the biennial renewal of the license. A fee of $50 is to be charged for any change or addition of supervising physician or change or addition of job location. A fee of $50 will be charged for prescriptive writing privileges.

(w) As a condition of renewal of physician assistant license, each physician assistant shall provide written documentation of participation in and successful completion during the preceding two-year period of continuing education, in the number of hours specified by the board by rule, designated as Category I by the American Medical Association, American Academy of Physician Assistants or the Academy of Family Physicians and continuing education, in the number of hours specified by the board by rule, designated as Category II by the Association or either Academy.
(x) Notwithstanding any provision of this chapter to the contrary, failure to timely submit the required written documentation results in the automatic expiration of any license as a physician assistant until the written documentation is submitted to and approved by the board.

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

1. Provide certification with supporting written documentation of the successful completion of the required continuing education;

2. Pay a renewal fee; and

3. Pay a reinstatement fee equal to fifty percent of the renewal fee.

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

1. Apply for a new license;

2. Provide certification with supporting written documentation of the successful completion of the required continuing education; and

3. Pay such fees as determined by the board.

(aa) It is unlawful for any physician assistant to represent to any person that he or she is a physician, surgeon or podiatrist. A 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.

(bb) All physician assistants holding valid certificates issued by the board prior to July 1, 1992, are licensed under this section.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-3. When licensed pharmacist required; person not licensed pharmacist, pharmacy technician or licensed intern not to compound prescriptions or dispense poisons or narcotics; licensure of interns; prohibiting the dispensing of prescription orders in absence of practitioner-patient relationship.

1. (a) It is unlawful for any person not a pharmacist, or who does not employ a pharmacist, to conduct any pharmacy or store for the purpose of retailing, compounding or dispensing prescription drugs or prescription devices.

(b) It is unlawful for the proprietor of any store or pharmacy, any "ambulatory health care facility", as that term is defined in section one, article five-b, chapter sixteen of this code, that offers pharmaceutical care, or a facility operated to provide health care or mental health care services free of charge or at a reduced rate and that operates a charitable clinic pharmacy to permit any person not a pharmacist to compound or dispense prescriptions or prescription refills or to retail or dispense the poisons and narcotic drugs named in sections two, three and six, article eight, chapter sixteen of this code: Provided, That a licensed intern may compound and dispense prescriptions or prescription refills under the direct supervision of a pharmacist: Provided, however, That
registered pharmacy technicians may assist in the preparation
and dispensing of prescriptions or prescription refills,
including, but not limited to, reconstitution of liquid
medications, typing and affixing labels under the direct
supervision of a licensed pharmacist.

(c) It is the duty of a pharmacist or employer who
employs an intern to license the intern with the board within
ninety days after employment. The board shall furnish proper
forms for this purpose and shall issue a certificate to the
intern upon licensure.

(d) The experience requirement for licensure as a
pharmacist shall be computed from the date certified by the
supervising pharmacist as the date of entering the internship.
If the internship is not registered with the Board of Pharmacy,
then the intern shall receive no credit for the experience when
he or she makes application for examination for licensure as
a pharmacist: Provided, That credit may be given for the
unregistered experience if an appeal is made and evidence
produced showing experience was obtained but not registered
and that failure to register the internship experience was not
the fault of the intern.

(e) An intern having served part or all of his or her
internship in a pharmacy in another state or foreign country
shall be given credit for the same when the affidavit of his or
her internship is signed by the pharmacist under whom he or
she served, and it shows the dates and number of hours
served in the internship and when the affidavit is attested by
the secretary of the State Board of Pharmacy of the state or
country where the internship was served.

(f) Up to one third of the experience requirement for
licensure as a pharmacist may be fulfilled by an internship in
a foreign country.
(g) No pharmacist may compound or dispense any prescription order when he or she has knowledge that the prescription was issued by a practitioner without establishing a valid practitioner-patient relationship. An online or telephonic evaluation by questionnaire, or an online or telephonic consultation, is inadequate to establish a valid practitioner-patient relationship: Provided, That this prohibition does not apply:

(1) In a documented emergency;

(2) In an on-call or cross-coverage situation;

(3) For the treatment of sexually transmitted diseases by expedited partner therapy as set forth in article four-f, chapter sixteen of this code; or

(4) Where patient care is rendered in consultation with another practitioner who has an ongoing relationship with the patient and who has agreed to supervise the patient's treatment, including the use of any prescribed medications.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-15a. Prescriptive authority for prescription drugs; coordination with Board of Pharmacy.

(a) The board may, in its discretion, authorize an advanced practice registered nurse to prescribe prescription drugs in a collaborative relationship with a physician licensed to practice in West Virginia and in accordance with applicable state and federal laws. An authorized advanced practice registered nurse may write or sign prescriptions or transmit prescriptions verbally or by other means of communication.
(b) For purposes of this section an agreement to a collaborative relationship for prescriptive practice between a physician and an advanced practice registered nurse shall be set forth in writing. Verification of the agreement shall be filed with the board by the advanced practice registered nurse. The board shall forward a copy of the verification to the Board of Medicine and the Board of Osteopathic Medicine. Collaborative agreements shall include, but are not limited to, the following:

1. Mutually agreed upon written guidelines or protocols for prescriptive authority as it applies to the advanced practice registered nurse's clinical practice;

2. Statements describing the individual and shared responsibilities of the advanced practice registered nurse and the physician pursuant to the collaborative agreement between them;

3. Periodic and joint evaluation of prescriptive practice;

4. Periodic and joint review and updating of the written guidelines or protocols.

(c) The board shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code governing the eligibility and extent to which an advanced practice registered nurse may prescribe drugs. Such rules shall provide, at a minimum, a state formulary classifying those categories of drugs which shall not be prescribed by advanced practice registered nurse including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals and general anesthetics. Drugs listed under Schedule III shall be limited to a 72-hour supply
without refill. The rules shall also include a provision that
advanced nurse practitioners licensed under this chapter may
not be disciplined for providing expedited partner therapy in
accordance with the provisions of article four-f, chapter
sixteen of this code. In addition to the above-referenced
provisions and restrictions and pursuant to a collaborative
agreement as set forth in subsections (a) and (b) of this
section, the rules shall permit the prescribing of an annual
supply of any drug, with the exception of controlled
substances, which is prescribed for the treatment of a chronic
condition, other than chronic pain management. For the
purposes of this section, a “chronic condition” is a condition
which lasts three months or more, generally cannot be
prevented by vaccines, can be controlled but not cured by
medication and does not generally disappear. These
conditions, with the exception of chronic pain, include, but
are not limited to, arthritis, asthma, cardiovascular disease,
cancer, diabetes, epilepsy and seizures and obesity. The
prescriber authorized in this section shall note on the
prescription the chronic disease being treated.

(d) The board shall consult with other appropriate boards
for the development of the formulary.

(e) The board shall transmit to the Board of Pharmacy a
list of all advanced practice registered nurses with
prescriptive authority. The list shall include:

(1) The name of the authorized advanced practice
registered nurse;

(2) The prescriber’s identification number assigned by the
board; and

(3) The effective date of prescriptive authority.
ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-11. Refusal, suspension or revocation of license; suspension or revocation of certificate of authorization.

(a) The board may either refuse to issue or may suspend or revoke any license for any one or more of the following causes:

1. Conviction of a felony, as shown by a certified copy of the record of the trial court;
2. Conviction of a misdemeanor involving moral turpitude;
3. Violation of any provision of this article regulating the practice of osteopathic physicians and surgeons;
4. Fraud, misrepresentation or deceit in procuring or attempting to procure admission to practice;
5. Gross malpractice;
6. Advertising by means of knowingly false or deceptive statements;
7. Advertising, practicing or attempting to practice under a name other than one's own;
8. Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs.

(b) The board shall also have the power to suspend or revoke for cause any certificate of authorization issued by it.
21 It shall have the power to reinstate any certificate of
22 authorization suspended or revoked by it.

23 (c) An osteopathic physician licensed under this chapter
24 may not be disciplined for providing expedited partner
25 therapy in accordance with the provisions of article four-f,
26 chapter sixteen of this code.

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, are licensed under the provisions of this article, but 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 an 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;

(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; and

(4) An osteopathic physician assistant may not be disciplined for providing expedited partner therapy in accordance with the provisions of article four-f, chapter sixteen of this code.

(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 a 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 a graduate of an approved program submits an application to the board, accompanied by a job description 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) An 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 a license of an assistant to a physician for cause, after giving the 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 but 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.

(h) The acts or omissions of an osteopathic physician assistant employed by health care facilities providing in-patient 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.

(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 after the commencement and the conclusion of any resulting legal action, the name of an 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 an 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.

(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.

(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.

(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 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.

(l) An application for license or renewal of license shall be accompanied by payment of a fee established by legislative rule of the Board of Osteopathy pursuant to the provisions of article three, chapter twenty-nine-a of this code.
(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 physicians. 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 results in the automatic suspension of a license as an osteopathic physician assistant until the written documentation is submitted to and approved by the board.

(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. A 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 an osteopathic physician assistant to represent to any person that he or she is a physician. A 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 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 include, but are not limited to, Schedules I and II of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals, general anesthetics and radiographic contrast materials. Drugs listed under Schedule III are limited to a 72-hour supply without refill. In addition to the above-referenced provisions and restrictions and at the direction of a supervising physician, the rules shall permit the prescribing an annual supply of any drug other than controlled substances which is prescribed for the treatment of a chronic condition other than chronic pain management. For the purposes of this section, a “chronic condition” is a condition which last three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication and does not generally disappear. These conditions include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures and obesity. The prescriber authorized in this section shall note on the prescription the condition for which the patient is being treated. The rules shall provide that all pharmacological categories of drugs to be prescribed by an osteopathic physician assistant 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)(1) The rules shall provide that to be eligible for such prescription privileges, an osteopathic physician assistant must:
(A) Submit an application to the board for prescription privileges;

(B) Have performed patient care services for a minimum of two years immediately preceding the application; and

(C) Have successfully completed an accredited course of instruction in clinical pharmacology approved by the board.

(2) The rules shall provide that to maintain prescription privileges, an osteopathic physician assistant shall:

(A) Continue to maintain national certification as an osteopathic physician assistant; and

(B) Complete a minimum of ten hours of continuing education in rational drug therapy in each licensing period.

(3) Nothing in this subsection permits an osteopathic physician assistant to independently prescribe or dispense drugs.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Member, Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within was presented this the Day of March, 2014.

[Signature]
Governor