

WEST VIRGINIA
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Board of Medicine TITLE NUMBER: 11

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series IB

TITLE OF RULE BEING AMENDED: Certification, Disciplinary and
Complaint Procedures: Physician Assistants

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 637

SECTION 64-9-16 (h), PASSED ON March 9, 1991

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: July 1, 1991



2175-1 11/2/91

WEST VIRGINIA LEGISLATIVE RULES
WEST VIRGINIA BOARD OF MEDICINE
CHAPTER 30-3
SERIES 1B

TITLE: Certification, Disciplinary and Complaint Procedures,
Physician Assistants.

§11-1B-1. General.

- 1.1. Scope. -- West Virginia Code §30-3-16(b) requires the Board of Medicine to adopt rules governing the extent to which physician assistants may function in this State.
- 1.2. Authority. -- West Virginia Code §30-3-16(b).
- 1.3. Filing Date. --
- 1.4. Effective Date. --
- 1.5. Repeal of former rule. -- These legislative rules repeal and replace 11 CSR 1 "Licensing, Disciplinary and Complaint Procedures; Podiatry; Physician Assistants" legislative rules that were filed on April 28, 1986, and became effective on April 28, 1986.

§11-1B-2. Regulations For Physician Assistants.

- 2.1. For purposes of this section, the following definitions shall be in effect:
 - (a) Certification -- The approval of individuals by the Board to serve as physician assistants. It shall also mean the approval of programs by the Board for the training and education of physician assistants.
 - (b) Crimes involving moral turpitude. -- Those crimes which have dishonesty as a fundamental and necessary element; including, but not limited to, crimes involving theft, embezzlement, false swearing perjury, fraud or misrepresentation.
 - (c) NCCPA. --The National Commission on the Certification of Physician Assistants.

- (d) Protocol. -- Written treatment instructions prepared by a supervising physician for use by a physician assistant. Such instructions should be flexible, in accordance with the setting where the physician assistant is employed.
- (e) Satellite operation. -- An office or clinic separate and apart from the office of the supervising physician, established by the physician and manned in part by a physician assistant.
- (f) Supervision. -- The opportunity or ability of the physician to provide or exercise control and direction over the services of physician assistants. Constant physical presence of the supervising physician of a physician assistant certified by the NCCPA is not required so long as the supervising physician and the physician assistant are or can easily be in contact with each other by radio, telephone or telecommunication. Supervision requires the availability of the supervising physician. An appropriate degree of supervision includes:
 - (1) The active and continuing overview of the physician assistant's activities to determine that the supervising physician's directions are being implemented;
 - (2) The availability of the supervising physician to the physician assistant for all necessary consultations;
 - (3) Personal and regular (at least weekly) review by the supervising physician of the patient records upon which entries are made by the physician assistant; and
 - (4) Periodic (at least monthly) education and review sessions discussing specific conditions, protocols, procedures and specific patients, held by the supervising physician for the physician assistant under his or her supervision.

In the case of a physician assistant who has not been certified by the NCCPA, the presence of the supervising physician or alternate supervising physician is required on the premises where the noncertified physician assistant performs delegated medical tasks.

- 2.2. Employment of physician assistants by licensed physician; services that may be performed by physician assistants.
 - (a) A physician fully licensed under chapter thirty of the Code of West Virginia may submit a job description to the Board to employ a physician assistant.
 - (b) The delegation of certain acts to a physician assistant shall be stated on the job description in a manner consistent with sound medical practice and with the protection of the health and safety of the patient in mind. Such services shall be limited to those which are educational, diagnostic, therapeutic or preventive in nature and may, according to the standards set by his or her supervising physician, allow the physician assistant to formulate a provisional diagnosis and treatment plan which may be set by standard protocols of his or her supervising physician and are under his or her direction.
- 2.3. Submission of application; job description. -- An application completed by the applicant and a job description written and signed by the supervising physician listing in numerical order the duties which will be performed by the assistant must be in the office of the Board of Medicine, 101 Dee Drive, Charleston, West Virginia 25311, thirty (30) days prior to a Board meeting. Meetings are held bimonthly or as needed, beginning in January. The filing of an application and job description does not entitle a physician assistant to certification. The only legal authority for such approval must be given by the Board.
- 2.4. Annual report of physician assistant's performance; annual report of the Board. -- Physician assistants and their supervising physicians must submit annual signed reports either individually or combined, on the

professional conduct, capabilities and performance of the physician assistant. Said report must accompany each application for recertification and must be submitted to the office of the Board by April 1. In addition thereto, the Board shall compile and publish an annual report that includes a list of currently certified physician assistants, their employers and location in the state and a list of approved programs in West Virginia, the number of graduates per year of such approved program and the number of physician assistants from other states' approved programs practicing in West Virginia.

- 2.5. Supervision and control of physician assistant. -- The physician assistant, whether employed by a health care facility or the supervising physician, shall perform only under the supervision and control of the supervising physician. Supervision and control of a physician assistant certified by the NCCPA requires the availability of a physician for consultation and direction of the actions of the assistant, but does not necessarily require the personal presence of the supervising physician at the place or places where services are rendered, if the physician assistant certified by the NCCPA is performing (specified) duties at the direction of the supervising physician. In the case of a physician assistant who has not been certified by the NCCPA, the presence of the supervising physician or alternate supervising physician on the premises where the noncertified assistant performs delegated medical tests is required. The physician assistant may function in any setting within which the supervising physician routinely practices, but in no instance shall a separate place of work for the physician assistant be established. The supervising physician shall be a physician permanently licensed in this State.
- 2.6. Limitations on employment and scope of duties of physician assistants.
- (a) A supervising physician shall not employ at any one time more than two (2) physician assistants.
 - (b) A physician assistant shall not sign prescriptions except in the case of certain authorized physician assistants.

- (c) A physician assistant shall not perform any services which his or her supervising physician is not qualified to perform.
- (d) A physician assistant may sign orders to be countersigned later by his or her supervising physician: Provided, That they are not in conflict with hospital regulations.
- (e) A physician assistant shall not perform any services which are not included in his or her job description and approved by the Board.

2.7. Identification of physician assistant. --When functioning as a physician assistant, the physician assistant shall wear a name tag which identifies the physician assistant as a physician assistant and which also specifies the type of classification of such assistant and the name of his or her supervising physician.

2.8. Supervising physician; responsibilities.

- (a) The supervising physician shall be responsible for observing, directing and evaluating the work, records and practices performed by the physician assistant.
- (b) It shall be the responsibility of the supervising physician to obtain consent in writing from the patient before physician assistants employed in a satellite clinic may render general medical or surgical services, except in emergencies.
- (c) The supervising physician shall notify the Board in writing of any termination of the employment of his or her physician assistant within ten (10) days of said termination.
- (d) The legal responsibility for any physician assistant shall remain that of the supervising physician at all times.

2.9. The certification of physician assistants shall be restricted, suspended or revoked by the Board in accordance with the alternatives set out at West Virginia Code §30-3-14(i) when, after due notice and a

hearing in accordance with the manner and form prescribed by the contested case hearing procedure, West Virginia Code §29A-5-1 et seq. and regulations of the Board set out at 11 CSR 3 it is found:

- (a) That the assistant has held himself or herself out or permitted another person to represent him or her as a licensed physician.
- (b) That the assistant has in fact performed other than at the direction and under the supervision of a supervising physician licensed by the Board;
- (c) That the assistant has been delegated and performed a task or tasks beyond his or her competence and not in accordance with his or her job description as approved by the Board;
- (d) That the assistant is a habitual user of intoxicants or drugs to such an extent that he or she is unable to safely perform as an assistant to the physician.
- (e) That the assistant has been convicted in any court, state or federal, of any felony or other criminal offense involving moral turpitude;
- (f) That the assistant has been adjudicated a mental incompetent or his mental condition renders him or her unable to safely perform as an assistant to a physician.
- (g) That the assistant has failed to comply with any of the provisions of these regulations or the West Virginia Medical Practice Act;
- (h) That the assistant is guilty of unprofessional conduct which includes, but is not limited to, the following:
 - (1) Misrepresentation or concealment of material fact in obtaining a certificate or a reinstatement thereof;
 - (2) The commission of an offense against any provision of state law related to the

practice of physician assistant, or any rule or regulation promulgated thereunder;

- (3) The commission of any act involving moral turpitude, dishonesty or corruption, when such act directly or indirectly affects the health, welfare or safety of citizens of this State. If the act constitutes a crime, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action;
- (4) Conviction of a felony, as defined under the laws of this State or under the laws of any other state, territory or country;
- (5) Misconduct in his or her practice as a physician assistant or performing tasks fraudulently, beyond his or her authorized scope, with incompetence or with negligence on a particular occasion or negligence on repeated occasions;
- (6) Performing tasks as a physician assistant while the ability to do so is impaired by alcohol, drugs, physical disability or mental instability;
- (7) Impersonation of a licensed physician or another certified physician assistant;
- (8) Offering, undertaking or agreeing to cure or treat disease by a secret method, procedure, treatment or medicine; treating or prescribing for any human condition by a method, means or procedure which the physician assistant refuses to divulge upon demand of the Board; or using such methods or treatment processes not accepted by a reasonable segment of the medical profession.
- (9) Prescribing a prescription drug, including any controlled substance under state or federal law, other than in good faith and a therapeutic manner in accordance with accepted medical standards;

- (10) Prescribing a controlled substance under state or federal law, to or for himself or herself, or to or for any member of his or her immediate family;
- (11) Prescribing a prescription drug, including any controlled substance under state or federal law, which is not included in the approved job description for that physician assistant or which is not included in the approved state formulary for physician assistants.

2.10. Denial of certification of physician assistant. Whenever the Board determines that an applicant has failed to satisfy the Board that he or she should be certified, the Board shall immediately notify such applicant of its decision and indicate in what respect the applicant has failed to satisfy the Board. Such applicant shall be given a formal hearing before the Board upon request of such applicant filed with or mailed by registered mail to the Secretary of the Board at Charleston, West Virginia, which request must be filed within thirty (30) days after receipt of the Board's decision, stating the reasons for such request. The Board shall within twenty (20) days of receipt of such request, notify such applicant of the time and place of a public hearing, which shall be held within a reasonable time. The burden of satisfying the Board of his or her qualifications for certification shall be upon the applicant. Following such hearing, the Board shall determine on the basis of these regulations whether the applicant is qualified to be certified, and this decision of the Board shall be final as to that application.

2.11. Disciplinary procedures. -- The disciplinary process and procedures set forth in the contested case hearing procedure, West Virginia Code §29A-5-1 et seq. and in regulations of the Board set out at 11 CSR 3 also apply to disciplinary actions instituted against physician assistants with the same provisions regarding the appeal of decisions made to circuit courts.

2.12. Physician assistant utilization.

(a) The physician assistant shall, under appropriate direction and supervision by a physician, augment the physician's data gathering abilities in order to assist the supervising physician in reaching decisions and instituting care plans for the physician's patients. A Type 'A' physician assistant shall have, as a minimum, the knowledge and competency to perform the following functions and may under appropriate supervision perform them; this list is not intended to be specific or all-inclusive:

- (1) Screen patients to determine the need for medical attention.
- (2) Review patient records to determine health status.
- (3) Take a patient history.
- (4) Perform a physical examination.
- (5) Perform development screening examinations on children.
- (6) Record pertinent patient data.
- (7) Make decisions regarding data gathering and appropriate management and treatment of patients being seen for the initial evaluation of a problem or the follow-up evaluation of a previously diagnosed and stabilized condition.
- (8) Prepare patient summaries.
- (9) Initiate requests for commonly performed initial laboratory studies.
- (10) Collect specimens for and carry out commonly performed blood, urine and stool analyses and cultures.

- (11) Identify normal and abnormal findings in history physical examination and commonly performed laboratory studies.
 - (12) Initiate appropriate evaluation and emergency management for emergency situations; for example, cardiac arrest, respiratory distress, injuries, burns and hemorrhage.
 - (13) Perform clinical procedures such as:
 - (A) Venipuncture;
 - (B) Electrocardiogram;
 - (C) Care and suturing of minor lacerations;
 - (D) Casting and splinting;
 - (E) Control of external hemorrhage;
 - (F) Application of dressings and bandages;
 - (G) Removal of superficial foreign bodies
 - (H) Cardiopulmonary resuscitation;
 - (I) Audiometry screening;
 - (J) Visual screening; and
 - (K) Carry out aseptic and isolation techniques.
 - (14) Provide counseling and instruction regarding common patient problems.
- (b) The tasks a physician assistant may perform are those which require technical skill, execution of standing orders, routine patient care tasks and such diagnostic and therapeutic procedures as the supervising physician may wish to delegate to the physician assistant after the supervising physician has satisfied himself or herself as to the ability and competence of the physician assistant. The supervising physician may, with due regard for the safety of the patient and in

keeping with sound medical practice, delegate to the physician assistant such medical procedures and other tasks as are usually performed within the normal scope of the supervising physician's practice, subject to the limitations set forth in this section and the West Virginia Medical Practice Act and the training and expertise of the physician assistant.

- (c) A supervising physician shall not permit a physician assistant to independently practice medicine. Supervision must be maintained at all times.
- (d) A physician assistant shall not:
 - (1) Maintain or manage an office separate and apart from the supervising physician's primary office for treating patients, unless the Board has granted the supervising physician specific permission to establish a satellite operation;
 - (2) Independently bill patients for services provided;
 - (3) Independently delegate a task assigned to him or her by his or her supervising physician to another individual;
 - (4) Perform acupuncture in any form; or
 - (5) Pronounce a patient dead in any setting.
- (e) The supervising physician shall monitor and supervise the activities of the physician assistant and require documentation, including organized medical records with symptoms, pertinent physical findings, impressions and treatment plans indicated. The supervising physician shall also provide written protocols for the use of the physician assistant in the performance of delegated tasks. Such established protocols shall be available for public inspection upon request and may be reviewed by the Board as required.

- (f) If the supervising physician absents himself or herself in such a manner or to such an extent that he or she is unavailable to aid the physician assistant when required, the supervising physician shall not delegate patient care to his or her physician assistant unless he or she has made appropriate arrangements for substitute supervision.
- (g) The supervising physician may provide to the Board the names of two (2) physicians who are willing to assume the supervising responsibilities in his or her absence. The supervising physician shall be notified by the Board whether any of his or her delegated substitutes are unacceptable to the Board. It is the responsibility of the supervising physician to ensure that supervision is maintained in his or her absence.
- (h) No physician assistant shall be permitted to be utilized in an office or clinic separate and apart from the supervising physician's primary place for meeting patients unless the supervising physician has obtained specific approval from the Board. A supervising physician may supervise only two (2) satellite operations. The criteria for granting such approval is that the supervising physician demonstrate the following to the satisfaction of the Board:
- (1) That the physician assistant will be utilized in a designated manpower shortage area or an area of medical need as defined by the Board.
 - (2) That there is adequate provision for direct communication between the physician assistant and the supervising physician and that the distance between the main office and the satellite operation is not so great as to prohibit or impede appropriate emergency services.
 - (3) That provision is made for the supervising physician to see each regular patient periodically; for example, every third visit.

- (4) That the supervising physician visit the remote office at least weekly and demonstrate that he or she spends enough time on site to provide supervision and personally review the records of each patient seen by the physician assistant in this setting.
- (i) Appropriate records of supervisory contact must be maintained and available for Board review if required. Failure to maintain the standards required for such an operation may result in the loss of the privilege to maintain a satellite operation.
- (j) Designated representatives of the Board will be authorized to make on-site visits to the offices of supervising physicians and medical care facilities utilizing physician assistants to review the following:
 - (1) The supervision of physician assistants;
 - (2) The maintenance of and compliance with, protocols;
 - (3) Utilization in conformity with the provisions of this section;
 - (4) Identification of physician assistants; and
 - (5) Compliance with certification and registration requirements.
- (k) The Board reserves the right to review physician assistant utilization without prior notice to either the physician assistant or the supervising physician. It will be considered a violation of these regulations for a supervising physician to refuse to undergo such a review by the Board.
- (l) The provisions of this section shall not be construed to require medical care facilities to accept physician assistants or to use them within their premises. It is appropriate for the physician assistant to provide services to the

hospitalized patients of his or her supervising physician under the supervision of the physician, if the medical care facility permits it.

- (m) Physician assistants employed directly by medical care facilities shall perform services only under the supervision of a clearly identified supervising physician, and such physician shall supervise no more than two (2) physician assistants.
- (n) So long as the facility permits, a physician assistant may:
 - (1) Assess and record the patient's progress within the parameters of an established protocol or regimen and report the patient's progress to the supervising physician; and
 - (2) Make entries in medical records and patient charts so long as an appropriate mechanism is established for authentication by the supervising physician through countersignature.
- (o) A physician assistant may provide medical care or services in an emergency department so long as he or she has training in emergency medicine, functions under specific protocols which govern his or her performance and is under the supervision of a physician with whom he or she has ready contact and who is willing to assume full responsibility for the physician assistant's performance.
- (p) No physician assistant shall render nonemergency outpatient medical services until the patient has been informed that the individual providing care is a physician assistant.
- (q) It shall be the supervising physician's responsibility to be alert to patient complaints concerning the type or quality of services provided by the physician assistant.

- (r) In the supervising physician's office and any satellite operation, a notice plainly visible to all patients shall be posted in a prominent place explaining the meaning of the term "Physician Assistant". The physician assistant's certificate must be prominently displayed in the office and any satellite operation in which he or she may function. Duplicate certificates may be obtained from the Board if required.
- (s) The physician assistant is required to notify the Board of changes in his or her employment within thirty (30) days. The physician assistant must provide the Board with his or her new address and telephone number of residence, address and telephone number of employment and name of supervising physician.
- (t) The supervising physician is required to notify the Board of any changes in his or her supervision of a physician assistant within ten (10) days.

2.13. Limited prescriptive privileges for physician assistants.

- (a) A physician assistant may be authorized by the Board to issue written or oral prescriptions for certain medicinal drugs at the direction of his or her supervising physician if all of the following conditions are met:
 - (1) The physician assistant is a certified Type 'A' physician assistant who has performed patient care services for a minimum of two (2) years immediately preceding the submission to the Board of the job description requesting limited prescriptive privileges;
 - (2) The physician assistant has successfully completed an accredited course of instruction in clinical pharmacology approved by the Board of not less than four (4) semester hours;

- (3) The physician assistant provides primary care outpatient services in a medically underserved area or other area of need, and remains in that area, including any one of the following areas:
 - (A) Areas designated by state or federal authorities as medically underserved;
 - (B) Areas designated by state or federal authorities as health manpower shortage areas in primary care;
 - (C) State government facilities offering outpatient services to underserved populations such as clinics of the division of corrections; or
 - (D) Any other area of need specifically recognized and approved by the Board;
 - (4) The physician assistant obtains Board approval of his or her job description which includes the categories of drugs the physician assistant proposes to prescribe at the direction of his or her supervising physician.
 - (5) The physician assistant continues to maintain national certification as a physician assistant, and in meeting such national certification requirements, completes a minimum of ten (10) hours of continuing education in rational drug therapy in each certification period.
- (b) Evidence of completion of all conditions for the granting of limited prescriptive privileges shall be included with the physician assistant's annual renewal application and report to the Board.
 - (c) The Board shall approve a formulary classifying pharmacologic categories of all drugs which may be prescribed by a Type 'A' physician assistant. The formulary shall exclude Schedules I and II of the Uniform Controlled Substances Act, anticoagulants, antineoplastics, antipsychotics,

radiopharmaceuticals, general anesthetics and radiographic contrast materials. In addition, no parenteral preparation may be included in the formulary except Insulin and Epinephrine. The formulary may be revised annually, and shall include the following designated sections:

- (1) Section a. -- A choice of drugs commonly used in primary care outpatient settings to be prescribable by physician assistants who have completed an additional accredited course of study in clinical pharmacology approved by the Board of not less than four (4) semester hours;
- (2) Section b. -- Additional drugs used less commonly in primary care outpatient settings to be prescribable by physician assistants who have satisfied the requirements set forth under Section (1)a. above. In addition, Section b. drugs may be prescribed by physician assistants only under the following limited situations:
 - (A) On a direct order from the supervising physician to the physician assistant during consultation at the time of the patient's examination by the physician assistant, and specifically noted in the patient's chart; or
 - (B) On a refill prescription for a previously diagnosed and stable patient whose prescription was initiated by the supervising physician.
- (d) A prescription drug not included in the approved formulary shall not be contained in the job description of any physician assistant.
- (e) Prescriptions issued by a physician assistant shall be issued consistent with the supervising physician's treatment protocol provided to his or her physician assistant. The maximum dosage shall be indicated in the protocol and in no case may exceed the manufacturer's recommended average therapeutic dose for that drug.

- (f) Each prescription and subsequent refills given by the physician assistant shall be entered on the patient's chart and countersigned by the supervising physician within seven (7) days.
- (g) The prescription form utilized by a physician assistant approved for limited prescriptive privileges shall be imprinted with the name of the supervising physician, the name of the approved physician assistant, the address of the health care facility, the telephone number of the health care facility, the categories of drugs or drugs within a category which the assistant may prescribe and the statement, "Physician Assistant Prescription - it is a violation of state law to dispense drugs not imprinted on this prescription." The physician assistant shall write the name of the patient, the patient's address and the date on each prescription form. The physician assistant shall sign his or her name to each prescription followed by the letters "PA-C." The supervising physician must provide the Board with a copy of the prescription form utilized by his or her physician assistant prior to its use. A copy of this prescription form shall be provided to area pharmacies where the physician assistant may issue a prescription by word of mouth, telephone or other means of communication in his or her name at the direction of the supervising physician.
- (h) Physician assistants authorized to issue prescriptions for Schedules III through V controlled substances shall write on the prescription form the Federal Drug Enforcement Administration number issued to that physician assistant. Prescriptions written for Schedule III drugs shall be limited to a forty-eight (48) hour supply and may not authorize a refill. The maximum amount of Schedule IV or Schedule V drugs shall be no more than ninety (90) dosage units or a thirty (30) day supply, whichever is less.
- (i) Other prescription drugs shall not be prescribed or refillable for a period exceeding six (6) months.

- (j) The Board of Medicine shall provide the Board of Pharmacy with a list of physician assistants with limited prescriptive privileges and shall update the list within ten (10) days after additions or deletions are made.
- (k) Nothing in these regulations shall be construed to permit a Type 'A' physician assistant to independently prescribe or dispense drugs.

11-2B-3. Severability.

If any provision of these rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or application of these rules which can be given effect without the invalid provisions or application and to this end the provisions of these rules are declared to be severable.