

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: West Virginia Board of Osteopathy TITLE NUMBER: 24

CITE AUTHORITY WV Code § 30-14. -1, et seq.

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Rules and Regulations for
Osteopathic Physician Assistants

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

J. E. Schuber, Jr.
J. E. Schuber, Jr.

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RULES AND REGULATIONS FOR OSTEOPATHIC PHYSICIAN ASSISTANTS

24-2-1. General

- 1.1. Scope - West Virginia Code 30-14-3 authorizes the Board of Osteopathic Medicine to promulgate rules which are necessary to perform the duties and responsibilities of the Board.
- 1.2. Authority - WV Code 30-14-1, et seq.
- 1.3. Filing Date -
- 1.4. Effective Date -

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

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24-2-2. For purposes of this section, the following definitions shall be in effect:

- 2.1. Certification -- The approval of individuals by the Board to serve as physicians assistants.
- 2.2. 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.
- 2.3. NCCPA - The National Commission on the Certification of Physician Assistants.
- 2.4. 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.
- 2.5. 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.
- 2.6. 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:
 - 2.6.1. The active and continuing overview of the physician assistant's activities to determine that the supervising physician's directions are being implemented;
 - 2.6.2. The availability of the supervising physician to

the physician assistant for all necessary consultations;

2.6.3. 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

2.6.4. 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 supervision.

2.6.5. 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 non-certified physician assistant performs delegated medical tasks.

2.6.6. On site supervision is required not less than 60% of the time for certified physician assistants; recorded time for each is required. A minimum requirement may be met by an aggregate time of supervising and alternate supervising physicians.

24-2-3. Employment of Physician Assistants by Licensed Physician Services That May Be Performed by Physician Assistants

3.1. A physician fully licensed under Chapter 30-14 of the Code of West Virginia may submit a job description to the Board to employ a physician assistant.

3.2. "Physician assistant" means an assistant to a physician, who is a graduate of an approved program of instruction as a physician assistant, who is qualified to take or has passed the national certification examination and is qualified to perform limited direct patient care services under the supervision of the primary care physician.

3.3. Applicants shall be of good moral character.

3.4. 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, 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.

24-2-4. 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 submitted to the office of the Board of

Osteopathy. 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.

24-2-5. Ad Interim Certification

5.1. When any graduate of an approved program who has not passed the NCCPA examination submits an application to the Board, accompanied by a job description for physician assistant certificate, the Board may issue to such applicant a temporary certificate at its discretion, allowing such applicant to function as a physician assistant for a period up to one (1) year. A physician assistant who has not been certified as such by the NCCPA will be restricted to working under the direct supervision of the supervising physician and passing the NCCPA exam at the next available date. Physician assistants failing such test shall have their temporary certificate expire at that time. Failing to take the NCCPA exam shall likewise result in automatic expiration of the interim certificate on the date of the absence from the NCCPA examination.

24-2-6. Fees - In accordance with West Virginia Code 30-14A-3, a non-refundable cashier's check or money order in the amount of one hundred dollars (\$100.00) must accompany each application, and certification must be renewed biennially at a fee of fifty (\$50.00).

24-2-7. Requirements for Certification

7.1. Graduation from an educational physician assistant training program approved and accredited by the Committee on Allied Health Education. (A photocopy of the graduation certificate must accompany the application.)

7.2. Evidence of certification by the NCCPA of having successfully passed the Certifying Examination for primary care Physician Assistants.

7.3. Be of good moral character.

7.4. Be actively employed or supervised by a physician actively licensed by this Board and is qualified to perform direct patient care services under the supervision of an osteopathic physician.

24-2-8. 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 those involved. Said report must accompany each application for recertification. Any request for additional duties should be included at this time.

24-2-9. Supervision and Control of Physician Assistants -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 non-certified assistant performs delegated duties 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.

24-2-10. Limitations on Employment and Scope of Duties of Physician Assistants

10.1. A supervising physician shall not employ at any one time more than two (2) physician assistants.

10.2. A physician assistant shall not sign prescriptions, except in the case of certain authorized physicians assistants, as per 30-14A-1 effective June 8, 1991.

10.3. A physician assistant shall not perform any patient care services which are not included in his job description and approved by the Board. Non-medical patient care duties are at the discretion of the employer, as per any other employee.

10.4. A physicians assistant shall not perform any services which his or her supervising physician is not qualified to perform.

10.5. A physicians assistant shall not perform any services which are not included in his or her job description and approved by the Board.

24-2-11. 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.

24-2-12. Supervising Physician; Responsibilities

12.1. The supervising physician shall be responsible for observing, directing and evaluating the work, records and practices performed by the physician assistant.

12.2. It shall be the responsibility of the supervising physician to obtain consent in writing from the patient before physician assistants may render general medical or surgical services, except in emergencies.

12.3. The supervising physician shall notify the Board in writing of any termination of the employment of their physician assistant within ten (10) days of said termination.

12.4. The legal responsibility for any physician assistant shall remain that of the supervising physician at all times, except that a Health Care facility may be legally responsible when the physician's assistant is an employee of the Health Care facility.

24-2-13. The certification of a physician assistant shall be restricted, suspended, or revoked by the Board under 30-14A-3 & regulations of the Board when, after due notice and a hearing, it is found:

13.1. That the assistant has held himself out or permitted another person to represent him as a licensed physician;

13.2. That the assistant has in fact performed other than at the direction and under the supervision of a supervising physician licensed by the Board;

13.3. That the assistant has been delegated and performed a task or tasks beyond his competence and not in accordance with his job description as approved by the Board;

13.4. That the assistant is a habitual user of intoxicants or drugs to such an extent that he is unable to safely perform as an assistant to the physician;

13.5. That the assistant has been convicted in any court, state or federal, of any felony or other criminal offense involving moral turpitude;

13.6. That the assistant has been adjudicated a mental incompetent, or his mental condition renders him unable to safely perform as an assistant to a physician;

13.7. That the assistant has failed to comply with any of the provision of these regulations or the West Virginia Code Section 30-14A-1 et seq.

13.8. That the assistant is guilty of unprofessional conduct which includes, but is not limited to, the following:

13.8.1. Misrepresentation or concealment of material fact in obtaining a certificate or a reinstatement thereof;

13.8.2. The commission of an offense against any provision of state law related to the practice of physician assistants, or any rule or regulation promulgated thereunder;

13.8.3. The commission of any act involving moral turpitude, dishonesty or corruption, regardless of whether 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;

13.8.4. Conviction of a felony, as defined under the laws of this State or under the laws of any other state, territory or country;

13.8.5. Misconduct in his or her practice as a physician assistant or performing tasks fraudulently, beyond his authorized scope, with incompetence, or with negligence on a particular occasion or negligence on repeated occasions;

13.8.6. Performing tasks as a physician assistant while the ability to do so is impaired by alcohol, drugs, physical disability or mental instability;

13.8.7. Impersonation of a licensed physician or another certified physician assistant;

13.8.8. 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 treatments which are not in accordance with treatment processes accepted by a reasonable segment of the medical profession.

13.8.9. Prescribing 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.

13.8.10. Prescribing a controlled substance under state or federal law, to or for himself, or to or for any member of his immediate family.

13.8.11. Prescribing a prescription drug, including any controlled substance under state or federal law, which is not included in the approved job description for that physicians assistant or which is not included in the approved state formulary for physicians assistants.

24-2-14. Denial of Certification of Physician - The certificate is regarded as expired, effective immediately, upon termination of employment for any reason or loss of license of the supervising physician. Whenever the Board determines that an applicant has failed to satisfy the Board that he should be certified, the Board shall immediately notify such applicant of its decision and indicate in what

respect the applicant has so 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, within ten (10) 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 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. Hearings will not be granted whenever certificates are not issued because of incomplete applications. Also, summary suspension may be given by this Board, pending hearings, should this Board deem it advisable in the interest of the public.

24-2-15. Disciplinary Procedures - The disciplinary process and procedures set forth in the Contested Case Hearing Procedure, Chapter 6-9A & 29A-5, Series I (1983) also apply to disciplinary actions instituted against physician assistants with the same provisions regarding the appeal of decisions made to circuit courts.

24-2-16. Physician Assistant Utilization

16.1. 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. Physician assistants 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:

16.1.1. Screen patients to determine the need for medical attention.

16.1.2. Review patient records to determine health status.

16.1.3. Take a patient history.

16.1.4. Perform a physical examination.

16.1.5. Perform development screening examinations on children.

16.1.6. Record pertinent patient data.

16.1.7. Make decisions regarding data gathering of patients being seen for the follow-up evaluation of a previously diagnosed and stabilized condition.

16.1.8. Prepare patient summaries.

16.1.9. Initiate requests for commonly performed initial laboratory studies.

16.1.10. Collect specimens for and carry out commonly performed blood, urine, and stool analyses and cultures.

16.1.11. Identify normal and abnormal findings in history, physical examination and commonly performed laboratory studies.

16.1.12. Initiate appropriate evaluation and emergency management for emergency situations; for example, cardiac arrest, respiratory distress, injuries, burns, hemorrhage.

16.1.13. Perform clinical procedures such as;

16.1.13.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. Cardio-pulmonary resuscitation;

.i. Audiometry screening;

.j. Visual screening;

.k. Carry out aseptic and isolation techniques;

.l. Screen new patients on urgent basis, as new patients initial exams should be by the physician.

16.1.14. Provide counseling and instruction regarding common patient problems.

16.2. 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 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 Code Section 30-14A-1 et seq, and the training and expertise of the physician assistant.

16.3. A supervising physician shall not permit a physician assistant to independently practice medicine. Supervision must be maintained at all times.

16.4. A physician assistant shall not:

16.4.1. Maintain or manage an office separate and apart from the supervising physician's primary office for treating patients;

16.4.2. Independently bill patients for services provided;

16.4.3. Independently delegate a task assigned to him by his supervising physician to another individual;

16.4.4. Perform acupuncture in any form; or

16.4.5. Pronounce a patient dead in any setting.

16.5. 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.

16.6. If the supervising physician absents himself in such a manner or to such an extent that he is unavailable to aid the physician assistant when required, the supervising physician shall not delegate patient care to his physician assistant unless he has made appropriate arrangements for substitute supervision.

16.7. It is the responsibility of the supervising physician to ensure that supervision is maintained in his/her absence.

16.8. 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:

16.8.1. The supervision of physician assistants;

16.8.2. The maintenance of, and compliance, with protocols;

16.8.3. Utilization in conformity with the provisions of this Section;

16.8.4. Identification of physician assistant; and

16.8.5. Compliance with certification and registration requirements.

16.9. 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 this Section for a supervising physician to refuse to undergo such a review by the Board.

16.10. The provision 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 supervising physician under the supervision of the physician, if the medical care facility permits it.

16.11. A supervising physician shall not supervise at any time more than two osteopathic physician assistants, except that a physician may supervise up to four hospital-employed osteopathic physicians: Provided, That an alternative supervisor has been designated for each.

16.12. So long as the facility permits, a physician assistant may:

16.12.1. 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

16.12.2. Make entries in medical records and patient charts so long as an appropriate mechanism is established for authentication by the supervising physician through countersignature.

16.13. A physician assistant may provide medical care or services in an emergency department so long as he has training in emergency medicine, functions under specific protocols which govern his performance and is under the supervision of a physician with whom he has ready contact and who is willing to assume full responsibility for the physician assistant's performance.

16.14. No physician assistant shall render non-emergency out-patient medical services until the patient has been informed that the individual providing care is a physician assistant.

16.15. 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.

16.16. 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 may function. Duplicate certificates may be obtained from the Board if required.

16.17. The physician assistant is required to notify the Board of changes in his employment within thirty (30) days. The physician assistant must provide the Board with his new address and telephone number of residence, address and telephone number of employment and name of supervising physician.

16.18. The supervising physician is required to notify the Board of any changes in his supervision of a physician assistant within ten (10) days.

16.19. Supervising physicians, found to have inadequately supervised their physician assistant, delegated tasks for which the physician assistant is not trained, encouraged illegal activities, including false billing, or otherwise not performed as a supervising physician, shall lose their right to supervise physician assistants; for not less than five (5) years, or longer as determined by the board. This shall be in addition to any other restraints as the board or other legal body determines appropriate.

24-2-17. Limited prescriptive privileges for osteopathic physicians assistants.

17.1. A physicians 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:

17.1.1. The physicians assistant is a certified physicians assistant, who has performed primary patient care services for a minimum of two (2) years immediately preceding the submission of the job description requesting limited prescriptive privileges: and such experience is of the type to afford familiarity with types of medications for which prescriptive privileges are sought.

17.1.2. The physicians assistant has successfully completed an accredited course of instruction in clinical pharmacology approved by the Board.

17.1.3. The physicians 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:

- 17.1.3.a. Areas designated by state or federal authorities as medically underserved:
 - 17.1.3.b. Area designated by state or federal authorities as health manpower shortage areas in primary care;
 - 17.1.3.c. State government facilities offering outpatient services to underserved populations such as clinics of the divisions of corrections;
 - 17.1.3.d. Or approved areas designated by the Board.
- 17.1.4. 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.
- 17.1.5. The physicians assistant continues to maintain national certification as a physicians assistance, and in the meeting such national certification requirements, completes a minimum of ten (10) hours of continuing education in rational drug therapy in each certification period.
- 17.2. Evidence of completion of all conditions for the granting of limited prescriptive privileges shall be included with the physician assistant annual renewal application and report to the Board.
- 17.3. The Board shall approve a formulary classifying pharmacologic categories of all drugs which may be prescribed by an osteopathic physician assistant. The formulary shall exclude Schedules I and II of the Uniform Controlled Substance Act, anticoagulants, antineoplastics, antipsychotics, radiopharmaceuticals, general anesthetics and radiographic contrast materials. In addition, no parenteral preparations may be included in the formulary except Insulin and Epinephrine. The formulary may be revised annually, and shall include the following designated sections:
- 17.3.1. Sections a. -- A choice of drugs commonly used in primary care outpatient settings to be prescribable by the physicians 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;

17.3.2. Section b. -- Additional drugs used less commonly in primary care outpatient settings to be prescribable by physicians assistants who have satisfied the requirements set forth under Section 17.3.1. above. In addition, Section b. drugs may be prescribed by physicians assistants only under the following limited situations:

17.3.2.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

17.3.2.b. On a refill prescription for the previously diagnosed and stable patient whose prescription was initiated by the supervising physician.

17.4. A prescription drug not included in the approved formulary shall not be contained in the job description of any physician assistant.

17.5. 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.

17.6. 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.

17.7. 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 the drug or drugs within the a category which the

physicians assistant may prescribe and the statement, "Physician Assistant Prescription - it is a violation of the 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 physicians 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 assistance prior to its use. A copy of this prescription form shall be provided to area pharmacies where the physicians 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.

- 17.8. Physicians assistants authorized to issue prescriptions for Schedule III through V controlled substances shall write on the prescription form the Federal Drug Enforcement Administration number issued to the physician assistant. Prescriptions written for Schedule III drugs shall be limited to forty-eight (48) hour supply and may not authorize a refill. The IV or Schedule V drugs shall be no more than ninety (90) dosage units or thirty (30) day supply, whichever is less.
- 17.9. Other prescription drugs shall not be prescribed or refillable for a period exceeding six (6) months.
- 17.10. The Board of Osteopathy shall provide the Board of Pharmacy with a list of physicians assistants with limited prescriptive privileges and shall update the list within ten (10) days after additions or deletions are made.
- 17.11. Nothing in these regulations shall be construed to permit a physicians assistant to independently prescribe or dispense drugs.
- 24-2-18. A health care facility shall report in writing to the board within sixty (60) days after the completion of the facility's formal disciplinary procedure, and also after the commencement, and again after the conclusion, of any resulting legal action, the name of the osteopathic physician assistant practicing in the facility whose privileges have been revoked, restricted, reduced or terminated for any cause

including resignation, together with all pertinent information relating to such action. The health care facility shall also report any other formal disciplinary action taken against any osteopathic physician assistant by the facility relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

24-2-19. As a condition of renewal of osteopathic physicians assistant certification, each osteopathic physician assistant shall provide written documentation satisfactory to the board of the participation in the successful completion during the preceding one-year period of a minimum of twenty (20) hours of continuing education in the courses approved by the Board of Osteopathy for the purpose of continuing education of osteopathic physicians assistants. Notwithstanding any provision of this chapter to the contrary, failure to timely submit such required written documentation shall result in the automatic suspension of any certification as an osteopathic physician assistant until such time as the written documentation is submitted to and approved by the board.

24-2-20. It is unlawful for any person who is not certified by the Board as an osteopathic physicians assistant to use the title of "osteopathic physician assistant" or to represent to any other person that he or she is an osteopathic physicians assistant. Any person who violates the provisions of this subsection is guilty of misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand dollars.

24-2-21. Severability.

If any provision of these rules or the application thereof to any person or circumstances 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.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Regulations for Osteopathic Physician Assistants

Type of Rule: Legislative Interpretive Procedural

Agency West Virginia Board of Osteopathy

334 Penco Road

Weirton, WV 26062

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Personal Services	N/A				
Current Expense	N/A				
Repairs and Alterations	N/A				
Equipment	N/A				
Other	N/A				

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

N/A

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: April 1, 1993

Signature of Agency Head or Authorized Representative

J. E. Scherardo



STATE OF WEST VIRGINIA
BOARD OF OSTEOPATHY

JOSEPH E. SCHREIBER, D.O.
SECRETARY

334 PENCO ROAD
WEIRTON, WV 26062

TELEPHONE
304-723-4638

West Virginia Board of Osteopathy
Rules and Regulations For
Osteopathic Physician Assistants

Brief Summary:

This series of rules and regulations will govern what duties shall be performed by Osteopathic Physician Assistants practicing in the state of West Virginia.

DATE: August 5, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Board of Osteopathy

LEGISLATIVE RULE TITLE: Rules and Regulations for Osteopathic

1. Authorizing statute(s) citation ^{Physiciana Assistants} WV Code §30-14-1, et seq.

2. a. Date filed in State Register with Notice of Hearing

April 5, 1993

b. What other notice, including advertising, did you give of the hearing?

Announcement at Association meeting

c. Date of Hearing(s) May 21, 1993

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached x No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 9, 1993

f. Name and phone number(s) of agency person(s) to contact for additional information:

Cheryl D. Schreiber, Executive Secretary

334 Penco Road

Weirton, WV 26062

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____



STATE OF WEST VIRGINIA
BOARD OF OSTEOPATHY

JOSEPH E. SCHREIBER, D.O.
SECRETARY

334 PENCO ROAD
WEIRTON, WV 26062

TELEPHONE
304-723-4638

Title 24
Legislative Rule
West Virginia Board of Osteopathy

Series 2
Rules and Regulations for
Osteopathic Physician Assistants

In lieu of a public hearing, a comment period was established during which any interested person could send comments concerning these proposed rules. The comment period ended on May 21, 1993 at 5:00 P.M.

Comments were received from the West Virginia Nurses Association, Inc. and the West Virginia Association of Physician Assistants. Copies of their comments and our responses are included with this filing.

The following amendments were made to the proposed rules:

1. Rule 2.1 - The second sentence was deleted to conform to the Code.
2. Rule 3.4 - Three references to "his" were changed to "his or her".
3. Rule 16.11 - This was amended to conform to the Code.

J. E. Schreiber, D.O.

West Virginia
NURSES
Association,
Inc.

Post Office Box 1946

Charleston, WV 25327

(304) 342-1169

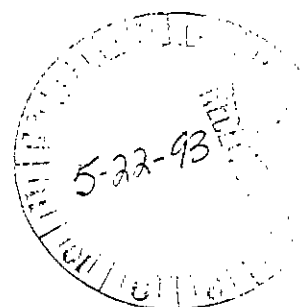
Fax Memo

To: West Virginia Board of Osteopathy
From: Carol Fulks, Executive Director
Re: Physician Assistant Rule Change - Section 24-2-10
Date: May 21, 1993

Attached please find a comment from the West Virginia Nurses Association regarding the above referenced rule.

Please process our comment and reply as necessary. Thank you for the opportunity for comment in this regard.

cc: WVNA Board of Directors



Comments:

Rules and Regulations for Osteopathic Physician Assistants

Section 10.3

It is unclear what is meant by non-medical patient care duties. Does this mean the employer could assign patient care duties to the physician assistant that constitutes professional nursing practice or the practice of any other licensed health care practitioner?

24-2-9. Supervision and Control of Physician Assistants -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 non-certified assistant performs delegated duties 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.

24-2-10. Limitations on Employment and Scope of Duties of Physician Assistants

10.1. A supervising physician shall not employ at any one time more than two (2) physician assistants.

10.2. A physician assistant shall not sign prescriptions, except in the case of certain authorized physicians assistants, as per 30-14A-1 effective June 8, 1991.

10.3. A physician assistant shall not perform any patient care services which are not included in his job description and approved by the Board. Non-medical patient care duties are at the discretion of the employer, as per any other employee. *somebody diff yellow page 5 (c)*

10.4. A physicians assistant shall not perform any services which his or her supervising physician is not qualified to perform.

10.5. A physicians assistant shall not perform any services which are not included in his or her job description and approved by the Board.

24-2-11. 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.

24-2-12. Supervising Physician; Responsibilities

12.1. The supervising physician shall be responsible for



STATE OF WEST VIRGINIA
BOARD OF OSTEOPATHY

JOSEPH E. SCHREIBER, D.O.
SECRETARY

334 PENCO ROAD
WEIRTON, WV 26062

TELEPHONE
304-723-4638

August 3, 1993

Carol Fulks
Executive Director
West Virginia Nurses Association, Inc.
P.O. Box 1946
Charleston, WV 25327

Dear Ms. Fulks,

Thank you for your comments regarding the proposed rules for osteopathic physician assistants.

The Board's meaning of non-medical patient care duties is non-medical and non-nursing, but would allow clerical duties such as insurance and patient billing duties or janitorial duties.

The Board very much appreciates your comments. If you require any further information, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Joseph E. Schreiber D.O.".

Joseph E. Schreiber, D.O.
Secretary,
West Virginia Board of Osteopathy

JES/cds

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AREA CODE 304
344-5046
TELECOPIER NUMBER
344-5103

May 20, 1993

UPS OVERNIGHT

Joseph E. Schreiber, D.O.
Secretary
West Virginia Board of Osteopathy
334 Penco Road
Weirton, West Virginia 26062

RE: PROPOSED RULES AND REGULATIONS
FOR OSTEOPATHIC PHYSICIAN ASSISTANTS

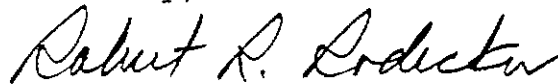
Dear Dr. Schreiber:

Enclosed herein please find Comments to the above-referenced proposed rules and regulations filed on behalf of the West Virginia Association of Physician Assistants.

Please stamp the enclosed copy of this transmittal letter "received" and return to me in the enclosed envelope.

Thank you for your assistance in this matter.

Sincerely,



Robert R. Rodecker

RRR/bg
enclosure
cc w/enc: Tom Harward, PA-C
Legislative Committee Chairperson
WVAPA

BEFORE THE
WEST VIRGINIA BOARD OF OSTEOPATHY

PROPOSED RULES AND REGULATIONS
FOR OSTEOPATHIC PHYSICIAN ASSISTANTS

COMMENTS SUBMITTED ON BEHALF OF
WEST VIRGINIA ASSOCIATION OF PHYSICIAN ASSISTANTS

Now comes the West Virginia Association of Physician Assistants ("WVAPA"), by counsel, and respectfully submits its comments with regard to the proposed rules filed by the West Virginia Board of Osteopathy ("Board") with the Secretary of State on April 1, 1993.

Physician assistants have practiced in West Virginia under the supervision of physicians for over twenty years. The profession enjoys an excellent practice record both in the state and nationally. Because the qualifications and training of osteopathic and allopathic physician assistants is identical, the WVAPA believes that the rules to be adopted by the Board should reflect this fact in basic requirements and scope of practice.

The WVAPA is generally pleased with the efforts devoted to the proposed rules by the Board; however, it does have several serious concerns, and offers the following comments:

24-2-2 - DEFINITIONS

RULE 2.1: There is no basis in the statute for the approval by the Board of physician assistant educational programs. Code §30-14A-1(3) defines an "approved program". These programs undergo a national review and approval process by the Committee On Allied Health Education and Accreditation. For the Board to impose a further approval requirement would appear to exceed the Board's authority. Therefore, the WVAPA recommends that the second sentence of proposed Rule 2.1 be struck.

RULE 2.6.6: The requirement that a supervising physician be on site 60% of the time is contrary to the intent of the statute. This provision would make it impossible for a physician assistant to staff the most remote and rural satellite clinic sites under the supervision of an osteopathic physician. While physician assistants are intended to increase access to care for the public, this proposed rule would result in decreased access to health care.

The Board, in Rule 2.5, has defined a satellite clinic. Physician assistants have been staffing sites, consistent with this definition, for twenty (20) years under allopathic physicians. Proposed Rule 2.6.6 would make the operation of a satellite clinic by an osteopathic physician assistant impossible.

24-2-3 - EMPLOYMENT OF PHYSICIAN ASSISTANTS

RULE 3.2: The insertion of the word "limited" in this section does not reflect the intent of the statute. Given the past record and attitude of the Board toward non-physician health care providers, the WVAPA is concerned how the word "limited" will be later interpreted by the Board. Accordingly, WVAPA recommends deletion of the word "limited".

RULE 3.4: "his" should be changed to "his or her" in the three instances found in such proposed rule.

24-2-12 - SUPERVISING PHYSICIAN; RESPONSIBILITIES

RULE 12.2: There is no basis in the statute for requiring a properly identified physician assistant to obtain written consent from a patient prior to rendering services. Once a physician assistant has been certified, he or she is, in essence, an extension of the physician. There is no general requirement that the physician obtain written consent from a patient prior to rendering service. Likewise, there is no such requirement for allopathic physician assistants to obtain such consent. Therefore, the WVAPA recommends that this provision be struck.

24-2-16 - PHYSICIAN ASSISTANT UTILIZATION

RULE 16.1.13.1.: The WVAPA recommends that this provision be struck from the proposed rules. Physician assistants have for years routinely seen new patients and provided quality care without incident. It is WVAPA's belief that this rule is highly restrictive and discriminatory and would render the operation of a satellite clinic by a physician assistant impossible.

RULE 16.4.1: Because the Board has no statutory authority to determine who manages a practice or clinic, and because this rule would prevent a physician assistant from working in a satellite clinic which would result in decreasing public access to care, the WVAPA recommends that this provision be struck.

RULE 16.11: This provision should be revised to be consistent with Code §30-14A-1(j)(1). That provision provides that a physician may supervise four (4) hospital-employed physician assistants. The proposed Rule would conflict with the statutory provision.

Respectfully submitted,

WEST VIRGINIA ASSOCIATION
OF PHYSICIAN ASSISTANTS

By Counsel



Robert R. Rodecker
McDonald & Rodecker
Post Office Box 2151
Charleston, West Virginia 25328
(WVAPA\Comments)



STATE OF WEST VIRGINIA
BOARD OF OSTEOPATHY

JOSEPH E. SCHREIBER, D.O.
SECRETARY

334 Penco Road
Weirton, WV 26062

TELEPHONE
304-723-4638

August 3, 1993

Robert R. Rodecker
McDonald & Rodecker
1200 Charleston National Plaza
P.O. Box 2151
Charleston, WV 25328

Re: Response to comments from the West Virginia Association
of Physicians Assistants to the Proposed Rules and
Regulations for Osteopathic Physician Assistants

Dear Mr Rodecker:

Thank you for your comments regarding the proposed rules for
osteopathic physician assistants. I will attempt to address them
in the same order in which you have in your comments.

RULE 2.1: You are correct in your comment that WV Code §30-14A-
1(3) defines an "approved program". Therefore the Board will
amend proposed Rule 2.1 by striking the second sentence which
reads as follows "it shall also mean the approval of the programs
by the board for the training and education of physician
assistants".

RULE 2.6.6: The Board disagrees with your comment that requiring
a supervising physician be on site 60% of the time is contrary to
the intent of the statute. The intent of the statute was to
provide quality medical care to the citizens of the state of West
Virginia. West Virginia Code section 30-14A-1(a)(5)(b) states in
part "that the osteopathic 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
an Osteopathic Physician permanently licensed in this state".
The Board position is that this code provision gives them not
only the authority but a mandate to regulate the supervision of
an Osteopathic Physician's Assistant. This rule is intended to
insure and does result in increased quality supervision for
Osteopathic Physician's assistants.

RULE 3.2: The word "limited" was placed into this section to
express the intent by the Board and to further underscore the
fact that physician assistants are not licensed to perform nor
was it intended that they could perform, all necessary medical
functions that could be performed by a physician whether
allopathic or osteopathic.

RULE 3.4: Your comment regarding the change of "his" to "his or her" in three instances found in such rule will be made in the Boards continuing effort to remain politically correct.

RULE 12.2: West Virginia Code Section §30-14A-1(i) requires an Osteopathic Physician's Assistant to wear a name tag that identifies him or her as a physician's assistant rather than as a physician. Many citizens of the state of West Virginia have expressed desire to be treated by physicians rather than by physician's assistants. This requirement of written consent, is merely to ensure that there is no confusion in a patient's mind that the individual who is rendering medical treatment to them is a physician's assistant and not a physician. This rule provision was inserted to ensure that patients are not misled, and to document "informed consent".

RULE 16.1.13.1.: The Board's position is that the screening of new patients should be performed by a physician rather than as a physician's assistant. The screening of patients on an urgent basis may be performed by a physician's assistant. While it is true that this rule may be restrictive, this restriction is put in place to ensure the health, safety and welfare of the citizenry of West Virginia and is not intended to discriminate against physician assistants. Further, physicians and physician assistants have different training, education, and experience which justify any differing treatment of the two professions.

RULE 16.4.1: This rule merely repeats the portion of West Virginia Code Section 30-14A-1b which states that a separate place of work for the Osteopathic Physician's Assistant shall not be established.

RULE 16.11: This rule will be amended to read as follows: a Supervising physician shall not supervise at any time more than two 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.

The Board very much appreciates your comments submitted on behalf of the West Virginia Association of Physician Assistants and will continue to solicit their input in furthering the understanding and working relationship between the two professions.

We remain respectfully yours.



Joseph E. Schreiber, D.O.
Secretary,
West Virginia Board of Osteopathy

JES/cds