

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

Do Not Mark In this Box

FILED

APR 5 8 09 AM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: WV Board of Osteopathy TITLE NUMBER: 24

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING PROPOSED: Rules for Osteopathic Physician
Assistants

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

AUTHORIZATION IS CITED IN (house or senate bill number) SB 159

SECTION 64-9-36(b), PASSED ON March 12, 1994

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 5, 1994

William T. Douglass Jr.

William T. Douglass Jr.
Assistant Attorney General
Counsel for Board

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

March 15, 1994

Cheryl D. Schreiber
Osteopathy
334 Penco Rd.
Weirton, WV 26062

SB 159 authorizing, **Title 24, Series 2, Rules & Regulations for Osteopathic Physician Assistants**, passed the Legislature on **March 12, 1994**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs SB 159, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 159** section **64-9-36(a)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, YOU MUST SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

TITLE 24-2

64-9-36. Board of osteopathy.

(a) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred ninety-three, relating to the board of osteopathy (osteopathic physician assistants), are authorized with amendment set forth below:

On page one by striking out the entire rule and inserting in lieu thereof the following:

§11-1B-1. General.

1.1. Scope. -- W. Va. Code §30-14A-1 requires the Board of Osteopathy to adopt rules governing the extent to which osteopathic physician assistants may function in this State.

1.2. Authority. -- W. Va. Code §30-14A-1.

1.3. Filing Date. --

1.4. Effective Date. --

§11-1B-2. Rules For Osteopathic physician Assistants.

2.1. For purposes of this section, the following definitions are in effect:

2.1.1. Licensure. -- The approval of individuals by the Board to serve as osteopathic physician assistants. It also means the approval of programs by the Board for the training and education of osteopathic physician assistants.

2.1.2. 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.

2.1.3. NCCPA. -- The National Commission on the Certification of Physician Assistants.

2.1.4. Protocol. -- Written treatment instructions prepared by a supervising osteopathic physician for use by a osteopathic physician assistant. Such instructions should be flexible, in accordance with the setting where the osteopathic physician assistant is employed.

2.1.5. Satellite operation. -- An office or clinic separate and apart from the office of the supervising osteopathic physician, established by the osteopathic physician and manned in part by a osteopathic physician assistant.

2.1.6. Supervision. -- The opportunity or ability of the osteopathic physician to provide or exercise control and direction over the services of osteopathic physician assistants. Constant physical presence of the supervising osteopathic physician of a osteopathic physician assistant certified by the NCCPA is not required so long as the supervising osteopathic physician and the osteopathic physician assistant are or can easily be in contact with each other by radio, telephone or telecommunication. Supervision requires the availability of the supervising osteopathic physician. An appropriate degree of supervision includes:

a. Personal supervision by the osteopathic physician of a minimum of twenty-five percent of the weekly hours worked by each osteopathic physician assistant;

b. The active and continuing overview of the osteopathic physician assistant's activities to determine that the supervising osteopathic physician's directions are being implemented;

c. The availability of the supervising osteopathic physician to the osteopathic physician assistant for all necessary consultations;

d. Personal and regular (at least monthly) review by the supervising osteopathic physician of selected patient records upon which entries are made by the osteopathic physician assistant. Patient records shall be selected for review on the basis of written criteria established by the supervising osteopathic physician and the osteopathic physician assistant and shall be of sufficient number to assure adequate review of the osteopathic physician assistant's scope of practice, and;

e. Periodic (at least monthly) education and review sessions discussing specific conditions, protocols, procedures and specific patients, held by the supervising osteopathic physician for the osteopathic physician assistant under his or her supervision.

In the case of a osteopathic physician assistant who has not been certified by the NCCPA, the presence of the supervising

osteopathic physician or alternate supervising osteopathic physician is required on the premises where the noncertified osteopathic physician assistant performs delegated medical tasks.

2.2. Employment of osteopathic physician assistants by licensed osteopathic physician; services that may be performed by osteopathic physician assistants.

2.2.1. A osteopathic physician fully licensed under W. Va. Code §30-14-1 et seq. may submit a job description to the Board to employ a osteopathic physician assistant.

2.2.2. The delegation of certain acts to a osteopathic 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. The 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 osteopathic physician, allow the osteopathic physician assistant to formulate a provisional diagnosis and treatment plan which may be set by standard protocols of his or her supervising osteopathic 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 osteopathic physician listing in numerical order the duties which will be performed by the assistant must be in the office of the Board of Osteopathy,

thirty (30) days prior to a Board meeting. The filing of an application and job description does not entitle a osteopathic physician assistant to licensure. The only legal authority for such approval must be given by the Board.

2.4. Biennial report of osteopathic physician assistant's performance; biennial report of the Board. -- Osteopathic physician assistants and their supervising osteopathic physicians must submit biennial signed reports either individually or combined, on the professional conduct, capabilities and performance of the osteopathic physician assistant. The report must accompany each application for licensure and must be submitted to the office of the Board by April 1. In addition thereto, the Board shall compile and publish a biennial report that includes a list of currently licensed osteopathic 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 the approved programs and the number of osteopathic physician assistants from other states' approved programs practicing in West Virginia.

2.5. Supervision and control of osteopathic physician assistant. -- The osteopathic physician assistant, whether employed by a health care facility or the supervising osteopathic physician, shall perform only under the supervision and control of the supervising osteopathic physician. Supervision and control of a osteopathic physician assistant certified by the

NCCPA requires the availability of a osteopathic physician for consultation and direction of the actions of the assistant, but does not necessarily require the personal presence of the supervising osteopathic physician at the place or places where services are rendered, if the osteopathic physician assistant certified by the NCCPA is performing (specified) duties at the direction of the supervising osteopathic physician. In the case of a osteopathic physician assistant who has not been certified by the NCCPA, the presence of the supervising osteopathic physician or alternate supervising osteopathic physician on the premises where the noncertified assistant performs delegated medical tasks is required. The osteopathic physician assistant may function in any setting within which the supervising osteopathic physician routinely practices, but in no instance shall a separate place of work for the osteopathic physician assistant be established. The supervising osteopathic physician shall be a osteopathic physician permanently licensed in this State.

2.6. Limitations on employment and scope of duties of osteopathic physician assistants.

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

2.6.2. A osteopathic physician assistant shall not sign prescriptions except in the case of certain osteopathic physician

assistants authorized to do so by the Board in accordance with the provisions of 2.13 of this rule.

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

2.6.4. A osteopathic physician assistant may sign orders to be countersigned later by his or her supervising osteopathic physician: Provided, That they are not in conflict with hospital regulations.

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

2.6.6. No osteopathic physician assistant shall be supervised by and work for more than three supervising osteopathic physicians at one time.

2.7. Identification of osteopathic physician assistant. -- When functioning as a osteopathic physician assistant, the osteopathic physician assistant shall wear a name tag which identifies the osteopathic physician assistant as a osteopathic physician assistant.

2.8. Supervising osteopathic physician; responsibilities.

2.8.1. The supervising osteopathic physician is responsible for observing, directing and evaluating the work, records and practices performed by the osteopathic physician assistant.

2.8.2. The supervising osteopathic physician shall notify the Board in writing of any termination of the employment of his or her osteopathic physician assistant within ten (10) days of the termination.

2.8.3. The legal responsibility for any osteopathic physician assistant remains that of his or her supervising osteopathic physician at all times, except in temporary situations not to exceed twenty one days, in cases when a licensed and fully qualified osteopathic physician assistant is substituting for another licensed osteopathic physician assistant, the acts and omissions of the substituting osteopathic physician assistant are the legal responsibility of the absent osteopathic physician assistant's designated supervising osteopathic physician. The temporary change in supervisory responsibility shall be provided to the Board in writing, within ten (10) days of the effective date of the substitution, signed by the affected supervising osteopathic physicians and osteopathic physician assistants, and clearly specifying the dates of substitution.

2.9. The license of a osteopathic physician assistant shall be restricted, suspended or revoked by the Board in accordance with all the alternatives set out at W. Va. Code §30-14A-1 when, after due notice and a hearing in accordance with the manner and form prescribed by the contested case hearing procedure, W. Va. Code §29A-5-1 et seq. and regulations of the Board set out at 24 CSR 1 if it is found:

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

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

2.9.3. 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;

2.9.4. 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 osteopathic physician;

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

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

2.9.7. That the assistant has failed to comply with any of the provisions of this rule or W. Va. Code §30-14-1 et seq.; and

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

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

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

c. The commission of any act involving moral turpitude, dishonesty or corruption, when the 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 is not a condition precedent to disciplinary action;

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

e. Misconduct in his or her practice as a osteopathic 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;

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

g. Impersonation of a licensed osteopathic physician or another certified or licensed osteopathic physician assistant;

h. 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 osteopathic 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;

i. 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;

j. 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; and

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

2.10. Denial of licensure of osteopathic physician assistant. Whenever the Board determines that an applicant has failed to satisfy the Board that he or she should be licensed, the Board shall immediately notify the applicant of its decision and indicate in what respect the applicant has failed to satisfy the Board. The applicant shall be given a formal hearing before the Board upon request of the applicant filed with or mailed by registered or certified mail to the Secretary of the Board, which request must be filed within thirty (30) days after receipt of the Board's decision, stating the reasons for the request. The Board shall within twenty (20) days of receipt of the request,

notify the 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 licensure is upon the applicant. Following the hearing, the Board shall determine on the basis of this rule whether the applicant is qualified to be licensed, and this decision of the Board is final as to that application.

2.11. Disciplinary procedures. -- The disciplinary process and procedures set forth in the contested case hearing procedure, W. Va. Code §29A-5-1 et seq. and in regulations of the Board set out at 24 CSR 1 also apply to disciplinary actions instituted against osteopathic physician assistants with the same provisions regarding the appeal of decisions made to circuit courts.

2.12. Osteopathic physician assistant utilization.

2.12.1. The osteopathic physician assistant shall, under appropriate direction and supervision by a osteopathic physician, augment the osteopathic physician's data gathering abilities in order to assist the supervising osteopathic physician in reaching decisions and instituting care plans for the osteopathic physician's patients. A osteopathic 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:

a. Screen patients to determine the need for medical attention;

- b. Review patient records to determine health status;
- c. Take a patient history;
- d. Perform a physical examination;
- e. Perform development screening examinations on children;
- f. Record pertinent patient data;
- g. 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;
- h. Prepare patient summaries;
- i. Initiate requests for commonly performed initial laboratory studies;
- j. Collect specimens for and carry out commonly performed blood, urine and stool analyses and cultures;
- k. Identify normal and abnormal findings in history physical examination and commonly performed laboratory studies;
- l. Initiate appropriate evaluation and emergency management for emergency situations; for example, cardiac arrest, respiratory distress, injuries, burns and hemorrhage;
- m. 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. Aseptic and isolation techniques; and
- n. Provide counseling and instruction regarding common patient problems.

2.12.2. The tasks a osteopathic 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 osteopathic physician may wish to delegate to the osteopathic physician assistant after the supervising osteopathic physician has satisfied himself or herself as to the ability and competence of the osteopathic physician assistant. The supervising osteopathic physician may, with due regard for the safety of the patient and in keeping with sound medical practice, delegate to the osteopathic physician assistant such medical procedures and other tasks as are usually performed within the normal scope of the supervising osteopathic physician's practice, subject to the limitations set forth in this section and W. Va. Code §30-14-1 et seq., and the training and expertise of the osteopathic physician assistant.

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

2.12.4. A osteopathic physician assistant shall not:

a. Maintain or manage an office separate and apart from the supervising osteopathic physician's primary office for treating patients, unless the Board has granted the supervising osteopathic physician specific permission to establish a satellite operation;

b. Independently bill patients for services provided;

c. Independently delegate a task assigned to him or her by his or her supervising osteopathic physician to another individual;

d. Perform acupuncture in any form; or

e. Pronounce a patient dead, except in a setting where state or federal government regulations permit a registered nurse or a osteopathic physician assistant to do so.

2.12.5. The supervising osteopathic physician shall monitor and supervise the activities of the osteopathic physician assistant and require documentation, including organized medical records with symptoms, pertinent physical findings, impressions and treatment plans indicated. The supervising osteopathic physician may also provide written protocols for the use of the osteopathic physician assistant in the performance of delegated tasks. The established protocols shall be available for public

inspection upon request and may be reviewed by the Board as required.

2.12.6. If the supervising osteopathic physician absents himself or herself in such a manner or to such an extent that he or she is unavailable to aid the osteopathic physician assistant when required, the supervising osteopathic physician shall not delegate patient care to his or her osteopathic physician assistant unless he or she has made appropriate arrangements for an alternate supervising osteopathic physician. The legal responsibility for the acts and omissions of the osteopathic physician assistant remains with the supervising osteopathic physician at all times.

2.12.7. It is the responsibility of the supervising osteopathic physician to ensure that supervision is maintained in his or her absence.

2.12.8. No osteopathic physician assistant may be utilized in an office or clinic separate and apart from the supervising osteopathic physician's primary place for meeting patients unless the supervising osteopathic physician has obtained specific approval from the Board. A supervising osteopathic physician may supervise only two (2) satellite operations. The criteria for granting approval is that the supervising osteopathic physician demonstrate the following to the satisfaction of the Board:

a. That the osteopathic physician assistant will be utilized in a designated manpower shortage area or an area of medical need as defined by the Board;

b. That there is adequate provision for direct communication between the osteopathic physician assistant and the supervising osteopathic 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;

c. That provision is made for the supervising osteopathic physician to see each regular patient periodically; for example, every third visit; and

d. That the supervising osteopathic physician visit the remote office at least once every fourteen days and demonstrate that he or she spends enough time on site to provide supervision and personal and regular review of the selected records upon which entries are made by the osteopathic physician assistant. Patient records shall be selected on the basis of written criteria established by the supervising osteopathic physician and the osteopathic physician assistant and shall be of sufficient number to assure adequate review of the osteopathic physician assistant's scope of practice.

2.12.9. Appropriate records of supervisory contact must be maintained and made 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.

2.12.10. Designated representatives of the Board will be authorized to make on-site visits to the offices of supervising osteopathic physicians and medical care facilities utilizing osteopathic physician assistants to review the following:

- a. The supervision of osteopathic physician assistants;
- b. The maintenance of and compliance with, any protocols;
- c. Utilization in conformity with the provisions of this section;
- d. Identification of osteopathic physician assistants; and
- e. Compliance with licensure and registration requirements.

2.12.11. The Board reserves the right to review osteopathic physician assistant utilization without prior notice to either the osteopathic physician assistant or the supervising osteopathic physician. It is a violation of this rule for a supervising osteopathic physician or a osteopathic physician assistant to refuse to undergo a review by the Board.

2.12.12. The provisions of this section shall not be construed to require medical care facilities to accept osteopathic physician assistants or to use them within their premises. It is appropriate for the osteopathic physician assistant to provide services to the hospitalized patients of his or her supervising osteopathic physician under the supervision of the osteopathic physician, if the medical care facility permits it.

2.12.13. Osteopathic physician assistants employed directly by medical care facilities shall perform services only under the supervision of a clearly identified supervising osteopathic physician, and the osteopathic physician shall supervise no more than two (2) osteopathic physician assistants, except that a supervising osteopathic physician may supervise up to four (4) hospital employed osteopathic physician assistants.

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

a. 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 osteopathic physician; and

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

2.12.15. A osteopathic 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 osteopathic physician with whom he or she has ready contact and who is willing to assume full responsibility for the osteopathic physician assistant's performance.

2.12.16. No osteopathic physician assistant shall render nonemergency outpatient medical services until the patient has

been informed that the individual providing care is a osteopathic physician assistant.

2.12.17. It is the supervising osteopathic physician's responsibility to be alert to patient complaints concerning the type or quality of services provided by the osteopathic physician assistant.

2.12.18. In the supervising osteopathic 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 "Osteopathic physician Assistant". The osteopathic physician assistant's license must be prominently displayed in the office and any satellite operation in which he or she may function. Duplicate licenses may be obtained from the Board if required.

2.12.19. The osteopathic physician assistant is required to notify the Board of changes in his or her employment within thirty (30) days. The osteopathic 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 osteopathic physician.

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

2.13. Limited prescriptive privileges for osteopathic physician assistants.

2.13.1. A osteopathic 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 osteopathic physician if all of the following conditions are met:

a. The osteopathic physician assistant 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;

b. The osteopathic 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;

c. The osteopathic physician assistant obtains Board approval of his or her job description which includes the categories of drugs the osteopathic physician assistant proposes to prescribe at the direction of his or her supervising osteopathic physician.

d. The osteopathic physician assistant continues to maintain national certification as a osteopathic 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.

2.13.2. Evidence of completion of all conditions for the granting of limited prescriptive privileges shall be included with the osteopathic physician assistant's biennial renewal application and report to the Board.

2.13.3. The Board shall approve a formulary classifying pharmacologic categories of all drugs which may be prescribed by a osteopathic physician assistant authorized by the Board to prescribe drugs. The formulary shall exclude Schedules I and II of the Uniform Controlled Substances Act, anticoagulants, antineoplastics, radiopharmaceuticals, general anesthetics and radiographic contrast materials. The formulary may be revised annually, and shall include the following designated sections:

a. Section a. -- A choice of drugs commonly used in primary care outpatient settings to be prescribable by osteopathic 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; and

b. Section b. -- Additional drugs used less commonly in primary care outpatient settings to be prescribable by osteopathic physician assistants who have satisfied the requirements set forth under Section 2.13.3.a of this rule. In addition, Section b. drugs may be prescribed by osteopathic physician assistants only under the following limited situations:

A. On a direct order from the supervising osteopathic physician to the osteopathic physician assistant during consultation at the time of the patient's examination by the osteopathic 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 osteopathic physician.

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

2.13.5. Prescriptions issued by a osteopathic physician assistant shall be issued consistent with the supervising osteopathic physician's directions or treatment protocol provided to his or her osteopathic physician assistant. The maximum dosage shall be indicated in the protocol and in no case may the dosage exceed the manufacturer's recommended average therapeutic dose for that drug.

2.13.6. Each prescription and subsequent refills given by the osteopathic physician assistant shall be entered on the patient's chart.

2.13.7. The prescription form utilized by a osteopathic physician assistant approved for limited prescriptive privileges shall be imprinted with the name of the supervising osteopathic physician, the name of the approved osteopathic 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, "Osteopathic physician Assistant Prescription - it is a violation of state law to dispense drugs not imprinted on this

prescription." The osteopathic physician assistant shall write the name of the patient, the patient's address and the date on each prescription form. The osteopathic physician assistant shall sign his or her name to each prescription followed by the letters "PA-C." The supervising osteopathic physician must provide the Board with a copy of the prescription form utilized by his or her osteopathic physician assistant prior to its use. A copy of this prescription form shall be provided by the osteopathic physician assistant to area pharmacies where the osteopathic 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 osteopathic physician.

2.13.8. Osteopathic 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 osteopathic physician assistant. Prescriptions written for Schedule III drugs shall be limited to a seventy-two (72) 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.

2.13.9. Other prescription drugs shall not be prescribed or refillable for a period exceeding six (6) months.

2.13.10. The Board of Osteopathy shall provide the Board of Pharmacy with a list of osteopathic physician assistants with

limited prescriptive privileges and shall update the list within ten (10) days after additions or deletions are made.

2.13.11. Nothing in this rule shall be construed to permit any osteopathic physician assistant to independently prescribe or dispense drugs.

2.14. Continuing Education.

2.14.1. Each osteopathic physician assistant, as a condition of biennial renewal of osteopathic physician assistant license, shall provide written documentation of participation in and successful completion during the preceding two (2) year period of a minimum of twenty (20) hours of continuing education in courses approved by the Board for the purposes of continuing education of osteopathic physician assistants.

2.14.2. All written documentation must be submitted to and received by the Board, with the completed biennial renewal form, prior to the first day of April of the year of renewal of the osteopathic physician assistant license.

2.14.3. Failure to timely submit written documentation as set forth in subsection 2.14.3 of this rule shall result in the automatic suspension of the license of a osteopathic physician assistant until such time as the written documentation is submitted to and approved by the Board.

§11-2B-3. Severability.

If any provision of these rules or the application thereof to any person or circumstance is held invalid, the invalidity shall

not affect the provisions or application of this rules which can be given effect without the invalid provisions or application and to this end the provisions of this rule are declared to be severable.

SENATE BILL NO. 204

(By Senators Manchin, Anderson, Grubb, Macnaughtan
and Binard)

[Introduced January 31, 1994; referred to the
Committee on

HEALTH AND HUMAN RESOURCES;

Judiciary

A BILL to amend, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section designated section thirty-six, relating to authorizing the board of osteopathy to promulgate legislative rules relating to osteopathic physician assistants.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirty-six, to read as follows:

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS
TO PROMULGATE LEGISLATIVE RULES.**

§64-9-36. Board of osteopathy.

1 The legislative rules filed in the state register on the
2 sixth day of August, one thousand nine hundred ninety-three,
3 relating to the board of osteopathy (osteopathic physician
4 assistants), are authorized with amendment set forth below:

5 On page one by striking out the entire rule and inserting in
6 lieu thereof the following:

7 **§11-1B-1. General.**

8 1.1. Scope. -- W. Va. Code §30-14A-1 requires the Board of
9 Osteopathy to adopt rules governing the extent to which
10 osteopathic physician assistants may function in this State.

11 1.2. Authority. -- W. Va. Code §30-14A-1.

12 1.3. Filing Date. --

13 1.4. Effective Date. --

14 **§11-1B-2. Rules For Osteopathic physician Assistants.**

15 2.1. For purposes of this section, the following definitions
16 are in effect:

17 2.1.1. License -- The approval of individuals by the
18 Board to serve as osteopathic physician assistants. It also
19 means the approval of programs by the Board for the training and
20 education of osteopathic physician assistants.

21 2.1.2. Crimes involving moral turpitude. -- Those crimes
22 which have dishonesty as a fundamental and necessary element;
23 including, but not limited to, crimes involving theft,
24 embezzlement, false swearing perjury, fraud or misrepresentation.

1 2.1.3. NCCPA. --The National Commission on the
2 Certification of Physician Assistants.

3 2.1.4. Protocol. -- Written treatment instructions
4 prepared by a supervising osteopathic physician for use by a
5 osteopathic physician assistant. Such instructions should be
6 flexible, in accordance with the setting where the osteopathic
7 physician assistant is employed.

8 2.1.5. Satellite operation. -- An office or clinic
9 separate and apart from the office of the supervising osteopathic
10 physician, established by the osteopathic physician and manned in
11 part by a osteopathic physician assistant.

12 2.1.6. Supervision. -- The opportunity or ability of the
13 osteopathic physician to provide or exercise control and
14 direction over the services of osteopathic physician assistants.
15 Constant physical presence of the supervising osteopathic
16 physician of a osteopathic physician assistant certified by the
17 NCCPA is not required so long as the supervising osteopathic
18 physician and the osteopathic physician assistant are or can
19 easily be in contact with each other by radio, telephone or
20 telecommunication. Supervision requires the availability of the
21 supervising osteopathic physician. An appropriate degree of
22 supervision includes:

23 a. The active and continuing overview of the
24 osteopathic physician assistant's activities to determine that

1 the supervising osteopathic physician's directions are being
2 implemented;

3 b. The availability of the supervising osteopathic
4 physician to the osteopathic physician assistant for all
5 necessary consultations;

6 c. Personal and regular (at least monthly) review by
7 the supervising osteopathic physician of selected patient records
8 upon which entries are made by the osteopathic physician
9 assistant. Patient records shall be selected for review on the
10 basis of written criteria established by the supervising
11 osteopathic physician and the osteopathic physician assistant and
12 shall be of sufficient number to assure adequate review of the
13 osteopathic physician assistant's scope of practice, and;

14 d. Periodic (at least monthly) education and review
15 sessions discussing specific conditions, protocols, procedures
16 and specific patients, held by the supervising osteopathic
17 physician for the osteopathic physician assistant under his or
18 her supervision.

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

1 2.2. Employment of osteopathic physician assistants by
2 licensed osteopathic physician; services that may be performed by
3 osteopathic physician assistants.

4 2.2.1. A osteopathic physician fully licensed under W. Va.
5 Code §30-14-1 et. seq. may submit a job description to the Board
6 to employ a osteopathic physician assistant.

7 2.2.2. The delegation of certain acts to a osteopathic
8 physician assistant shall be stated on the job description in a
9 manner consistent with sound medical practice and with the
10 protection of the health and safety of the patient in mind. The
11 services shall be limited to those which are educational,
12 diagnostic, therapeutic or preventive in nature and may,
13 according to the standards set by his or her supervising
14 osteopathic physician, allow the osteopathic physician assistant
15 to formulate a provisional diagnosis and treatment plan which may
16 be set by standard protocols of his or her supervising
17 osteopathic physician and are under his or her direction.

18 2.3. Submission of application; job description. -- An
19 application completed by the applicant and a job description
20 written and signed by the supervising osteopathic physician
21 listing in numerical order the duties which will be performed by
22 the assistant must be in the office of the Board of Osteopathy,
23 thirty (30) days prior to a Board meeting. The filing of an
24 application and job description does not entitle a osteopathic

1 physician assistant to licensure. The only legal authority for
2 such approval must be given by the Board.

3 2.4. Biennial report of osteopathic physician assistant's
4 performance; biennial report of the Board. -- Osteopathic
5 physician assistants and their supervising osteopathic physicians
6 must submit biennial signed reports either individually or
7 combined, on the professional conduct, capabilities and
8 performance of the osteopathic physician assistant. The report
9 must accompany each application for licensure and must be
10 submitted to the office of the Board by April 1. In addition
11 thereto, the Board shall compile and publish a biennial report
12 that includes a list of currently licensed osteopathic physician
13 assistants, their employers and location in the state and a list
14 of approved programs in West Virginia, the number of graduates
15 per year of the approved programs and the number of osteopathic
16 physician assistants from other states' approved programs
17 practicing in West Virginia.

18 2.5. Supervision and control of osteopathic physician
19 assistant. -- The osteopathic physician assistant, whether
20 employed by a health care facility or the supervising osteopathic
21 physician, shall perform only under the supervision and control
22 of the supervising osteopathic physician. Supervision and
23 control of a osteopathic physician assistant certified by the
24 NCCPA requires the availability of a osteopathic physician for
25 consultation and direction of the actions of the assistant, but

1 does not necessarily require the personal presence of the
2 supervising osteopathic physician at the place or places where
3 services are rendered, if the osteopathic physician assistant
4 certified by the NCCPA is performing (specified) duties at the
5 direction of the supervising osteopathic physician. In the case
6 of a osteopathic physician assistant who has not been certified
7 by the NCCPA, the presence of the supervising osteopathic
8 physician or alternate supervising osteopathic physician on the
9 premises where the noncertified assistant performs delegated
10 medical tasks is required. The osteopathic physician assistant
11 may function in any setting within which the supervising
12 osteopathic physician routinely practices, but in no instance
13 shall a separate place of work for the osteopathic physician
14 assistant be established. The supervising osteopathic physician
15 shall be a osteopathic physician permanently licensed in this
16 State.

17 2.6. Limitations on employment and scope of duties of
18 osteopathic physician assistants.

19 2.6.1. A supervising osteopathic physician shall not
20 employ at any one time more than two (2) osteopathic physician
21 assistants.

22 2.6.2. A osteopathic physician assistant shall not sign
23 prescriptions except in the case of certain osteopathic physician
24 assistants authorized to do so by the Board in accordance with
25 the provisions of 2.13 of this rule.

1 2.6.3. A osteopathic physician assistant shall not perform
2 any services which his or her supervising osteopathic physician
3 is not qualified to perform.

4 2.6.4. A osteopathic physician assistant may sign orders
5 to be countersigned later by his or her supervising osteopathic
6 physician: Provided, That they are not in conflict with hospital
7 regulations.

8 2.6.5. A osteopathic physician assistant shall not perform
9 any services which are not included in his or her job description
10 and approved by the Board.

11 — 2.6.6. No osteopathic physician assistant shall be
12 supervised by and work for more than three supervising
13 osteopathic physicians at one time.

14 2.7. Identification of osteopathic physician assistant. --
15 When functioning as a osteopathic physician assistant, the
16 osteopathic physician assistant shall wear a name tag which
17 identifies the osteopathic physician assistant as a osteopathic
18 physician assistant.

19 2.8. Supervising osteopathic physician; responsibilities.

20 2.8.1. The supervising osteopathic physician is
21 responsible for observing, directing and evaluating the work,
22 records and practices performed by the osteopathic physician
23 assistant.

24 2.8.2. The supervising osteopathic physician shall notify
25 the Board in writing of any termination of the employment of his

1 or her osteopathic physician assistant within ten (10) days of
2 the termination.

3 2.8.3. The legal responsibility for any osteopathic
4 physician assistant remains that of his or her supervising
5 osteopathic physician at all times, except in temporary
6 situations not to exceed twenty one days, in cases when a
7 licensed and fully qualified osteopathic physician assistant is
8 substituting for another licensed osteopathic physician
9 assistant, the acts and omissions of the substituting osteopathic
10 physician assistant are the legal responsibility of the absent
11 osteopathic physician assistant's designated supervising
12 osteopathic physician. The temporary change in supervisory
13 responsibility shall be provided to the Board in writing, within
14 ten (10) days of the effective date of the substitution, signed
15 by the affected supervising osteopathic physicians and
16 osteopathic physician assistants, and clearly specifying the
17 dates of substitution.

18 2.9. The license of a osteopathic physician assistant shall
19 be restricted, suspended or revoked by the Board in accordance
20 with all the alternatives set out at W. Va. Code §30-14A-1 when,
21 after due notice and a hearing in accordance with the manner and
22 form prescribed by the contested case hearing procedure, W. Va.
23 Code §29A-5-1 et seq. and regulations of the Board set out at 24
24 CSR 1 if it is found:

1 2.9.1. That the assistant has held himself or herself out
2 or permitted another person to represent him or her as a licensed
3 osteopathic physician;

4 2.9.2. That the assistant has in fact performed other than
5 at the direction and under the supervision of a supervising
6 osteopathic physician licensed by the Board;

7 2.9.3. That the assistant has been delegated and performed
8 a task or tasks beyond his or her competence and not in
9 accordance with his or her job description as approved by the
10 Board;

11 2.9.4. That the assistant is a habitual user of
12 intoxicants or drugs to such an extent that he or she is unable
13 to safely perform as an assistant to the osteopathic physician;

14 2.9.5. That the assistant has been convicted in any court,
15 state or federal, of any felony or other criminal offense
16 involving moral turpitude;

17 2.9.6. That the assistant has been adjudicated a mental
18 incompetent or his or her mental condition renders him or her
19 unable to safely perform as an assistant to a osteopathic
20 physician;

21 2.9.7. That the assistant has failed to comply with any of
22 the provisions of this rule or W. Va. Code §30-14-1 et seq.; and

23 2.9.8. That the assistant is guilty of unprofessional
24 conduct which includes, but is not limited to, the following:

1 a. Misrepresentation or concealment of any material
2 fact in obtaining any certificate or license or a reinstatement
3 thereof;

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

7 c. The commission of any act involving moral turpitude,
8 dishonesty or corruption, when the act directly or indirectly
9 affects the health, welfare or safety of citizens of this State.
10 If the act constitutes a crime, conviction thereof in a criminal
11 proceeding is not a condition precedent to disciplinary action;

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

15 e. Misconduct in his or her practice as a osteopathic
16 physician assistant or performing tasks fraudulently, beyond his
17 or her authorized scope, with incompetence or with negligence on
18 a particular occasion or negligence on repeated occasions;

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

22 g. Impersonation of a licensed osteopathic physician or
23 another certified or licensed osteopathic physician assistant;

24 h. Offering, undertaking or agreeing to cure or treat
25 disease by a secret method, procedure, treatment or medicine;

1 treating or prescribing for any human condition by a method,
2 means or procedure which the osteopathic physician assistant
3 refuses to divulge upon demand of the Board; or using such
4 methods or treatment processes not accepted by a reasonable
5 segment of the medical profession;

6 i. Prescribing a prescription drug, including any
7 controlled substance under state or federal law, other than in
8 good faith and a therapeutic manner in accordance with accepted
9 medical standards;

10 j. Prescribing a controlled substance under state or
11 federal law, to or for himself or herself, or to or for any
12 member of his or her immediate family; and

13 k. Prescribing a prescription drug, including any
14 controlled substance under state or federal law, which is not
15 included in the approved job description for that osteopathic
16 physician assistant or which is not included in the approved
17 state formulary for osteopathic physician assistants.

18 2.10. Denial of licensure of osteopathic physician assistant.
19 Whenever the Board determines that an applicant has failed to
20 satisfy the Board that he or she should be licensed, the Board
21 shall immediately notify the applicant of its decision and
22 indicate in what respect the applicant has failed to satisfy the
23 Board. The applicant shall be given a formal hearing before the
24 Board upon request of the applicant filed with or mailed by
25 registered or certified mail to the Secretary of the Board, which

1 request must be filed within thirty (30) days after receipt of
2 the Board's decision, stating the reasons for the request. The
3 Board shall within twenty (20) days of receipt of the request,
4 notify the applicant of the time and place of a public hearing,
5 which shall be held within a reasonable time. The burden of
6 satisfying the Board of his or her qualifications for licensure
7 is upon the applicant. Following the hearing, the Board shall
8 determine on the basis of this rule whether the applicant is
9 qualified to be licensed, and this decision of the Board is final
10 as to that application.

11 2.11. Disciplinary procedures. -- The disciplinary process
12 and procedures set forth in the contested case hearing procedure,
13 W. Va. Code §29A-5-1 et seq. and in regulations of the Board set
14 out at 24 CSR 1 also apply to disciplinary actions instituted
15 against osteopathic physician assistants with the same provisions
16 regarding the appeal of decisions made to circuit courts.

17 2.12. Osteopathic physician assistant utilization.

18 2.12.1. The osteopathic physician assistant shall, under
19 appropriate direction and supervision by a osteopathic physician,
20 augment the osteopathic physician's data gathering abilities in
21 order to assist the supervising osteopathic physician in reaching
22 decisions and instituting care plans for the osteopathic
23 physician's patients. A osteopathic physician assistant shall
24 have, as a minimum, the knowledge and competency to perform the

1 following functions and may under appropriate supervision perform
2 them; this list is not intended to be specific or all-inclusive:

3 a. Screen patients to determine the need for medical
4 attention;

5 b. Review patient records to determine health status;

6 c. Take a patient history;

7 d. Perform a physical examination;

8 e. Perform development screening examinations on
9 children;

10 f. Record pertinent patient data;

11 g. Make decisions regarding data gathering and
12 appropriate management and treatment of patients being seen for
13 the initial evaluation of a problem or the follow-up evaluation
14 of a previously diagnosed and stabilized condition;

15 h. Prepare patient summaries;

16 i. Initiate requests for commonly performed initial
17 laboratory studies;

18 j. Collect specimens for and carry out commonly
19 performed blood, urine and stool analyses and cultures;

20 k. Identify normal and abnormal findings in history
21 physical examination and commonly performed laboratory studies;

22 l. Initiate appropriate evaluation and emergency
23 management for emergency situations; for example, cardiac arrest,
24 respiratory distress, injuries, burns and hemorrhage;

25 m. Perform clinical procedures such as:

- 1 A. Venipuncture;
- 2 B. Electrocardiogram;
- 3 C. Care and suturing of minor lacerations;
- 4 D. Casting and splinting;
- 5 E. Control of external hemorrhage;
- 6 F. Application of dressings and bandages;
- 7 G. Removal of superficial foreign bodies;
- 8 H. Cardiopulmonary resuscitation;
- 9 I. Audiometry screening;
- 10 J. Visual screening; and
- 11 K. Aseptic and isolation techniques; and
- 12 n. Provide counseling and instruction regarding common
- 13 patient problems.

14 2.12.2. The tasks a osteopathic physician assistant may
15 perform are those which require technical skill, execution of
16 standing orders, routine patient care tasks and such diagnostic
17 and therapeutic procedures as the supervising osteopathic
18 physician may wish to delegate to the osteopathic physician
19 assistant after the supervising osteopathic physician has
20 satisfied himself or herself as to the ability and competence of
21 the osteopathic physician assistant. The supervising osteopathic
22 physician may, with due regard for the safety of the patient and
23 in keeping with sound medical practice, delegate to the
24 osteopathic physician assistant such medical procedures and other
25 tasks as are usually performed within the normal scope of the

1 supervising osteopathic physician's practice, subject to the
2 limitations set forth in this section and W. Va. Code §30-14-1 et
3 seq., and the training and expertise of the osteopathic physician
4 assistant.

5 2.12.3. A supervising osteopathic physician shall not
6 permit a osteopathic physician assistant to independently
7 practice medicine. Supervision must be maintained at all times.

8 2.12.4. A osteopathic physician assistant shall not:

9 a. Maintain or manage an office separate and apart from
10 the supervising osteopathic physician's primary office for
11 treating patients, unless the Board has granted the supervising
12 osteopathic physician specific permission to establish a
13 satellite operation;

14 b. Independently bill patients for services provided;

15 c. Independently delegate a task assigned to him or her
16 by his or her supervising osteopathic physician to another
17 individual;

18 d. Perform acupuncture in any form; or

19 e. Pronounce a patient dead, except in a setting where
20 state or federal government regulations permit a registered nurse
21 or a osteopathic physician assistant to do so.

22 2.12.5. The supervising osteopathic physician shall
23 monitor and supervise the activities of the osteopathic physician
24 assistant and require documentation, including organized medical
25 records with symptoms, pertinent physical findings, impressions

1 and treatment plans indicated. The supervising osteopathic
2 physician may also provide written protocols for the use of the
3 osteopathic physician assistant in the performance of delegated
4 tasks. The established protocols shall be available for public
5 inspection upon request and may be reviewed by the Board as
6 required.

7 2.12.6. If the supervising osteopathic physician absents
8 himself or herself in such a manner or to such an extent that he
9 or she is unavailable to aid the osteopathic physician assistant
10 when required, the supervising osteopathic physician shall not
11 delegate patient care to his or her osteopathic physician
12 assistant unless he or she has made appropriate arrangements for
13 an alternate supervising osteopathic physician. The legal
14 responsibility for the acts and omissions of the osteopathic
15 physician assistant remains with the supervising osteopathic
16 physician at all times.

17 2.12.7. It is the responsibility of the supervising
18 osteopathic physician to ensure that supervision is maintained in
19 his or her absence.

20 2.12.8. No osteopathic physician assistant may be utilized
21 in an office or clinic separate and apart from the supervising
22 osteopathic physician's primary place for meeting patients unless
23 the supervising osteopathic physician has obtained specific
24 approval from the Board. A supervising osteopathic physician may
25 supervise only two (2) satellite operations. The criteria for

1 granting approval is that the supervising osteopathic physician
2 demonstrate the following to the satisfaction of the Board:

3 a. That the osteopathic physician assistant will be
4 utilized in a designated manpower shortage area or an area of
5 medical need as defined by the Board;

6 b. That there is adequate provision for direct
7 communication between the osteopathic physician assistant and the
8 supervising osteopathic physician and that the distance between
9 the main office and the satellite operation is not so great as to
10 prohibit or impede appropriate emergency services;

11 c. That provision is made for the supervising
12 osteopathic physician to see each regular patient periodically;
13 for example, every third visit; and

14 d. That the supervising osteopathic physician visit the
15 remote office at least once every fourteen days and demonstrate
16 that he or she spends enough time on site to provide supervision
17 and personal and regular review of the selected records upon
18 which entries are made by the osteopathic physician assistant.
19 Patient records shall be selected on the basis of written
20 criteria established by the supervising osteopathic physician and
21 the osteopathic physician assistant and shall be of sufficient
22 number to assure adequate review of the osteopathic physician
23 assistant's scope of practice.

24 2.12.9. Appropriate records of supervisory contact must be
25 maintained and made available for Board review if required.

1 Failure to maintain the standards required for such an operation
2 may result in the loss of the privilege to maintain a satellite
3 operation.

4 2.12.10. Designated representatives of the Board will be
5 authorized to make on-site visits to the offices of supervising
6 osteopathic physicians and medical care facilities utilizing
7 osteopathic physician assistants to review the following:

8 a. The supervision of osteopathic physician assistants;

9 b. The maintenance of and compliance with, any
10 protocols;

11 c. Utilization in conformity with the provisions of
12 this section;

13 d. Identification of osteopathic physician assistants;

14 and

15 e. Compliance with licensure and registration
16 requirements.

17 2.12.11. The Board reserves the right to review
18 osteopathic physician assistant utilization without prior notice
19 to either the osteopathic physician assistant or the supervising
20 osteopathic physician. It is a violation of this rule for a
21 supervising osteopathic physician or a osteopathic physician
22 assistant to refuse to undergo a review by the Board.

23 2.12.12. The provisions of this section shall not be
24 construed to require medical care facilities to accept
25 osteopathic physician assistants or to use them within their

1 premises. It is appropriate for the osteopathic physician
2 assistant to provide services to the hospitalized patients of his
3 or her supervising osteopathic physician under the supervision of
4 the osteopathic physician, if the medical care facility permits
5 it.

6 2.12.13. Osteopathic physician assistants employed
7 directly by medical care facilities shall perform services only
8 under the supervision of a clearly identified supervising
9 osteopathic physician, and the osteopathic physician shall
10 supervise no more than two (2) osteopathic physician assistants,
11 except that a supervising osteopathic physician may supervise up
12 to four (4) hospital employed osteopathic physician assistants.

13 2.12.14. So long as the facility permits, a osteopathic
14 physician assistant may:

15 a. Assess and record the patient's progress within the
16 parameters of an established protocol or regimen and report the
17 patient's progress to the supervising osteopathic physician; and

18 b. Make entries in medical records and patient charts
19 so long as an appropriate mechanism is established for
20 authentication by the supervising osteopathic physician through
21 countersignature.

22 2.12.15. A osteopathic physician assistant may provide
23 medical care or services in an emergency department so long as he
24 or she has training in emergency medicine, functions under
25 specific protocols which govern his or her performance and is

1 under the supervision of a osteopathic physician with whom he or
2 she has ready contact and who is willing to assume full
3 responsibility for the osteopathic physician assistant's
4 performance.

5 2.12.16. No osteopathic physician assistant shall render
6 nonemergency outpatient medical services until the patient has
7 been informed that the individual providing care is a osteopathic
8 physician assistant.

9 2.12.17. It is the supervising osteopathic physician's
10 responsibility to be alert to patient complaints concerning the
11 type or quality of services provided by the osteopathic physician
12 assistant.

13 2.12.18. In the supervising osteopathic physician's office
14 and any satellite operation, a notice plainly visible to all
15 patients shall be posted in a prominent place explaining the
16 meaning of the term "Osteopathic physician Assistant". The
17 osteopathic physician assistant's license must be prominently
18 displayed in the office and any satellite operation in which he
19 or she may function. Duplicate licenses may be obtained from the
20 Board if required.

21 2.12.19. The osteopathic physician assistant is required
22 to notify the Board of changes in his or her employment within
23 thirty (30) days. The osteopathic physician assistant must
24 provide the Board with his or her new address and telephone

1 number of residence, address and telephone number of employment
2 and name of supervising osteopathic physician.

3 2.12.20. The supervising osteopathic physician is required
4 to notify the Board of any changes in his or her supervision of a
5 osteopathic physician assistant within ten (10) days.

6 2.13. Limited prescriptive privileges for osteopathic
7 physician assistants.

8 2.13.1. A osteopathic physician assistant may be
9 authorized by the Board to issue written or oral prescriptions
10 for certain medicinal drugs at the direction of his or her
11 supervising osteopathic physician if all of the following
12 conditions are met:

13 a. The osteopathic physician assistant has performed
14 patient care services for a minimum of two (2) years immediately
15 preceding the submission to the Board of the job description
16 requesting limited prescriptive privileges;

17 b. The osteopathic physician assistant has successfully
18 completed an accredited course of instruction in clinical
19 pharmacology approved by the Board of not less than four (4)
20 semester hours;

21 c. The osteopathic physician assistant obtains Board
22 approval of his or her job description which includes the
23 categories of drugs the osteopathic physician assistant proposes
24 to prescribe at the direction of his or her supervising
25 osteopathic physician.

1 d. The osteopathic physician assistant continues to
2 maintain national certification as a osteopathic physician
3 assistant, and in meeting such national certification
4 requirements, completes a minimum of ten (10) hours of continuing
5 education in rational drug therapy in each certification period.

6 2.13.2. Evidence of completion of all conditions for the
7 granting of limited prescriptive privileges shall be included
8 with the osteopathic physician assistant's biennial renewal
9 application and report to the Board.

10 2.13.3. The Board shall approve a formulary classifying
11 pharmacologic categories of all drugs which may be prescribed by
12 a osteopathic physician assistant authorized by the Board to
13 prescribe drugs. The formulary shall exclude Schedules I and II
14 of the Uniform Controlled Substances Act, anticoagulants,
15 antineoplastics, radiopharmaceuticals, general anesthetics and
16 radiographic contrast materials. The formulary may be revised
17 annually, and shall include the following designated sections:

18 a. Section a. -- A choice of drugs commonly used in
19 primary care outpatient settings to be prescribable by
20 osteopathic physician assistants who have completed an additional
21 accredited course of study in clinical pharmacology approved by
22 the Board of not less than four (4) semester hours; and

23 b. Section b. -- Additional drugs used less commonly in
24 primary care outpatient settings to be prescribable by
25 osteopathic physician assistants who have satisfied the

1 requirements set forth under Section 2.13.3.a of this rule. In
2 addition, Section b. drugs may be prescribed by osteopathic
3 physician assistants only under the following limited situations:

4 A. On a direct order from the supervising
5 osteopathic physician to the osteopathic physician assistant
6 during consultation at the time of the patient's examination by
7 the osteopathic physician assistant, and specifically noted in
8 the patient's chart; or

9 B. On a refill prescription for a previously
10 diagnosed and stable patient whose prescription was initiated by
11 the supervising osteopathic physician.

12 2.13.4. A prescription drug not included in the approved
13 formulary shall not be contained in the job description of any
14 osteopathic physician assistant.

15 2.13.5. Prescriptions issued by a osteopathic physician
16 assistant shall be issued consistent with the supervising
17 osteopathic physician's directions or treatment protocol provided
18 to his or her osteopathic physician assistant. The maximum
19 dosage shall be indicated in the protocol and in no case may the
20 dosage exceed the manufacturer's recommended average therapeutic
21 dose for that drug.

22 2.13.6. Each prescription and subsequent refills given by
23 the osteopathic physician assistant shall be entered on the
24 patient's chart.

1 2.13.7. The prescription form utilized by a osteopathic
2 physician assistant approved for limited prescriptive privileges
3 shall be imprinted with the name of the supervising osteopathic
4 physician, the name of the approved osteopathic physician
5 assistant, the address of the health care facility, the telephone
6 number of the health care facility, the categories of drugs or
7 drugs within a category which the assistant may prescribe and the
8 statement, "Osteopathic physician Assistant Prescription - it is
9 a violation of state law to dispense drugs not imprinted on this
10 prescription." The osteopathic physician assistant shall write
11 the name of the patient, the patient's address and the date on
12 each prescription form. The osteopathic physician assistant
13 shall sign his or her name to each prescription followed by the
14 letters "PA-C." The supervising osteopathic physician must
15 provide the Board with a copy of the prescription form utilized
16 by his or her osteopathic physician assistant prior to its use.
17 A copy of this prescription form shall be provided by the
18 osteopathic physician assistant to area pharmacies where the
19 osteopathic physician assistant may issue a prescription by word
20 of mouth, telephone or other means of communication in his or her
21 name at the direction of the supervising osteopathic physician.

22 2.13.8. Osteopathic physician assistants authorized to
23 issue prescriptions for Schedules III through V controlled
24 substances shall write on the prescription form the Federal Drug
25 Enforcement Administration number issued to that osteopathic

1 physician assistant. Prescriptions written for Schedule III
2 drugs shall be limited to a seventy-two (72) hour supply and may
3 not authorize a refill. The maximum amount of Schedule IV or
4 Schedule V drugs shall be no more than ninety (90) dosage units
5 or a thirty (30) day supply, whichever is less.

6 2.13.9. Other prescription drugs shall not be prescribed
7 or refillable for a period exceeding six (6) months.

8 2.13.10. The Board of Osteopathy shall provide the Board
9 of Pharmacy with a list of osteopathic physician assistants with
10 limited prescriptive privileges and shall update the list within
11 ten (10) days after additions or deletions are made.

12 2.13.11. Nothing in this rule shall be construed to permit
13 any osteopathic physician assistant to independently prescribe or
14 dispense drugs.

15 2.14. Continuing Education.

16 2.14.1. Each osteopathic physician assistant, as a
17 condition of biennial renewal of osteopathic physician assistant
18 license, shall provide written documentation of participation in
19 and successful completion during the preceding two (2) year
20 period of a minimum of twenty (20) hours of continuing education
21 in courses approved by the Board for the purposes of continuing
22 education of osteopathic physician assistants

23 2.14.2. All written documentation must be submitted to and
24 received by the Board, with the completed biennial renewal form,

1 prior to the first day of April of the year of renewal of the
2 osteopathic physician assistant license.

3 2.14.3. Failure to timely submit written documentation as
4 set forth in subsection 2.14.3 of this rule shall result in the
5 automatic suspension of the license of a osteopathic physician
6 assistant until such time as the written documentation is
7 submitted to and approved by the Board.

8 **§11-2B-3. Severability.**

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

15

16 NOTE: The purpose of this bill is to authorize the Board of
17 Osteopathy to promulgate legislative rules relating to
18 osteopathic physician assistants.

19

20 This section is new; therefore, strike-throughs and
21 underscoring have been omitted.

H.L.C.H.

1
2
3
4
5
6
7
8
9

H. B. 4294

(By Delegates Gallagher, Douglas, Compton,
Huntwork, Burk and Faircloth
(Introduced January 31, 1994; referred to the
Committee on Health and Human Resources then the
Judiciary)

10 A BILL to amend, article nine, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto a new section designated section
13 thirty-six, relating to authorizing the board of osteopathy
14 to promulgate legislative rules relating to osteopathic
15 physician assistants.

16 Be it enacted by the Legislature of West Virginia:

17 That article nine, chapter sixty-four of the code of West
18 Virginia, one thousand nine hundred thirty-one, as amended, be
19 amended by adding thereto a new section, designated section
20 thirty-six, to read as follows:

21 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS
22 TO PROMULGATE LEGISLATIVE RULES.

23 §64-9-36. Board of osteopathy.

4294

1 The legislative rules filed in the state register on the
2 sixth day of August, one thousand nine hundred ninety-three,
3 relating to the board of osteopathy (osteopathic physician
4 assistants), are authorized with amendment set forth below:

5 On page one by striking out the entire rule and inserting in
6 lieu thereof the following:

7 **§11-1B-1. General.**

8 1.1. Scope. -- W. Va. Code §30-14A-1 requires the Board of
9 Osteopathy to adopt rules governing the extent to which
10 osteopathic physician assistants may function in this State.

11 1.2. Authority. -- W. Va. Code §30-14A-1.

12 1.3. Filing Date. --

13 1.4. Effective Date. --

14 **§11-1B-2. Rules For Osteopathic physician Assistants.**

15 2.1. For purposes of this section, the following definitions
16 are in effect:

17 2.1.1. Licensure -- The approval of individuals by the
18 Board to serve as osteopathic physician assistants. It also
19 means the approval of programs by the Board for the training and
20 education of osteopathic physician assistants.

21 2.1.2. Crimes involving moral turpitude. -- Those crimes
22 which have dishonesty as a fundamental and necessary element;
23 including, but not limited to, crimes involving theft,
24 embezzlement, false swearing perjury, fraud or misrepresentation.

1 2.1.3. NCCPA. --The National Commission on the
2 Certification of Physician Assistants.

3 2.1.4. Protocol. -- Written treatment instructions
4 prepared by a supervising osteopathic physician for use by a
5 osteopathic physician assistant. Such instructions should be
6 flexible, in accordance with the setting where the osteopathic
7 physician assistant is employed.

8 2.1.5. Satellite operation. -- An office or clinic
9 separate and apart from the office of the supervising osteopathic
10 physician, established by the osteopathic physician and manned in
11 part by a osteopathic physician assistant.

12 2.1.6. Supervision. -- The opportunity or ability of the
13 osteopathic physician to provide or exercise control and
14 direction over the services of osteopathic physician assistants.
15 Constant physical presence of the supervising osteopathic
16 physician of a osteopathic physician assistant certified by the
17 NCCPA is not required so long as the supervising osteopathic
18 physician and the osteopathic physician assistant are or can
19 easily be in contact with each other by radio, telephone or
20 telecommunication. Supervision requires the availability of the
21 supervising osteopathic physician. An appropriate degree of
22 supervision includes:

23 a. The active and continuing overview of the
24 osteopathic physician assistant's activities to determine that

1 the supervising osteopathic physician's directions are being
2 implemented;

3 b. The availability of the supervising osteopathic
4 physician to the osteopathic physician assistant for all
5 necessary consultations;

6 c. Personal and regular (at least monthly) review by
7 the supervising osteopathic physician of selected patient records
8 upon which entries are made by the osteopathic physician
9 assistant. Patient records shall be selected for review on the
10 basis of written criteria established by the supervising
11 osteopathic physician and the osteopathic physician assistant and
12 shall be of sufficient number to assure adequate review of the
13 osteopathic physician assistant's scope of practice, and;

14 d. Periodic (at least monthly) education and review
15 sessions discussing specific conditions, protocols, procedures
16 and specific patients, held by the supervising osteopathic
17 physician for the osteopathic physician assistant under his or
18 her supervision.

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

1 2.2. Employment of osteopathic physician assistants by
2 licensed osteopathic physician; services that may be performed by
3 osteopathic physician assistants.

4 2.2.1. A osteopathic physician fully licensed under W. Va.
5 Code §30-14-1 et. seq. may submit a job description to the Board
6 to employ a osteopathic physician assistant.

7 2.2.2. The delegation of certain acts to a osteopathic
8 physician assistant shall be stated on the job description in a
9 manner consistent with sound medical practice and with the
10 protection of the health and safety of the patient in mind. The
11 services shall be limited to those which are educational,
12 diagnostic, therapeutic or preventive in nature and may,
13 according to the standards set by his or her supervising
14 osteopathic physician, allow the osteopathic physician assistant
15 to formulate a provisional diagnosis and treatment plan which may
16 be set by standard protocols of his or her supervising
17 osteopathic physician and are under his or her direction.

18 2.3. Submission of application; job description. -- An
19 application completed by the applicant and a job description
20 written and signed by the supervising osteopathic physician
21 listing in numerical order the duties which will be performed by
22 the assistant must be in the office of the Board of Osteopathy,
23 thirty (30) days prior to a Board meeting. The filing of an
24 application and job description does not entitle a osteopathic

1 physician assistant to licensure. The only legal authority for
2 such approval must be given by the Board.

3 2.4. Biennial report of osteopathic physician assistant's
4 performance; biennial report of the Board. -- Osteopathic
5 physician assistants and their supervising osteopathic physicians
6 must submit biennial signed reports either individually or
7 combined, on the professional conduct, capabilities and
8 performance of the osteopathic physician assistant. The report
9 must accompany each application for licensure and must be
10 submitted to the office of the Board by April 1. In addition
11 thereto, the Board shall compile and publish a biennial report
12 that includes a list of currently licensed osteopathic physician
13 assistants, their employers and location in the state and a list
14 of approved programs in West Virginia, the number of graduates
15 per year of the approved programs and the number of osteopathic
16 physician assistants from other states' approved programs
17 practicing in West Virginia.

18 2.5. Supervision and control of osteopathic physician
19 assistant. -- The osteopathic physician assistant, whether
20 employed by a health care facility or the supervising osteopathic
21 physician, shall perform only under the supervision and control
22 of the supervising osteopathic physician. Supervision and
23 control of a osteopathic physician assistant certified by the
24 NCCPA requires the availability of a osteopathic physician for
25 consultation and direction of the actions of the assistant, but

1 does not necessarily require the personal presence of the
2 supervising osteopathic physician at the place or places where
3 services are rendered, if the osteopathic physician assistant
4 certified by the NCCPA is performing (specified) duties at the
5 direction of the supervising osteopathic physician. In the case
6 of a osteopathic physician assistant who has not been certified
7 by the NCCPA, the presence of the supervising osteopathic
8 physician or alternate supervising osteopathic physician on the
9 premises where the noncertified assistant performs delegated
10 medical tasks is required. The osteopathic physician assistant
11 may function in any setting within which the supervising
12 osteopathic physician routinely practices, but in no instance
13 shall a separate place of work for the osteopathic physician
14 assistant be established. The supervising osteopathic physician
15 shall be a osteopathic physician permanently licensed in this
16 State.

17 2.6. Limitations on employment and scope of duties of
18 osteopathic physician assistants.

19 2.6.1. A supervising osteopathic physician shall not
20 employ at any one time more than two (2) osteopathic physician
21 assistants:

22 2.6.2. A osteopathic physician assistant shall not sign
23 prescriptions except in the case of certain osteopathic physician
24 assistants authorized to do so by the Board in accordance with
25 the provisions of 2.13 of this rule.

1 2.6.3. A osteopathic physician assistant shall not perform
2 any services which his or her supervising osteopathic physician
3 is not qualified to perform.

4 2.6.4. A osteopathic physician assistant may sign orders
5 to be countersigned later by his or her supervising osteopathic
6 physician: Provided, That they are not in conflict with hospital
7 regulations.

8 2.6.5. A osteopathic physician assistant shall not perform
9 any services which are not included in his or her job description
10 and approved by the Board.

11 2.6.6. No osteopathic physician assistant shall be
12 supervised by and work for more than three supervising
13 osteopathic physicians at one time.

14 2.7. Identification of osteopathic physician assistant. --
15 When functioning as a osteopathic physician assistant, the
16 osteopathic physician assistant shall wear a name tag which
17 identifies the osteopathic physician assistant as a osteopathic
18 physician assistant.

19 2.8. Supervising osteopathic physician; responsibilities.

20 2.8.1. The supervising osteopathic physician is
21 responsible for observing, directing and evaluating the work,
22 records and practices performed by the osteopathic physician
23 assistant.

24 2.8.2. The supervising osteopathic physician shall notify
25 the Board in writing of any termination of the employment of his

1 or her' osteopathic physician assistant within ten (10) days of
2 the termination.

3 2.8.3. The legal responsibility for any osteopathic
4 physician assistant remains that of his or her supervising
5 osteopathic physician at all times, except in temporary
6 situations not to exceed twenty one days, in cases when a
7 licensed and fully qualified osteopathic physician assistant is
8 substituting for another licensed osteopathic physician
9 assistant, the acts and omissions of the substituting osteopathic
10 physician assistant are the legal responsibility of the absent
11 osteopathic physician assistant's designated supervising
12 osteopathic physician. The temporary change in supervisory
13 responsibility shall be provided to the Board in writing, within
14 ten (10) days of the effective date of the substitution, signed
15 by the affected supervising osteopathic physicians and
16 osteopathic physician assistants, and clearly specifying the
17 dates of substitution.

18 2.9. The license of a osteopathic physician assistant shall
19 be restricted, suspended or revoked by the Board in accordance
20 with all the alternatives set out at W. Va. Code §30-14A-1 when,
21 after due notice and a hearing in accordance with the manner and
22 form prescribed by the contested case hearing procedure, W. Va.
23 Code §29A-5-1 et seq. and regulations of the Board set out at 24
24 CSR 1 if it is found:

1 2.9.1. That the assistant has held himself or herself out
2 or permitted another person to represent him or her as a licensed
3 osteopathic physician;

4 2.9.2. That the assistant has in fact performed other than
5 at the direction and under the supervision of a supervising
6 osteopathic physician licensed by the Board;

7 2.9.3. That the assistant has been delegated and performed
8 a task or tasks beyond his or her competence and not in
9 accordance with his or her job description as approved by the
10 Board;

11 2.9.4. That the assistant is a habitual user of
12 intoxicants or drugs to such an extent that he or she is unable
13 to safely perform as an assistant to the osteopathic physician;

14 2.9.5. That the assistant has been convicted in any court,
15 state or federal, of any felony or other criminal offense
16 involving moral turpitude;

17 2.9.6. That the assistant has been adjudicated a mental
18 incompetent or his or her mental condition renders him or her
19 unable to safely perform as an assistant to a osteopathic
20 physician;

21 2.9.7. That the assistant has failed to comply with any of
22 the provisions of this rule or W. Va. Code §30-14-1 et seq.; and

23 2.9.8. That the assistant is guilty of unprofessional
24 conduct which includes, but is not limited to, the following:

- 1 a. Misrepresentation or concealment of any material
2 fact in obtaining any certificate or license or a reinstatement
3 thereof;
- 4 b. The commission of an offense against any provision
5 of state law related to the practice of osteopathic physician
6 assistants, or any rule or regulation promulgated thereunder;
- 7 c. The commission of any act involving moral turpitude,
8 dishonesty or corruption, when the act directly or indirectly
9 affects the health, welfare or safety of citizens of this State.
10 If the act constitutes a crime, conviction thereof in a criminal
11 proceeding is not a condition precedent to disciplinary action;
- 12 d. Conviction of a felony, as defined under the laws of
13 this State or under the laws of any other state, territory or
14 country;
- 15 e. Misconduct in his or her practice as a osteopathic
16 physician assistant or performing tasks fraudulently, beyond his
17 or her authorized scope, with incompetence or with negligence on
18 a particular occasion or negligence on repeated occasions;
- 19 f. Performing tasks as a osteopathic physician
20 assistant while the ability to do so is impaired by alcohol,
21 drugs, physical disability or mental instability;
- 22 g. Impersonation of a licensed osteopathic physician or
23 another certified or licensed osteopathic physician assistant;
- 24 h. Offering, undertaking or agreeing to cure or treat
25 disease by a secret method, procedure, treatment or medicine;

1 treating or prescribing for any human condition by a method,
2 means or procedure which the osteopathic physician assistant
3 refuses to divulge upon demand of the Board; or using such
4 methods or treatment processes not accepted by a reasonable
5 segment of the medical profession;

6 i. Prescribing a prescription drug, including any
7 controlled substance under state or federal law, other than in
8 good faith and a therapeutic manner in accordance with accepted
9 medical standards;

10 j. Prescribing a controlled substance under state or
11 federal law, to or for himself or herself, or to or for any
12 member of his or her immediate family; and

13 k. Prescribing a prescription drug, including any
14 controlled substance under state or federal law, which is not
15 included in the approved job description for that osteopathic
16 physician assistant or which is not included in the approved
17 state formulary for osteopathic physician assistants.

18 2.10. Denial of licensure of osteopathic physician assistant.
19 Whenever the Board determines that an applicant has failed to
20 satisfy the Board that he or she should be licensed, the Board
21 shall immediately notify the applicant of its decision and
22 indicate in what respect the applicant has failed to satisfy the
23 Board. The applicant shall be given a formal hearing before the
24 Board upon request of the applicant filed with or mailed by
25 registered or certified mail to the Secretary of the Board, which

1 request must be filed within thirty (30) days after receipt of
2 the Board's decision, stating the reasons for the request. The
3 Board shall within twenty (20) days of receipt of the request,
4 notify the applicant of the time and place of a public hearing,
5 which shall be held within a reasonable time. The burden of
6 satisfying the Board of his or her qualifications for licensure
7 is upon the applicant. Following the hearing, the Board shall
8 determine on the basis of this rule whether the applicant is
9 qualified to be licensed, and this decision of the Board is final
10 as to that application.

11 2.11. Disciplinary procedures. -- The disciplinary process
12 and procedures set forth in the contested case hearing procedure,
13 W. Va. Code §29A-5-1 et seq. and in regulations of the Board set
14 out at 24 CSR 1 also apply to disciplinary actions instituted
15 against osteopathic physician assistants with the same provisions
16 regarding the appeal of decisions made to circuit courts.

17 2.12. Osteopathic physician assistant utilization.

18 2.12.1. The osteopathic physician assistant shall, under
19 appropriate direction and supervision by a osteopathic physician,
20 augment the osteopathic physician's data gathering abilities in
21 order to assist the supervising osteopathic physician in reaching
22 decisions and instituting care plans for the osteopathic
23 physician's patients. A osteopathic physician assistant shall
24 have, as a minimum, the knowledge and competency to perform the

1 following functions and may under appropriate supervision perform
2 them; this list is not intended to be specific or all-inclusive:

3 a. Screen patients to determine the need for medical
4 attention;

5 b. Review patient records to determine health status;

6 c. Take a patient history;

7 d. Perform a physical examination;

8 e. Perform development screening examinations on
9 children;

10 f. Record pertinent patient data;

11 g. Make decisions regarding data gathering and
12 appropriate management and treatment of patients being seen for
13 the initial evaluation of a problem or the follow-up evaluation
14 of a previously diagnosed and stabilized condition;

15 h. Prepare patient summaries;

16 i. Initiate requests for commonly performed initial
17 laboratory studies;

18 j. Collect specimens for and carry out commonly
19 performed blood, urine and stool analyses and cultures;

20 k. Identify normal and abnormal findings in history
21 physical examination and commonly performed laboratory studies;

22 l. Initiate appropriate evaluation and emergency
23 management for emergency situations; for example, cardiac arrest,
24 respiratory distress, injuries, burns and hemorrhage;

25 m. Perform clinical procedures such as:

- 1 A. Venipuncture;
- 2 B. Electrocardiogram;
- 3 C. Care and suturing of minor lacerations;
- 4 D. Casting and splinting;
- 5 E. Control of external hemorrhage;
- 6 F. Application of dressings and bandages;
- 7 G. Removal of superficial foreign bodies;
- 8 H. Cardiopulmonary resuscitation;
- 9 I. Audiometry screening;
- 10 J. Visual screening; and
- 11 K. Aseptic and isolation techniques; and
- 12 n. Provide counseling and instruction regarding common
- 13 patient problems.

14 2.12.2. The tasks a osteopathic physician assistant may
15 perform are those which require technical skill, execution of
16 standing orders, routine patient care tasks and such diagnostic
17 and therapeutic procedures as the supervising osteopathic
18 physician may wish to delegate to the osteopathic physician
19 assistant after the supervising osteopathic physician has
20 satisfied himself or herself as to the ability and competence of
21 the osteopathic physician assistant. The supervising osteopathic
22 physician may, with due regard for the safety of the patient and
23 in keeping with sound medical practice, delegate to the
24 osteopathic physician assistant such medical procedures and other
25 tasks as are usually performed within the normal scope of the

1 supervising osteopathic physician's practice, subject to the
2 limitations set forth in this section and W. Va. Code §30-14-1 et
3 seq., and the training and expertise of the osteopathic physician
4 assistant.

5 2.12.3. A supervising osteopathic physician shall not
6 permit a osteopathic physician assistant to independently
7 practice medicine. Supervision must be maintained at all times.

8 2.12.4. A osteopathic physician assistant shall not:

9 a. Maintain or manage an office separate and apart from
10 the supervising osteopathic physician's primary office for
11 treating patients, unless the Board has granted the supervising
12 osteopathic physician specific permission to establish a
13 satellite operation;

14 b. Independently bill patients for services provided;

15 c. Independently delegate a task assigned to him or her
16 by his or her supervising osteopathic physician to another
17 individual;

18 d. Perform acupuncture in any form; or

19 e. Pronounce a patient dead, except in a setting where
20 state or federal government regulations permit a registered nurse
21 or a osteopathic physician assistant to do so.

22 2.12.5. The supervising osteopathic physician shall
23 monitor and supervise the activities of the osteopathic physician
24 assistant and require documentation, including organized medical
25 records with symptoms, pertinent physical findings, impressions

1 and treatment plans indicated. The supervising osteopathic
2 physician may also provide written protocols for the use of the
3 osteopathic physician assistant in the performance of delegated
4 tasks. The established protocols shall be available for public
5 inspection upon request and may be reviewed by the Board as
6 required.

7 2.12.6. If the supervising osteopathic physician absents
8 himself or herself in such a manner or to such an extent that he
9 or she is unavailable to aid the osteopathic physician assistant
10 when required, the supervising osteopathic physician shall not
11 delegate patient care to his or her osteopathic physician
12 assistant unless he or she has made appropriate arrangements for
13 an alternate supervising osteopathic physician. The legal
14 responsibility for the acts and omissions of the osteopathic
15 physician assistant remains with the supervising osteopathic
16 physician at all times.

17 2.12.7. It is the responsibility of the supervising
18 osteopathic physician to ensure that supervision is maintained in
19 his or her absence.

20 2.12.8. No osteopathic physician assistant may be utilized
21 in an office or clinic separate and apart from the supervising
22 osteopathic physician's primary place for meeting patients unless
23 the supervising osteopathic physician has obtained specific
24 approval from the Board. A supervising osteopathic physician may
25 supervise only two (2) satellite operations. The criteria for

1 granting approval is that the supervising osteopathic physician
2 demonstrate the following to the satisfaction of the Board:

3 a. That the osteopathic physician assistant will be
4 utilized in a designated manpower shortage area or an area of
5 medical need as defined by the Board;

6 b. That there is adequate provision for direct
7 communication between the osteopathic physician assistant and the
8 supervising osteopathic physician and that the distance between
9 the main office and the satellite operation is not so great as to
10 prohibit or impede appropriate emergency services;

11 c. That provision is made for the supervising
12 osteopathic physician to see each regular patient periodically;
13 for example, every third visit; and

14 d. That the supervising osteopathic physician visit the
15 remote office at least once every fourteen days and demonstrate
16 that he or she spends enough time on site to provide supervision
17 and personal and regular review of the selected records upon
18 which entries are made by the osteopathic physician assistant.
19 Patient records shall be selected on the basis of written
20 criteria established by the supervising osteopathic physician and
21 the osteopathic physician assistant and shall be of sufficient
22 number to assure adequate review of the osteopathic physician
23 assistant's scope of practice.

24 2.12.9. Appropriate records of supervisory contact must be
25 maintained and made available for Board review if required.

1 Failure to maintain the standards required for such an operation
2 may result in the loss of the privilege to maintain a satellite
3 operation.

4 2.12.10. Designated representatives of the Board will be
5 authorized to make on-site visits to the offices of supervising
6 osteopathic physicians and medical care facilities utilizing
7 osteopathic physician assistants to review the following:

8 a. The supervision of osteopathic physician assistants;
9 b. The maintenance of and compliance with, any
10 protocols;

11 c. Utilization in conformity with the provisions of
12 this section;

13 d. Identification of osteopathic physician assistants;
14 and

15 e. Compliance with licensure and registration
16 requirements.

17 2.12.11. The Board reserves the right to review
18 osteopathic physician assistant utilization without prior notice
19 to either the osteopathic physician assistant or the supervising
20 osteopathic physician. It is a violation of this rule for a
21 supervising osteopathic physician or a osteopathic physician
22 assistant to refuse to undergo a review by the Board.

23 2.12.12. The provisions of this section shall not be
24 construed to require medical care facilities to accept
25 osteopathic physician assistants or to use them within their

1 premises. It is appropriate for the osteopathic physician
2 assistant to provide services to the hospitalized patients of his
3 or her supervising osteopathic physician under the supervision of
4 the osteopathic physician, if the medical care facility permits
5 it.

6 2.12.13. Osteopathic physician assistants employed
7 directly by medical care facilities shall perform services only
8 under the supervision of a clearly identified supervising
9 osteopathic physician, and the osteopathic physician shall
10 supervise no more than two (2) osteopathic physician assistants,
11 except that a supervising osteopathic physician may supervise up
12 to four (4) hospital employed osteopathic physician assistants.

13 2.12.14. So long as the facility permits, a osteopathic
14 physician assistant may:

15 a. Assess and record the patient's progress within the
16 parameters of an established protocol or regimen and report the
17 patient's progress to the supervising osteopathic physician; and

18 b. Make entries in medical records and patient charts
19 so long as an appropriate mechanism is established for
20 authentication by the supervising osteopathic physician through
21 countersignature.

22 2.12.15. A osteopathic physician assistant may provide
23 medical care or services in an emergency department so long as he
24 or she has training in emergency medicine, functions under
25 specific protocols which govern his or her performance and is

1 under the supervision of a osteopathic physician with whom he or
2 she has ready contact and who is willing to assume full
3 responsibility for the osteopathic physician assistant's
4 performance.

5 2.12.16. No osteopathic physician assistant shall render
6 nonemergency outpatient medical services until the patient has
7 been informed that the individual providing care is a osteopathic
8 physician assistant.

9 2.12.17. It is the supervising osteopathic physician's
10 responsibility to be alert to patient complaints concerning the
11 type or quality of services provided by the osteopathic physician
12 assistant.

13 2.12.18. In the supervising osteopathic physician's office
14 and any satellite operation, a notice plainly visible to all
15 patients shall be posted in a prominent place explaining the
16 meaning of the term "Osteopathic physician Assistant". The
17 osteopathic physician assistant's license must be prominently
18 displayed in the office and any satellite operation in which he
19 or she may function. Duplicate licenses may be obtained from the
20 Board if required.

21 2.12.19. The osteopathic physician assistant is required
22 to notify the Board of changes in his or her employment within
23 thirty (30) days. The osteopathic physician assistant must
24 provide the Board with his or her new address and telephone

1 number of residence, address and telephone number of employment
2 and name of supervising osteopathic physician.

3 2.12.20. The supervising osteopathic physician is required
4 to notify the Board of any changes in his or her supervision or a
5 osteopathic physician assistant within ten (10) days.

6 2.13. Limited prescriptive privileges for osteopathic
7 physician assistants.

8 2.13.1. A osteopathic physician assistant may be
9 authorized by the Board to issue written or oral prescriptions
10 for certain medicinal drugs at the direction of his or her
11 supervising osteopathic physician if all of the following
12 conditions are met:

13 a. The osteopathic physician assistant has performed
14 patient care services for a minimum of two (2) years immediately
15 preceding the submission to the Board of the job description
16 requesting limited prescriptive privileges;

17 b. The osteopathic physician assistant has successfully
18 completed an accredited course of instruction in clinical
19 pharmacology approved by the Board of not less than four (4)
20 semester hours;

21 c. The osteopathic physician assistant obtains Board
22 approval of his or her job description which includes the
23 categories of drugs the osteopathic physician assistant proposes
24 to prescribe at the direction of his or her supervising
25 osteopathic physician.

1 d. The osteopathic physician assistant continues to
2 maintain national certification as a osteopathic physician
3 assistant, and in meeting such national certification
4 requirements, completes a minimum of ten (10) hours of continuing
5 education in rational drug therapy in each certification period.

6 2.13.2. Evidence of completion of all conditions for the
7 granting of limited prescriptive privileges shall be included
8 with the osteopathic physician assistant's biennial renewal
9 application and report to the Board.

10 2.13.3. The Board shall approve a formulary classifying
11 pharmacologic categories of all drugs which may be prescribed by
12 a osteopathic physician assistant authorized by the Board to
13 prescribe drugs. The formulary shall exclude Schedules I and II
14 of the Uniform Controlled Substances Act, anticoagulants,
15 antineoplastics, radiopharmaceuticals, general anesthetics and
16 radiographic contrast materials. The formulary may be revised
17 annually, and shall include the following designated sections:

18 a. Section a. -- A choice of drugs commonly used in
19 primary care outpatient settings to be prescribable by
20 osteopathic physician assistants who have completed an additional
21 accredited course of study in clinical pharmacology approved by
22 the Board of not less than four (4) semester hours; and

23 b. Section b. -- Additional drugs used less commonly in
24 primary care outpatient settings to be prescribable by
25 osteopathic physician assistants who have satisfied the

1 requirements set forth under Section 2.13.3.a of this rule. In
2 addition, Section b. drugs may be prescribed by osteopathic
3 physician assistants only under the following limited situations:

4 A. On a direct order from the supervising
5 osteopathic physician to the osteopathic physician assistant
6 during consultation at the time of the patient's examination by
7 the osteopathic physician assistant, and specifically noted in
8 the patient's chart; or

9 B. On a refill prescription for a previously
10 diagnosed and stable patient whose prescription was initiated by
11 the supervising osteopathic physician.

12 2.13.4. A prescription drug not included in the approved
13 formulary shall not be contained in the job description of any
14 osteopathic physician assistant.

15 2.13.5. Prescriptions issued by a osteopathic physician
16 assistant shall be issued consistent with the supervising
17 osteopathic physician's directions or treatment protocol provided
18 to his or her osteopathic physician assistant. The maximum
19 dosage shall be indicated in the protocol and in no case may the
20 dosage exceed the manufacturer's recommended average therapeutic
21 dose for that drug.

22 2.13.6. Each prescription and subsequent refills given by
23 the osteopathic physician assistant shall be entered on the
24 patient's chart.

1 2.13.7. The prescription form utilized by a osteopathic
2 physician assistant approved for limited prescriptive privileges
3 shall be imprinted with the name of the supervising osteopathic
4 physician, the name of the approved osteopathic physician
5 assistant, the address of the health care facility, the telephone
6 number of the health care facility, the categories of drugs or
7 drugs within a category which the assistant may prescribe and the
8 statement, "Osteopathic physician Assistant Prescription - it is
9 a violation of state law to dispense drugs not imprinted on this
10 prescription." The osteopathic physician assistant shall write
11 the name of the patient, the patient's address and the date on
12 each prescription form. The osteopathic physician assistant
13 shall sign his or her name to each prescription followed by the
14 letters "PA-C." The supervising osteopathic physician must
15 provide the Board with a copy of the prescription form utilized
16 by his or her osteopathic physician assistant prior to its use.
17 A copy of this prescription form shall be provided by the
18 osteopathic physician assistant to area pharmacies where the
19 osteopathic physician assistant may issue a prescription by word
20 of mouth, telephone or other means of communication in his or her
21 name at the direction of the supervising osteopathic physician.

22 2.13.8. Osteopathic physician assistants authorized to
23 issue prescriptions for Schedules III through V controlled
24 substances shall write on the prescription form the Federal Drug
25 Enforcement Administration number issued to that osteopathic

1 physician assistant. Prescriptions written for Schedule III
2 drugs shall be limited to a seventy-two (72) hour supply and may
3 not authorize a refill. The maximum amount of Schedule IV or
4 Schedule V drugs shall be no more than ninety (90) dosage units
5 or a thirty (30) day supply, whichever is less.

6 2.13.9. Other prescription drugs shall not be prescribed
7 or refillable for a period exceeding six (6) months.

8 2.13.10. The Board of Osteopathy shall provide the Board
9 of Pharmacy with a list of osteopathic physician assistants with
10 limited prescriptive privileges and shall update the list within
11 ten (10) days after additions or deletions are made.

12 2.13.11. Nothing in this rule shall be construed to permit
13 any osteopathic physician assistant to independently prescribe or
14 dispense drugs.

15 2.14. Continuing Education.

16 2.14.1. Each osteopathic physician assistant, as a
17 condition of biennial renewal of osteopathic physician assistant
18 license, shall provide written documentation of participation in
19 and successful completion during the preceding two (2) year
20 period of a minimum of twenty (20) hours of continuing education
21 in courses approved by the Board for the purposes of continuing
22 education of osteopathic physician assistants

23 2.14.2. All written documentation must be submitted to and
24 received by the Board, with the completed biennial renewal form,

1 prior to the first day of April of the year of renewal of the
2 osteopathic physician assistant license.

3 2.14.3. Failure to timely submit written documentation as
4 set forth in subsection 2.14.3 of this rule shall result in the
5 automatic suspension of the license of a osteopathic physician
6 assistant until such time as the written documentation is
7 submitted to and approved by the Board.

8 **§11-2B-3. Severability.**

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

15

16 NOTE: The purpose of this bill is to authorize the Board of
17 Osteopathy to promulgate legislative rules relating to
18 osteopathic physician assistants.

19
20 This section is new; therefore, strike-throughs and
21 underscoring have been omitted.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

TO: Cheryl D. Schreiber

AGENCY: Osteopathy

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: April 21, 1994

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 2 TITLE: 24 Osteopathy

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: J. E. Schreiber

TITLE OF PERSON SIGNING: Secretary

DATE: May 3, 1994

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.