ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.

§30-3E-1. Definitions.

As used in this article:

(1) “Advance duties” means medical acts that require additional training beyond the basic education program training required for licensure as a physician assistant.

(2) “Alternate supervising physician” means one or more physicians licensed in this state and designated by the supervising physician to provide supervision of a physician assistant in accordance with an authorized practice agreement.

(3) "Approved program" means an educational program for physician assistants approved and accredited by the Accreditation Review Commission on Education for the Physician Assistant or its successor. Prior to 2001, approval and accreditation would have been by either the Committee on Allied Health Education and Accreditation or the Accreditation Review Commission on Education for the Physician Assistant.

(4) “Boards” means the West Virginia Board of Medicine and the West Virginia Board of Osteopathic Medicine.

(5) “Chronic condition” means a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication and does not generally disappear. These conditions include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures and obesity.

(6) “Endorsement” means a summer camp or volunteer endorsement authorized under this article.

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

(8) “Hospital” means a facility licensed pursuant to article five-b, chapter sixteen of this code, and any acute-care facility operated by the state government that primarily provides inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick persons under the supervision of physicians and includes psychiatric hospitals.

(9) “License” means a license issued by either of the boards pursuant to the provisions of this article.

(10) “Licensee” means a person licensed pursuant to the provisions of this article.

(11) “Physician” means a doctor of allopathic or osteopathic medicine who is fully licensed pursuant to the provisions of either article three or article fourteen of this chapter to practice medicine and surgery in this state.

(12) “Physician assistant” means a person who meets the qualifications set forth in this article and is licensed pursuant to this article to practice medicine under supervision.

(13) “Practice Agreement” means a document that is executed between a supervising physician and a physician assistant pursuant to the provisions of this article, and is filed with and approved by the appropriate licensing board.

(14) “Supervising physician” means a doctor of medicine, osteopathy or podiatry fully licensed, by the appropriate board in this state, without restriction or limitation, who supervises physician assistants.

(15) “Supervision” means overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. Constant physical presence of the supervising physician is not required as long as the supervising physician and physician assistant are, or can be, easily in contact with one another by telecommunication. Supervision does not require the personal presence of the supervising physician at the place or places where services are rendered if the physician assistant’s normal place of employment is the same premises as the supervising physician.

§30-3E-2. Powers and duties of the boards.

In addition to the powers and duties set forth in this code for the boards, the boards shall:

(1) Establish the requirements for licenses and temporary licenses pursuant to this article;

(2) Establish the procedures for submitting, approving and rejecting applications for licenses and temporary licenses;

(3) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article;

(4) Compile and publish an annual report that includes a list of currently licensed physician assistants, their supervising physicians and their locations in the state; and

(5) Take all other actions necessary and proper to effectuate the purposes of this article.

§30-3E-3. Rulemaking.

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

(1) The extent to which physician assistants may practice in this state;

(2) The extent to which physician assistants may pronounce death;

(3) Requirements for licenses and temporary licenses;

(4) Requirements for practice agreements;

(5) Requirements for continuing education;

(6) Conduct of a licensee for which discipline may be imposed;

(7) The eligibility and extent to which a physician assistant may prescribe at the direction of his or her supervising physician, including the following:

(A) A list of drugs and pharmacologic categories, or both, the prescription of which may not be delegated to a physician assistant, including all drugs listed in Schedules I and II of the Uniform Controlled Substances Act, antineoplastic and chemotherapeutic agents, or both, used in the active treatment of current cancer, radiopharmaceuticals, general anesthetics, radiographic contrast materials and any other limitation or exclusions of specific drugs or categories of drugs as determined by the boards;

(B) Authority to include, in a practice agreement, the delegation of prescribing authority for up to a 72-hour supply of drugs listed under Schedule III of the Uniform Controlled Substances Act so long as the prescription is nonrefillable and an annual supply of any drug, with the exception of controlled substances, which is prescribed for the treatment of a chronic condition, other than chronic pain management, with the chronic condition being treated identified on the prescription; and

(C) A description of the education and training requirements for a physician assistant to be eligible to receive delegated prescriptive writing authority as part of a practice agreement;

(8) The authority a supervising physician may delegate for prescribing, dispensing and administering of controlled substances, prescription drugs or medical devices if the practice agreement includes:

(A) A notice of intent to delegate prescribing of controlled substances, prescription drugs or medical devices;

(B) An attestation that all prescribing activities of the physician assistant shall comply with applicable federal and state law governing the practice of physician assistants;

(C) An attestation that all medical charts or records shall contain a notation of any prescriptions written by a physician assistant;

(D) An attestation that all prescriptions shall include the physician assistant's name and the supervising physician's name, business address and business telephone number legibly written or printed; and

(E) An attestation that the physician assistant has successfully completed each of the requirements established by the appropriate board to be eligible to prescribe pursuant to a practice agreement accompanied by the production of any required documentation establishing eligibility;

(9) A fee schedule; and

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

(b) The boards may propose emergency rules pursuant to article three, chapter twenty-nine-a of this code to ensure conformity with this article.

§30-3E-4. License to practice as a physician assistant.

(a) A person seeking licensure as a physician assistant shall apply to the Board of Medicine or to the Board of Osteopathic Medicine. The appropriate board shall issue a license to practice as a physician assistant under the supervision of that board's licensed physicians or podiatrists.

(b) A license may be granted to a person who:

(1) Files a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board's satisfaction that he or she:

(A) Obtained a baccalaureate or master's degree from an accredited program of instruction for physician assistants;

(B) Prior to July 1, 1994, graduated from an approved program of instruction in primary health care or surgery; or

(C) Prior to July 1, 1983, was certified by the Board of Medicine as a physician assistant then classified as "Type B";

(4) Has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;

(5) Has a current certification from the National Commission on Certification of Physician Assistants;

(6) Is mentally and physically able to engage safely in practice as a physician assistant;

(7) Has not had a physician assistant license, certification or registration in any jurisdiction suspended or revoked;

(8) Is not currently subject to any limitation, restriction, suspension, revocation or discipline concerning a physician assistant license, certification or registration in any jurisdiction: *Provided*, That if a board is made aware of any problems with a physician assistant license, certification or registration and agrees to issue a license, certification or registration notwithstanding the provisions of this subdivision or subdivision (7) of this subsection;

(9) Is of good moral character; and

(10) Has fulfilled any other requirement specified by the appropriate board.

(c) A board may deny an application for a physician assistant license to any applicant determined to be unqualified by the board.

§30-3E-5. Temporary license.

(a) A temporary license may be issued by the boards to a person applying for a license under this article, if the person meets all of the qualifications for a license but is awaiting the next scheduled meeting of the board for action upon his or her application.

(b) The temporary license expires six months after issuance or after the board acts, whichever is earlier.

§30-3E-6. License renewal requirements.

(a) A licensee shall renew biennially, on a schedule established by the appropriate licensing board, by submitting:

(1) A complete renewal application;

(2) The renewal fee;

(3) Proof that he or she is currently certified and has been continuously certified during the preceding licensure period by the National Commission on Certification of Physician Assistants; and

(4) An attestation that all continuing education requirements for the reporting period have been met.

(b) If a licensee fails to timely renew his or her license, then the license automatically expires.

§30-3E-7. Expired license requirements.

(a) If a license automatically expires and reinstatement is sought within one year of the automatic expiration, then an applicant shall submit:

(1) A complete reinstatement application;

(2) The applicable fees;

(3) Proof that he or she is currently certified and has been continuously certified during the preceding licensure period and expiration period by the National Commission on Certification of Physician Assistants; and

(4) An attestation that all continuing education requirements have been met.

(b) If a license automatically expires and more than one year has passed since the automatic expiration, then an applicant shall apply for a new license.

§30-3E-8. Termination of license.

(a) A licensee who fails the recertification examination of the National Commission on Certification of Physician Assistants, and is no longer certified, shall immediately:

(1) Notify his or her supervising physician;

(2) Notify his or her licensing board in writing; and

(3) Cease practicing.

(b) The license automatically terminates and the physician assistant is not eligible for reinstatement until he or she has obtained a passing score on the examination.

§30-3E-9. Practice requirements.

(a) A physician assistant may not practice independent of a supervising physician.

(b) Before a licensed physician assistant may practice and before a supervising physician may delegate medical acts to a physician assistant, the supervising physician and the physician assistant shall:

(1) File a practice agreement with the appropriate licensing board, including any designated alternate supervising physicians;

(2) Pay the applicable fees; and

(3) Receive written authorization from the appropriate licensing board to commence practicing as a physician assistant pursuant to the practice agreement.

(c) A physician applying to supervise a physician assistant shall affirm that:

(1) The medical services set forth in the practice agreement are consistent with the skills and training of the supervising physician and the physician assistant; and

(2) The activities delegated to a physician assistant are consistent with sound medical practice and will protect the health and safety of the patient.

(d) A supervising physician may enter into practice agreements with up to five full-time physician assistants at any one time. A physician is prohibited from being a supervising or alternate supervising physician to more than five physician assistants at any one time. However, a physician practicing medicine in an emergency department of a hospital or a physician who supervises a physician assistant who is employed by or on behalf of a hospital may provide supervision for up to five physician assistants per shift if the physician has an authorized practice agreement in place with the supervised physician assistant or the physician has been properly authorized as an alternate supervising physician for each physician assistant.

§30-3E-10. Practice agreement requirements.

(a) A practice agreement shall include:

(1) A description of the qualifications of the supervising physician, the alternate supervising physicians, if applicable, and the physician assistant;

(2) A description of the settings in which the supervising physician assistant will practice;

(3) A description of the continuous physician supervision mechanisms that are reasonable and appropriate for the practice setting, and the experience and training of the physician assistant;

(4) A description of the medical acts that are to be delegated;

(5) An attestation by the supervising physician that the medical acts to be delegated are:

(A) Within the supervising physician’s scope of practice; and

(B) Appropriate to the physician assistant’s education, training and level of competence;

(6) A description of the medical care the physician assistant will provide in an emergency, including a definition of an emergency; and

(7) Any other information required by the boards.

(b) A licensing board may:

(1) Decline to authorize a physician assistant to commence practicing pursuant to a practice agreement, if the board determines that:

(A) The practice agreement is inadequate; or

(B) The physician assistant is unable to perform the proposed delegated duties safely; or

(2) Request additional information from the supervising physician and/or the physician assistant to evaluate the delegation of duties and advanced duties.

(c) A licensing board may authorize a practice agreement that includes advanced duties which are to be performed in a hospital or ambulatory surgical facility, if the practice agreement has a certification that:

(1) A physician, with credentials that have been reviewed by the hospital or ambulatory surgical facility as a condition of employment as an independent contractor or as a member of the medical staff, supervises the physician assistant;

(2) The physician assistant has credentials that have been reviewed by the hospital or ambulatory surgical facility as a condition of employment as an independent contractor or as a member of the medical staff; and

(3) Each advanced duty to be delegated to the physician assistant is reviewed and approved within a process approved by the governing body of the health care facility or ambulatory surgical facility before the physician assistant performs the advanced duties.

(d) If a licensing board declines to authorize a practice agreement or any proposed delegated act incorporated therein, the board shall provide the supervising physician and the physician assistant with written notice. A physician assistant who receives notice that the board has not authorized a practice agreement or a delegated act shall not practice under the agreement or perform the delegated act.

(e) If a practice agreement is terminated, then a physician assistant shall notify the appropriate licensing board in writing within ten days of the termination. Failure to provide timely notice of the termination constitutes unprofessional conduct and disciplinary proceedings may be instituted by the appropriate licensing board.

§30-3E-11. Supervision of physician assistants.

(a) A licensed physician or podiatrist may supervise a physician assistant:

(1) As a supervising physician in accordance with an authorized practice agreement; or

(2) As an alternate supervising physician who:

(A) Supervises in accordance with an authorized practice agreement;

(B) Has been designated an alternate supervising physician in the authorized practice agreement; and

(C) Only delegates those medical acts that have been authorized by the practice agreement and are within the scope of practice of both the primary supervising physician and the alternate supervising physician.

(b) A supervising physician is responsible at all times for the physician assistant under his or her supervision, including:

(1) The legal responsibility of the physician assistant;

(2) Observing, directing and evaluating the physician assistant's work records and practices; and

(3) Supervising the physician assistant in the care and treatment of a patient in a health care facility.

(c) A health care facility is only legally responsible for the actions or omissions of a physician assistant when the physician assistant is employed by or on behalf of the facility. Credentialed medical facility staff and attending physicians of a hospital who provide direction to or utilize physician assistants employed by or on behalf of the hospital are considered alternate supervising physicians.

§30-3E-12. Scope of practice.

(a) A license issued to a physician assistant by the appropriate state licensing board shall authorize the physician assistant to perform medical acts:

(1) Delegated to the physician assistant as part of an authorized practice agreement;

(2) Appropriate to the education, training and experience of the physician assistant;

(3) Customary to the practice of the supervising physician; and

(4) Consistent with the laws of this state and rules of the boards.

(b) This article does not authorize a physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental hygienists, optometrists or pharmacists, or certified as nurse anesthetists.

§30-3E-13. Identification.

(a) While practicing, a physician assistant shall wear a name tag that identifies him or her as a physician assistant.

(b) A physician assistant shall keep his or her license and current practice agreement available for inspection at his or her primary place of practice.

§30-3E-14. Special volunteer physician assistant license.

(a) A special volunteer physician assistant license may be issued to a physician assistant who:

(1) Is retired or is retiring from the active practice of medicine; and

(2) Wishes to donate his or her expertise for the medical care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge.

(b) The special volunteer physician assistant license shall be issued by the appropriate licensing board:

(1) To a physician assistant licensed or otherwise eligible for licensure under this article;

(2) Without the payment of any fee; and

(3) The initial license shall be issued for the remainder of the licensing period.

(c) The special volunteer physician assistant license shall be renewed consistent with the appropriate licensing board's other licensing requirements.

(d) The appropriate licensing board shall develop application forms for the special volunteer physician assistant license which shall contain the physician assistant's acknowledgment that:

(1) The physician assistant's practice under the special volunteer physician assistant license shall be exclusively devoted to providing medical care to needy and indigent persons in West Virginia;

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

(3) The physician assistant shall supply any supporting documentation that the appropriate licensing board may reasonably require; and

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

(e) A physician assistant who renders medical service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge, under a special volunteer physician assistant license, without payment or compensation or the expectation or promise of payment or compensation, is immune from liability for any civil action

arising out of any act or omission resulting from the rendering of the medical service at the clinic unless the act or omission was the result of the physician assistant's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there shall be a written agreement between the physician assistant and the clinic pursuant to which the physician assistant shall provide voluntary uncompensated medical services under the control of the clinic to patients of the clinic before the rendering of any services by the physician assistant at the clinic. Any clinic entering into a written agreement is required to maintain liability coverage of not less than $1 million per occurrence.

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

(g) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure under this article, except the fee requirements.

(h) Nothing in this section may be construed as requiring the appropriate licensing board to issue a special volunteer physician assistant license to any physician assistant whose license is or has been subject to any disciplinary action or to any physician assistant who has surrendered a physician assistant license or caused his or her license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a physician assistant license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a physician assistant license.

(i) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any physician assistant covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing the policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of the policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a physician assistant who holds a special volunteer physician assistant license.

§30-3E-15. Summer camp or volunteer endorsement -- West Virginia licensee.

(a) The appropriate licensing board may grant a summer camp or volunteer endorsement to provide services at a children's summer camp or volunteer services for a public or community event to a physician assistant who:

(1) Is currently licensed by the appropriate licensing board;

(2) Has no current discipline, limitations or restrictions on his or her license;

(3) Has submitted a timely application; and

(4) Attests that:

(A) The organizers of the summer camp and public or community event have arranged for a supervising physician to be available as needed to the physician assistant;

(B) The physician assistant shall limit his or her scope of practice to medical acts which are within his or her education, training and experience; and

(C) The physician assistant will not prescribe any controlled substances or legend drugs as part of his or her practice at the summer camp or public or community event.

(b) A physician assistant may only receive one summer camp or volunteer endorsement annually. The endorsement is active for one specifically designated period annually, which period cannot exceed three weeks.

(c) A fee cannot be assessed for the endorsement if the physician assistant is volunteering his or her services without compensation or remuneration.

§30-3E-16. Summer camp or volunteer endorsement -- Out-of-state licensee.

(a) The appropriate licensing board may grant a summer camp or volunteer endorsement to provide services at a children's summer camp or volunteer services for a public or community event to a physician assistant licensed from another jurisdiction who:

(1) Is currently licensed in another jurisdiction and has a current certification from the National Commission on Certification of Physician Assistants;

(2) Has no current discipline, limitations or restrictions on his or her license;

(3) Has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;

(4) Has submitted a timely application;

(5) Has paid the applicable fees; and

(6) Attests that:

(A) The organizers of the summer camp and public or community event have arranged for a supervising physician to be available as needed to the physician assistant;

(B) The physician assistant shall limit his or her scope of practice to medical acts which are within his or her education, training and experience; and

(C) The physician assistant will not prescribe any controlled substances or legend drugs as part of his or her practice at the summer camp or public or community event; and

(7) Has fulfilled any other requirements specified by the appropriate board.

(b) A physician assistant may only receive one summer camp or volunteer endorsement annually. The endorsement is active for one specifically designated period annually, which period cannot exceed three weeks.

§30-3E-17. Complaint process.

(a) All hearings and procedures related to denial of a license, and all complaints, investigations, hearings and procedures a physician assistant licenses and the discipline accorded thereto, shall be in accordance with the processes and procedures set forth in articles three and/or fourteen of this chapter, depending on which board licenses the physician assistant.

(b) The boards may impose the same discipline, restrictions and/or limitations upon the license of a physician assistant as they are authorized to impose upon physicians and/or podiatrists.

(c) The boards shall direct to the appropriate licensing board a complaint against a physician assistant, a supervising physician and/or an alternate supervising physician.

(d) In the event that independent complaint processes are warranted by the boards with respect to the professional conduct of a physician assistant or a supervising and/or alternate supervising physician, the boards are authorized to work cooperatively and to disclose to one another information which may assist the recipient appropriate licensing board in its disciplinary process. The determination of what information, if any, to disclose shall be at the discretion of the disclosing board.

§30-3E-18. Health care facility reporting requirements.

(a) A health care facility shall report, in writing, to the appropriate licensing board within sixty days after the completion of the facility's formal disciplinary procedure or after the commencement and conclusion of any resulting legal action against a licensee.

(b) The report shall include:

(1) The name of the physician assistant practicing in the facility whose privileges at the facility have been revoked, restricted, reduced or terminated for any cause including resignation;

(2) All pertinent information relating to the action; and

(3) The formal disciplinary action taken against the physician assistant by the facility relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse.

(c) A health care facility does not need to report temporary suspensions for failure to maintain records on a timely basis or for failure to attend staff or section meetings.

§30-3E-19. Unlawful act and penalty.

It is unlawful for any physician assistant to represent to any person that he or she is a physician, surgeon or podiatrist. A person who violates this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than two years, or be fined not more than $2,000, or both fined and imprisoned.