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Senate Bill No. 334

(By Senator Ferns)

[Introduced January 27, 2015; referred to the Committee on Government Organization; and then
to the Committee on Health and Human Resources.]

A BILL to amend and reenact §30-3-13 of the Code of West Virginia, 1931, as amended; and to
amend said code by adding thereto a new section, designated §30-3-13a, all relating generally
to practice of medicine; rewriting licensing requirements for practice of medicine and surgery
or podiatry; making exceptions; providing for unauthorized practice; requiring notice;
establishing criminal penalties; permitting practice of telemedicine; establishing
requirements; making exceptions; defining terms; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

That §30-3-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted;
and that said code be amended by adding thereto a new section, designated §30-3-13a, all to read as
follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13. Licensing requirements for the practice of medicine and surgery or podiatry;

1 **exceptions; unauthorized practice; notice; criminal penalties.**

2 (a) It is unlawful for any person who does not hold an active, unexpired license issued
3 pursuant to this article, or who is not practicing pursuant to the licensure exceptions set forth in this
4 section, to:

5 (1) Engage in the practice of medicine and surgery or podiatry in this state;

6 (2) Represent that he or she is a physician, surgeon or podiatrist authorized to practice
7 medicine and surgery or podiatry in this state; or

8 (3) Use any title, word or abbreviation to indicate to or induce others to believe that he or
9 she is licensed to practice medicine and surgery or podiatry in this state.

10 (b) It is not unlawful for a person:

11 (1) Who is a licensed health care provider under this code to act within his or her scope of
12 practice;

13 (2) Who is not a licensed health care professional in this state to provide first aid care in an
14 emergency situation; or

15 (3) To engage in the bona fide religious tenets of any recognized church in the administration
16 of assistance to the sick or suffering by mental or spiritual means.

17 (c) The following persons are exempt from the licensure requirements under this article:

18 (1) A person enrolled in a school of medicine approved by the Liaison Committee on Medical
19 Education or by the board;

20 (2) A person enrolled in a school of podiatric medicine approved by the Council of Podiatry
21 Education or by the board;

1 (3) A person engaged in graduate medical training in a program approved by the
2 Accreditation Council for Graduate Medical Education or the board;

3 (4) A person engaged in graduate podiatric training in a program approved by the Council
4 on Podiatric Education or by the board;

5 (5) A physician or podiatrist engaged in the performance of his or her official duties holding
6 one or more licenses from another state or foreign country and who is a commissioned medical
7 officer of, a member of or employed by:

8 (A) The United States Military;

9 (B) The Department of Defense;

10 (C) The United States Public Health Service;

11 (D) The Department of Council on Podiatric Education; or

12 (E) Any other federal agency;

13 (6) A physician or podiatrist holding one or more unrestricted licenses granted by another
14 state or foreign country serving as visiting medical faculty engaged in teaching or research duties at
15 a medical school or institution recognized by the board for up to six months if:

16 (A) The physician does not engage in the practice of medicine and surgery or podiatry outside
17 of the auspices of the sponsoring school or institution; and

18 (B) The sponsoring medical school or institution provides prior written notification to the
19 board including the physician's name, all jurisdictions of licensure and the beginning and end date
20 of the physician's visiting medical faculty status.

21 (7) A physician or podiatrist holding one or more unrestricted licenses granted by another

1 state present in the state as a member of an air ambulance treatment team or organ harvesting team;

2 (8) A physician or podiatrist holding one or more unrestricted licenses granted by another
3 state or foreign country providing a consultation on a singular occasion to a licensed physician or
4 podiatrist in this state, whether the consulting physician or podiatrists is physically present in the
5 state for the consultation or not;

6 (9) A physician or podiatrist holding one or more unrestricted licenses granted by another
7 state or foreign country providing teaching assistance, in a medical capacity, for a period not to
8 exceed seven days;

9 (10) A physician or podiatrist holding one or more unrestricted licenses granted by another
10 state or foreign country serving as a volunteer in a noncompensated role for a charitable function for
11 a period not to exceed seven days; and

12 (11) A physician or podiatrist holding one or more unrestricted licenses granted by another
13 state or foreign country providing medical services to a college or university affiliated and/or
14 sponsored sports team or an incorporated sports team if:

15 (A) He or she has a written agreement with that sports team to provide care to team members,
16 coaching staff, and families traveling with the team for a specific sporting event, team appearance
17 or training camp occurring in this state;

18 (B) He or she may only provide care or consultation to team members, coaching staff, and
19 families traveling with the team no longer than seven consecutive days per sporting event;

20 (C) He or she is not authorized to practice at a health care facility or clinic, acute care facility,
21 or urgent care center located in this state; but the physician may accompany the patient to the facility

1 and consult; and

2 (D) The physician or podiatrist may be permitted, by written permission from the executive
3 director, to extend his or her authorization to practice medicine for a maximum of seven additional
4 consecutive days if the requestor shows good cause for the extension.

5 (d) A physician or podiatrist who does not hold a license issued by the board and who is
6 practicing medicine in this state pursuant to the exceptions to licensure set forth in this section may
7 practice in West Virginia under one or more of the licensure exceptions for no greater than a
8 cumulative total of thirty days in any one calendar year.

9 (e) The executive director shall send by certified mail to a physician not licensed in this state
10 a written order that revokes the privilege to practice medicine under this section if the executive
11 director finds good cause to do so. If no current address can be determined, the order may be sent
12 by regular mail to the physician's last known address.

13 (f) A person who engages in unlawful practice of medicine and surgery or podiatry while
14 holding a license issued pursuant to this article which has been classified by the board as expired for
15 ninety days or fewer is guilty of a misdemeanor and, upon conviction, shall be fined not more than
16 \$5,000 or confined in jail not more than twelve months, or both fined and confined.

17 (g) A person who: (1) Has never been licensed by the board under this article; (2) holds a
18 license which has been classified by the board as expired for greater than ninety days; or (3) holds
19 a license which has been placed in inactive status, revoked, suspended or surrendered to the board
20 is guilty of a felony and, upon conviction, shall be fined not more than \$10,000 or imprisoned in a
21 correctional facility, or both fined and imprisoned.

1 **§30-3-13a. Telemedicine practice; requirements; exceptions; definitions; rule-making.**

2 (a) *Definitions.* – For the purposes of this section:

3 "Store and forward telemedicine" means the asynchronous computer based communication
4 of medical data and/or images between a patient and a physician or podiatrist at another site for the
5 purpose of diagnostic and/or therapeutic assistance.

6 "Telemedicine" means the practice of medicine using tools such as electronic
7 communication, information technology or other means of interaction between a licensed health care
8 professional in one location and a patient in another location, with or without an intervening
9 healthcare provider. The utilization of electronic communication in on call, cross coverage and
10 emergency services situations is not telemedicine.

11 "Telemedicine technologies" means technologies and devices enabling secure electronic
12 communications and information exchange in the practice of telemedicine, and typically involve the
13 application of secure real time video conferencing or similar secure video services, remote
14 monitoring and store and forward digital image technology to provide or support healthcare delivery
15 by replicating the interaction of a traditional in person encounter between a provider and a patient.

16 (b) The practice of medicine or surgery or podiatry occurs where the patient is located at the
17 time telemedicine technologies are used. A physician, podiatrist or physician assistant who engages
18 in the practice of medicine through telemedicine technologies with respect to patients located in this
19 state shall be licensed by the board.

20 (c) A physician, podiatrist or physician assistant using telemedicine technologies to practice
21 medicine or surgery or podiatry to a patient shall:

- 1 (1) Verify the identity and location of the patient;
- 2 (2) Provide the patient with confirmation of the identity, location and qualifications of the
3 physician, podiatrist or physician assistant;
- 4 (3) Establish and/or maintain a physician, podiatrist or physician assistant patient relationship
5 which conforms to the standard of care;
- 6 (4) Determine whether telemedicine technologies are appropriate for the particular patient
7 presentation for which the practice medicine or surgery or podiatry are to be rendered;
- 8 (5) Obtain from the patient informed consent for the use of telemedicine technologies in the
9 practice medicine or surgery or podiatry to the patient;
- 10 (6) Conduct all appropriate evaluations and history of the patient consistent with traditional
11 standards of care for the particular patient presentation; and
- 12 (7) Create and maintain healthcare records for the patient which justify the course of
13 treatment and which verify compliance with the requirements of this section.
- 14 (d) The requirements of subdivisions (2) and (5), subsection (c) of this section do not apply
15 the practice of pathology and radiology medicine through store and forward telemedicine.
- 16 (e) Where an existing physician, podiatrist or physician assistant patient relationship is not
17 present prior to the utilization to telemedicine technologies, or when services are rendered solely
18 through telemedicine technologies, a physician, podiatrist or physician assistant patient relationship
19 may only be established through the use of telemedicine technologies which incorporate real time
20 videoconferencing or similar secure video services during the initial physician, podiatrist or
21 physician assistant patient encounter. However, a physician patient relationship may be established

1 through store and forward telemedicine for the practice of pathology and radiology. Once a
2 physician, podiatrist or physician assistant patient relationship has been established, the physician,
3 podiatrist or physician assistant, with the informed consent of the patient, may utilize any
4 telemedicine technology which meets the standard of care and is appropriate for the particular patient
5 presentation.

6 (f) The practice of medicine and surgery or podiatry provided via telemedicine technologies,
7 including the establishment of a physician, podiatrist or physician assistant patient relationship and
8 issuing a prescription via electronic means as part of a telemedicine encounter, are subject to the
9 same standard of care, professional practice requirements and scope of practice limitations as
10 traditional in person physician, podiatrist or physician assistant patient encounters. Treatment,
11 including issuing a prescription, based solely on an online questionnaire does not constitute an
12 acceptable standard of care.

13 (g) The utilization of telemedicine technologies to practice medicine and surgery or podiatry
14 on a patient for whom the standard of care requires an in person, physical examination shall
15 constitute dishonorable, unethical and unprofessional conduct.

16 (h) The patient record established during the use of telemedicine technologies shall be
17 accessible and documented for both the physician, podiatrist, physician assistant and the patient,
18 consistent with the laws and legislative rules governing patient healthcare records and shall include
19 a copy of the informed consent to the practice of medicine and surgery or podiatry via telemedicine
20 technologies. All laws governing the confidentiality of health care information and governing
21 patient access to medical records shall apply to records of practice of medicine and surgery or

1 podiatry provided through telemedicine technologies. A physician, podiatrist or physician assistant
2 solely providing services using telemedicine technologies shall make documentation of the encounter
3 easily available to the patient, and subject to the patient's consent, any identified care provider of the
4 patient immediately after the encounter.

5 (I) A physician, podiatrist or physician assistant who has a physician, podiatrist or physician
6 assistant patient relationship and who practices medicine and surgery or podiatry to a patient solely
7 through the utilization of telemedicine technologies may not prescribe any controlled substances
8 listed in Schedules I or II of the Uniform Controlled Substances Act.

9 (j) The board may propose rules for legislative approval in accordance with article three,
10 chapter twenty nine a of this code to implement standards for and limitations upon the utilization of
11 telemedicine technologies in the practice of medicine and podiatry in this state.

12 (k) Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities
13 incident to the physician, podiatrist or physician assistant patient relationship, nor is it meant or
14 intended to change in any way the personal character of the physician, podiatrist or physician
15 assistant patient relationship. This section does not alter the scope of practice of any healthcare
16 provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise
17 authorized by law.

NOTE: The purpose of this bill is to reformulate what constitutes the unauthorized practice of medicine and podiatry under the West Virginia Board of Medicine, including qualified exemptions. The bill also updates and defines telemedicine and telemedicine technologies and medical services delivery standards. The bill establishes criminal penalties for unauthorized medical practice. The bill authorizes rule-making.

§30-3-13 has been completely rewritten; therefore strike-throughs and underscoring have been omitted.

§30-3-13a is new; therefore strike-throughs and underscoring have been omitted.