

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 47

BY SENATOR FERNS

[Introduced January 13, 2016;

Referred to the Committee on Health and Human

Resources; and then to the Committee on

Government Organization.]

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

Be it enacted by the Legislature of West Virginia:

1 That §30-3-13 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that said code be amended by adding thereto a new section, designated §30-3-
 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; exceptions; unauthorized practice; notice; criminal penalties.

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

- 4 (1) Engage in the practice of medicine and surgery or podiatry in this state;
- 5 (2) Represent that he or she is a physician, surgeon or podiatrist authorized to practice
 6 medicine and surgery or podiatry in this state; or
- 7 (3) Use any title, word or abbreviation to indicate to or induce others to believe that he or
 8 she is licensed to practice medicine and surgery or podiatry in this state.

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

- 10 (1) Who is a licensed health care provider under this code to act within his or her scope of
 11 practice;
- 12 (2) Who is not a licensed health care professional in this state to provide first aid care in
 13 an emergency situation; or

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

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

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

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

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

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

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

28 (A) The United States Military;

29 (B) The Department of Defense;

30 (C) The United States Public Health Service;

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

32 (E) Any other federal agency;

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

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

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

41 (7) A physician or podiatrist holding one or more unrestricted licenses granted by another
42 state present in the state as a member of an air ambulance treatment team or organ harvesting
43 team;

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

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

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

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

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

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

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

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

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

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

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

80 (g) A person who: (1) Has never been licensed by the board under this article; (2) holds
81 a license which has been classified by the board as expired for greater than ninety days; or (3)
82 holds a license which has been placed in inactive status, revoked, suspended or surrendered to
83 the board is guilty of a felony and, upon conviction, shall be fined not more than \$10,000 or
84 imprisoned in a correctional facility for not less than one year nor more than five years, or both
85 fined and imprisoned.

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

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

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

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

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

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

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

22 (1) Verify the identity and location of the patient;

23 (2) Provide the patient with confirmation of the identity, location and qualifications of the

24 physician, podiatrist or physician assistant;

25 (3) Establish and/or maintain a physician, podiatrist or physician assistant patient
26 relationship which conforms to the standard of care;

27 (4) Determine whether telemedicine technologies are appropriate for the particular patient
28 presentation for which the practice medicine or surgery or podiatry are to be rendered;

29 (5) Obtain from the patient informed consent for the use of telemedicine technologies in
30 the practice medicine or surgery or podiatry to the patient;

31 (6) Conduct all appropriate evaluations and history of the patient consistent with traditional
32 standards of care for the particular patient presentation; and

33 (7) Create and maintain healthcare records for the patient which justify the course of
34 treatment and which verify compliance with the requirements of this section.

35 (d)The requirements of subdivisions (2) and (5), subsection (c) of this section do not apply
36 the practice of pathology and radiology medicine through store and forward telemedicine.

37 (e) Where an existing physician, podiatrist or physician assistant patient relationship is not
38 present prior to the utilization to telemedicine technologies, or when services are rendered solely
39 through telemedicine technologies, a physician, podiatrist or physician assistant patient
40 relationship may only be established through the use of telemedicine technologies which
41 incorporate real time videoconferencing or similar secure video services during the initial
42 physician, podiatrist or physician assistant patient encounter. However, a physician patient
43 relationship may be established through store and forward telemedicine for the practice of
44 pathology and radiology. Once a physician, podiatrist or physician assistant patient relationship
45 has been established, the physician, podiatrist or physician assistant, with the informed consent
46 of the patient, may utilize any telemedicine technology which meets the standard of care and is
47 appropriate for the particular patient presentation.

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

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

58 (h) The patient record established during the use of telemedicine technologies shall be
59 accessible and documented for both the physician, podiatrist, physician assistant and the patient,
60 consistent with the laws and legislative rules governing patient healthcare records and shall
61 include a copy of the informed consent to the practice of medicine and surgery or podiatry via
62 telemedicine technologies. All laws governing the confidentiality of health care information and
63 governing patient access to medical records shall apply to records of practice of medicine and
64 surgery or podiatry provided through telemedicine technologies. A physician, podiatrist or
65 physician assistant solely providing services using telemedicine technologies shall make
66 documentation of the encounter easily available to the patient, and subject to the patient's
67 consent, any identified care provider of the patient immediately after the encounter.

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

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

75 (k) Nothing in this section changes the rights, duties, privileges, responsibilities and
76 liabilities incident to the physician, podiatrist or physician assistant patient relationship, nor is it
77 meant or intended to change in any way the personal character of the physician, podiatrist or
78 physician assistant patient relationship. This section does not alter the scope of practice of any
79 healthcare provider or authorize the delivery of health care services in a setting, or in a manner,
80 not otherwise 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.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.

§30-3-13 has been completely rewritten; therefore, it has been complexly underscored.

§30-3-13a is new; therefore, it has been complexly underscored.