

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 653

BY SENATORS STOLLINGS AND MARONEY

[Introduced February 18, 2019; Referred
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §30-3-15 of the Code of West Virginia, 1931, as amended, relating
 2 generally to the practice of medical corporations; eliminating references to podiatry
 3 corporations; replacing references to the practice of podiatry with podiatric medicine;
 4 providing that authorized medical corporations may only practice medicine and surgery
 5 through individual physicians, podiatric physicians, or physician assistants licensed to
 6 practice medicine; permitting podiatric physicians and physician assistants to be
 7 employees rather than shareholders of a medical corporation; and providing that licensed
 8 hospitals do not need to obtain a certificate of authorization from the Board of Medicine
 9 so long as the hospital does not exercise control of the independent medical judgment of
 10 licensed physicians and licensed podiatric physicians.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-15. Certificate of authorization requirements for medical and podiatry corporations.

1 (a) *Unlawful acts.* – It is unlawful for any corporation to practice or offer to practice
 2 medicine, surgery, ~~or podiatry~~ podiatric medicine, or to perform medical acts through one or more
 3 physician assistants in this state without a certificate of authorization issued by the board
 4 designating the corporation as an authorized medical ~~or podiatry~~ corporation.

5 (b) *Certificate of authorization for in-state medical ~~or podiatry~~ corporation.* – ~~One or more~~
 6 ~~physicians licensed to practice medicine and surgery in this state under this article, or one or more~~
 7 ~~physicians licensed under this article and one or more physicians licensed under article fourteen~~
 8 ~~of this chapter, or one or more podiatrists licensed to practice podiatry in this state may receive a~~
 9 ~~certificate of authorization from the board to be designated a medical or podiatry corporation~~ The
 10 board may issue a certificate of authorization for a medical corporation to one or more individuals
 11 licensed by the board. Licensees of the West Virginia Board of Osteopathic Medicine may join
 12 with licensees of the board to receive a certificate of authorization from the board. Eligible
 13 licensees may apply for a certificate of authorization by:

14 (1) Filing a written application with the board on a form prescribed by the board;

15 (2) Furnishing satisfactory proof to the board that each shareholder of the proposed
16 medical or podiatry corporation is a licensed physician ~~or podiatrist~~ pursuant to this article, §30-
17 3E-1 et seq., or §30-14-1 *et seq.*, of this code; and

18 (3) Submitting applicable fees which are not refundable.

19 (c) *Certificate of authorization for out-of-state medical ~~or podiatry~~ corporation.* – A medical
20 ~~or podiatry~~ corporation formed outside of this state for the purpose of engaging in the practice of
21 medicine, surgery, ~~or the practice of podiatry~~ and/or podiatric medicine may receive a certificate
22 of authorization from the board to be designated a foreign medical ~~or podiatry~~ corporation by:

23 (1) Filing a written application with the board on a form prescribed by the board;

24 (2) Furnishing satisfactory proof to the board that the ~~medical or podiatry~~ corporation has
25 received a certificate of authorization or similar authorization from the appropriate authorities as
26 a medical ~~or podiatry~~ corporation, or professional corporation in its state of incorporation and is
27 currently in good standing with that authority;

28 (3) Furnishing satisfactory proof to the board that at least one shareholder of the proposed
29 medical ~~or podiatry~~ corporation is a licensed physician or ~~podiatrist~~ podiatric physician pursuant
30 to this article and is designated as the corporate representative for all communications with the
31 board regarding the designation and continuing authorization of the corporation as a foreign
32 medical ~~or podiatry~~ corporation;

33 (4) Furnishing satisfactory proof to the board that all of the medical ~~or podiatry~~
34 corporation's shareholders are licensed physicians, ~~or podiatrists~~ podiatric physicians or
35 physician assistants in one or more states and submitting a complete list of the shareholders,
36 including each shareholder's name, their state or states of licensure and their license number(s);
37 and

38 (5) Submitting applicable fees which are not refundable.

39 (d) *Notice of certificate of authorization to Secretary of State.* – When the board issues a

40 certificate of authorization to a medical ~~or podiatry~~ corporation, then the board shall notify the
41 Secretary of State that a certificate of authorization has been issued. When the Secretary of State
42 receives a notification from the board, he or she shall attach that certificate of authorization to the
43 corporation application and, upon compliance by the corporation with the pertinent provisions of
44 this code, shall notify the incorporators that the medical ~~or podiatry~~ corporation, through licensed
45 physicians, ~~or licensed podiatrists~~, and/or physician assistants may engage in the practice of
46 medicine, surgery or the practice of podiatry in West Virginia.

47 (e) *Authorized practice of medical ~~or podiatry~~ corporation.* – An authorized medical
48 corporation may only practice medicine and surgery through individual physicians, podiatric
49 physicians or physician assistants licensed to practice medicine and surgery in this state. An
50 ~~authorized podiatry corporation may only practice podiatry through individual podiatrists licensed~~
51 ~~to practice podiatry in this state.~~ Physicians, ~~or podiatrists~~ podiatric physicians, and physician
52 assistants may be employees rather than shareholders of a medical ~~or podiatry~~ corporation, and
53 nothing herein requires a license for or other legal authorization of, any individual employed by a
54 medical or podiatry corporation to perform services for which no license or other legal
55 authorization is otherwise required.

56 (f) *Renewal of certificate of authorization.* – A medical ~~or podiatry~~ corporation holding a
57 certificate of authorization shall register biennially, on or before the expiration date on its certificate
58 of authorization, on a form prescribed by the board, and pay a biennial fee. If a medical or podiatry
59 corporation does not timely renew its certificate of authorization, then its certificate of authorization
60 automatically expires.

61 (g) *Renewal for expired certificate of authorization.* – A medical ~~or podiatry~~ corporation
62 whose certificate of authorization has expired may reapply for a certificate of authorization by
63 submitting a new application and application fee in conformity with subsection (b) or (c) of this
64 section.

65 (h) *Ceasing operation -- In-state medical ~~or podiatry~~ corporation.* – A medical ~~or podiatry~~

66 corporation formed in this state and holding a certificate of authorization shall cease to engage in
67 the practice of medicine, surgery or podiatry when notified by the board that:

68 (1) One of its shareholders is no longer a duly licensed physician ~~or podiatrist~~ in this state;

69 or

70 (2) The shares of the medical ~~or podiatry~~ corporation have been sold or transferred to a
71 person who is not a licensed ~~physician or podiatrist in this state~~ by the board or the Board of
72 Osteopathic Medicine. The personal representative of a deceased shareholder shall have a
73 period, not to exceed 12 months from the date of the shareholder's death, to transfer the shares.
74 Nothing herein affects the existence of the medical ~~or podiatry~~ corporation or its right to continue
75 to operate for all lawful purposes other than the ~~practice of medicine and surgery or the practice~~
76 ~~of podiatry~~ professional practice of licensed physicians, podiatric physicians and physician
77 assistants.

78 (i) *Ceasing operation -- Out-of-state medical ~~or podiatry~~ corporation.* – A medical ~~or~~
79 ~~podiatry~~ corporation formed outside of this state and holding a certificate of authorization shall
80 immediately cease to engage in ~~the practice of medicine, surgery or podiatry~~ in this state if:

81 (1) The corporate shareholders no longer include at least one shareholder who is licensed
82 to practice ~~as a physician or podiatrist~~ in this state pursuant to this article;

83 (2) The corporation is notified that one of its shareholders is no longer a licensed physician,
84 ~~or podiatrist~~ podiatric physician or physician assistant; or

85 (3) The shares of the medical ~~or podiatry~~ corporation have been sold or transferred to a
86 person who is not a licensed physician, ~~or podiatrist~~ podiatric physician or physician assistant.
87 The personal representative of a deceased shareholder shall have a period, not to exceed 12
88 months from the date of the shareholder's death, to transfer the shares. In order to maintain its
89 certificate of authorization to practice ~~medicine, surgery or podiatry~~ medicine and surgery,
90 podiatric medicine, or to perform medical acts through one or more physician assistants during
91 the 12 month period, the medical ~~or podiatry~~ corporation shall, at all times, have at least one

92 shareholder who is ~~a licensed physician or podiatrist~~ in this state pursuant to this article. Nothing
93 herein affects the existence of the medical ~~or podiatry~~ corporation or its right to continue to operate
94 for all lawful purposes other than ~~the practice of medicine, surgery or podiatry~~ the professional
95 practice of licensed physicians, podiatric physicians, and physician assistants.

96 (j) *Notice to Secretary of State.* – Within 30 days of the expiration, revocation or
97 suspension of a certificate of authorization by the board, the board shall submit written notice to
98 the Secretary of State.

99 (k) *Unlawful acts.* – It is unlawful for any corporation to practice or offer to practice
100 medicine, surgery, ~~or podiatry~~ podiatric medicine, or to perform medical acts through one or more
101 physician assistants after its certificate of authorization has expired or been revoked, or if
102 suspended, during the term of the suspension.

103 (l) *Application of section.* – Nothing in this section is meant or intended to change in any
104 way the rights, duties, privileges, responsibilities and liabilities incident to the physician-patient or
105 podiatrist-patient relationship, nor is it meant or intended to change in any way the personal
106 character of the ~~physician-patient or podiatrist-patient~~ practitioner-patient relationship. Nothing in
107 this section shall be construed to require a hospital licensed pursuant to §16-5B-1 et seq., of this
108 code, to obtain a certificate of authorization from the board so long as the hospital does not
109 exercise control of the independent medical judgment of physicians and podiatric physicians
110 licensed pursuant to this article.

111 (m) *Court evidence.* – A certificate of authorization issued by the board to a corporation to
112 practice medicine and surgery ~~or podiatry~~ podiatric medicine, or to perform medical acts through
113 one or more physician assistants in this state that has not expired, been revoked or suspended
114 is admissible in evidence in all courts of this state and is prima facie evidence of the facts stated
115 therein.

116 (n) *Penalties.* – Any officer, shareholder or employee of a medical ~~or podiatry~~ corporation
117 who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined

118 not more than \$1,000 per violation.

NOTE: The purpose of this bill concerns generally to the practice of medical corporations. The bill eliminates references to podiatry corporations. The bill replaces references to the practice of podiatry with podiatric medicine. The bill provides that authorized medical corporations may only practice medicine and surgery through individual physicians, podiatric physicians or physician assistants licensed to practice medicine. The bill permits podiatric physicians, and physician assistants to be employees rather than shareholders of a medical corporation. The bill provides that licensed hospitals do not need to obtain a certificate of authorization from the Board of Medicine so long as the hospital does not exercise control of the independent medical judgment of licensed physicians, and licensed podiatric physicians.

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