

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 47

BY SENATOR FERNS

[Originating in the Committee on Health and Human
Resources; reported on February 20, 2016.]

1 A BILL to amend and reenact §30-3-13 of the Code of West Virginia, 1931, as amended, relating
2 to practice of medicine; rewriting licensing requirements for practice of medicine and
3 surgery or podiatry; making exceptions; providing for unauthorized practice; requiring
4 notice; establishing criminal penalties; making exceptions; and defining terms.

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 to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

**~~30-3-13. Unauthorized practice of medicine and surgery or podiatry; criminal penalties;
limitations.~~**

1 ~~(a) A person may not engage in the practice of medicine and surgery or podiatry, hold~~
2 ~~himself or herself out as qualified to practice medicine and surgery or podiatry or use any title,~~
3 ~~word or abbreviation to indicate to or induce others to believe that he or she is licensed to practice~~
4 ~~medicine and surgery or podiatry in this state unless he or she is actually licensed under the~~
5 ~~provisions of this article. A person engaged in the practice of telemedicine is considered to be~~
6 ~~engaged in the practice of medicine within this state and is subject to the licensure requirements~~
7 ~~of this article. As used in this section, the term "practice of telemedicine" means the use of~~
8 ~~electronic information and communication technologies to provide health care when distance~~
9 ~~separates participants and includes one or both of the following: (1) The diagnosis of a patient~~
10 ~~within this state by a physician located outside this state as a result of the transmission of~~
11 ~~individual patient data, specimens or other material by electronic or other means from within this~~
12 ~~state to the physician or his or her agent; or (2) the rendering of treatment to a patient within this~~
13 ~~state by a physician located outside this state as a result of transmission of individual patient data,~~
14 ~~specimens or other material by electronic or other means from within this state to the physician~~
15 ~~or his or her agent. No person may practice as a physician assistant, hold himself or herself out~~
16 ~~as qualified to practice as a physician assistant or use any title, word or abbreviation to indicate~~

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17 ~~to or induce others to believe that he or she is licensed to practice as a physician assistant in this~~
18 ~~state unless he or she is actually licensed under the provisions of this article.~~

19 ~~(b) Any person who intentionally practices, or holds himself or herself out as qualified to~~
20 ~~practice, or uses any title, word or abbreviation to indicate to or induce others to believe he or she~~
21 ~~is licensed to practice a health care profession licensed under this article with a license classified~~
22 ~~by the board as expired, lapsed or terminated, for any period of time up to ninety days, is guilty of~~
23 ~~a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or confined in~~
24 ~~jail not more than twelve months, or both fined and confined.~~

25 ~~(c) Any person who intentionally practices, or holds himself or herself out as qualified to~~
26 ~~practice, or uses any title, word or abbreviation to indicate to or induce others to believe he or she~~
27 ~~is licensed to practice as a physician, podiatrist or physician assistant without obtaining an active,~~
28 ~~valid West Virginia license to practice that profession or with a license that is: (1) Expired,~~
29 ~~terminated or lapsed, for over ninety days; or (2) inactive, revoked, suspended or surrendered, is~~
30 ~~guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned~~
31 ~~in a state correctional facility for not less than one year nor more than five years, or both fined~~
32 ~~and imprisoned.~~

33 ~~(d) The provisions of this section do not apply to:~~

34 ~~(1) Persons who are duly licensed health care providers under other pertinent provisions~~
35 ~~of this code and are acting within the scope of their license;~~

36 ~~(2) Physicians or podiatrists licensed in other states or foreign countries who are acting in~~
37 ~~a consulting capacity with physicians or podiatrists duly licensed in this state for a period of not~~
38 ~~more than three months: *Provided*, That this exemption is applicable on a one-time only basis;~~

39 ~~(3) An individual physician or podiatrist, or physician or podiatrist groups, or physicians or~~
40 ~~podiatrists at a tertiary care or university hospital outside this state and engaged in the practice~~

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41 ~~of telemedicine who consult or render second opinions concerning diagnosis or treatment of~~
42 ~~patients within this state: (i) In an emergency or without compensation or expectation of~~
43 ~~compensation; or (ii) on an irregular or infrequent basis which occurs less than once a month or~~
44 ~~less than twelve times in a calendar year;~~

45 ~~(4) Persons holding licenses granted by another state or foreign country who are~~
46 ~~commissioned medical officers of, a member of or employed by the Armed Forces of the United~~
47 ~~States, the United States Public Health Service, the Veterans' Administration of the United States,~~
48 ~~any federal institution or any other federal agency while engaged in the performance of their~~
49 ~~official duties;~~

50 ~~(5) Any person providing first-aid care in emergency situations;~~

51 ~~(6) The practice of the religious tenets of any recognized church in the administration of~~
52 ~~assistance to the sick or suffering by mental or spiritual means;~~

53 ~~(7) Visiting medical faculty engaged in teaching or research duties at a medical school or~~
54 ~~institution recognized by the board and who are in this state for periods of not more than six~~
55 ~~months: *Provided*, That the individuals do not otherwise engage in the practice of medicine or~~
56 ~~podiatry outside of the auspices of their sponsoring institutions;~~

57 ~~(8) Persons enrolled in a school of medicine approved by the liaison committee on medical~~
58 ~~education or by the board, or persons enrolled in a school of podiatric medicine approved by the~~
59 ~~council of podiatry education or by the board, or persons enrolled in an undergraduate or graduate~~
60 ~~physician assistant program approved by the committee on allied health education and~~
61 ~~accreditation or its successor on behalf of the American Medical Association or by the board, or~~
62 ~~persons engaged in graduate medical training in a program approved by the liaison committee on~~
63 ~~graduate medical education or the board, or engaged in graduate podiatric training in a program~~
64 ~~approved by the council on podiatric medical education or by the board, who are performing~~

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65 ~~functions in the course of training including with respect to functions performed by medical~~
66 ~~residents or medical students under the supervision of a licensed physician, ordering and~~
67 ~~obtaining laboratory tests, medications and other patient orders by computer or other electronic~~
68 ~~means and no other provision of this code to the contrary may be construed to prohibit or limit~~
69 ~~medical residents' or medical students' use of computers or other electronic devices in this~~
70 ~~manner;~~

71 ~~(9) The fitting, recommending or sale of corrective shoes, arch supports or similar~~
72 ~~mechanical appliances in commercial establishments; and~~

73 ~~(10) The fitting or sale of a prosthetic or orthotic device not involving any surgical~~
74 ~~procedure, in accord with a prescription of a physician, osteopathic physician or where~~
75 ~~chiropractors or podiatrists are authorized by law to prescribe such a prosthetic or orthotic device,~~
76 ~~in accord with a prescription of a chiropractor or podiatrist, by a practitioner certified in the~~
77 ~~provision of custom orthotic and prosthetic devices, respectively, by a nationally recognized~~
78 ~~credentialing body for orthotics and prosthetics that is accredited by the National Commission for~~
79 ~~Certifying Agencies (NCCA): *Provided*, That the sale of any prosthetic or orthotic device by a~~
80 ~~partnership, proprietorship or corporation which employs such a practitioner or registered~~
81 ~~technician who fitted the prosthetic or orthotic device shall not constitute the unauthorized practice~~
82 ~~of medicine: *Provided, however*, That the practitioner or registered technician may, without a~~
83 ~~prescription, make recommendation solely to a physician or osteopathic physician or to a~~
84 ~~chiropractor or podiatrist otherwise authorized by law to prescribe a particular prosthetic or~~
85 ~~orthotic device regarding any prosthetic or orthotic device to be used for a patient upon a request~~
86 ~~for such recommendation.~~

87 ~~(e) This section may not be construed as being in any way a limitation upon the services~~
88 ~~of a physician assistant performed in accordance with the provisions of this article.~~

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89 ~~(f) Persons covered under this article may be permitted to utilize electronic signature or~~
90 ~~unique electronic identification to effectively sign materials, transmitted by computer or other~~
91 ~~electronic means, upon which signature is required for the purpose of authorized medical practice.~~
92 ~~Such signatures are deemed legal and valid for purposes related to the provision of medical~~
93 ~~services. This subsection does not confer any new practice privilege or right on any persons~~
94 ~~covered under this article.~~

§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 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 unlawful for any person who does not hold an active, unexpired license issued
10 pursuant to this article to engage in the practice of telemedicine within this state. As used in this
11 section, the "practice of telemedicine" means the practice of medicine using communication tools
12 such as electronic communication, information technology or other means of interaction between a
13 licensed health care professional in one location and a patient in another location, with or without
14 an intervening health care provider, and typically involves secure real time video conferencing or
15 similar secure video services, remote monitoring, interactive video and store and forward digital
16 image or health data technology to provide or support health care delivery by replicating the

17 interaction of a traditional in person encounter between a provider and a patient. The practice of
18 telemedicine occurs in this state when the patient receiving health care services through a
19 telemedicine encounter is physically located in this state.

20 (c) It is not unlawful for a person:

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

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

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

27 (d) The following persons are exempt from the licensure requirements under this article:

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

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

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

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

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

39 (A) The United States Military;

40 (B) The Department of Defense;

41 (C) The United States Public Health Service; or

42 (D) Any other federal agency;

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

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

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

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

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

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

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

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

67 (A) He or she has a written agreement with that sports team to provide

68 care to team members, coaching staff and families traveling with the team for a specific sporting
69 event, team appearance or training camp occurring in this state;

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

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

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

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

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

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

91 (h) A person who is found to be engaging in the practice of medicine and: (1) has never
92 been licensed by the board under this article; (2) holds a license which has been classified by the
93 board as expired for greater than ninety days; or (3) holds a license which has been placed in

94 inactive status, revoked, suspended or surrendered to the board is guilty of a felony and, upon
95 conviction, shall be fined not more than \$10,000 or imprisoned in a correctional facility, or both
96 fined and imprisoned.

97 (i) Upon a determination by the board that any report or complaint submitted to it concerns
98 allegations of the unlawful practice of medicine and surgery by an individual who is licensed under
99 another article of this chapter, the board shall refer the complaint to the appropriate licensing
100 authority. Additionally, whenever the Board receives credible information that an individual is
101 engaging in the unlawful practice of medicine and surgery or podiatry in violation of this section,
102 the Board may report such information to the appropriate state and/or federal law enforcement
103 authority and/or prosecuting attorney.

104

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 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 completely underscored.