

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2359

**Fiscal
Note**

BY DELEGATE ARVON

[Introduced February 13, 2017; Referred
to the Committee on Health and Human Resources
then the Judiciary.]

1 A BILL to amend and reenact §30-14-12 of the Code of West Virginia, 1931, as amended, relating
2 to offenses and penalties for practicing osteopathic medicine without a license.

Be it enacted by the Legislature of West Virginia:

1 That §30-14-12 of the Code of West Virginia 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12. Offenses; penalties.

1 ~~Each of the following acts shall constitute a misdemeanor, punishable upon conviction by~~
2 ~~a fine of not less than one thousand nor more than \$10,000:~~

3 ~~(a) The practice or attempting to practice as an osteopathic physician and surgeon without~~
4 ~~a license or permit;~~

5 ~~(b) The obtaining of or an attempt to obtain a license or permit to practice in the profession~~
6 ~~for money or any other thing of value, by fraudulent misrepresentation;~~

7 ~~(c) The making of any willfully false oath or affirmation whenever an oath or affirmation is~~
8 ~~required by this article;~~

9 ~~(d) Advertising, practicing or attempting to practice under a name other than one's own.~~

10 (a) A person may not engage in the practice of osteopathic medicine and surgery, hold
11 himself or herself out as qualified to practice osteopathic medicine and surgery or use any title,
12 word or abbreviation to indicate to or induce others to believe that he or she is licensed to practice
13 osteopathic medicine and surgery in this state unless he or she is actually licensed under the
14 provisions of this article. A person engaged in the practice of osteopathic telemedicine is
15 considered to be engaged in the practice of osteopathy within this state and is subject to the
16 licensure requirements of this article. As used in this section, the term "practice of osteopathic
17 telemedicine" means the use of electronic information and communication technologies to provide
18 health care when distance separates participants and includes one or both of the following: (1)
19 The diagnosis of a patient within this state by an osteopathic physician located outside this state

20 as a result of the transmission of individual patient data, specimens or other material by electronic
21 or other means from within this state to the osteopathic physician or his or her agent; or (2) the
22 rendering of treatment to a patient within this state by an osteopathic physician located outside
23 this state as a result of transmission of individual patient data, specimens or other material by
24 electronic or other means from within this state to the osteopathic physician or his or her agent.

25 (b) 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 a health care profession licensed under this article with a license classified
28 by the board as expired, lapsed or terminated, for any period of time up to ninety days, is guilty of
29 a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or confined in
30 jail not more than twelve months, or both fined and confined.

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

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

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

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

44 (3) An individual osteopathic physician, or osteopathic physician groups, or osteopathic
45 physicians at a tertiary care or university hospital outside this state and engaged in the practice

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

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

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

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

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

63 (8) Persons enrolled in a school of osteopathic medicine approved by the liaison
64 committee on medical education or by the board, or persons engaged in graduate osteopathic
65 medical training in a program approved by the liaison committee on graduate osteopathic medical
66 education or the board, who are performing functions in the course of training including with
67 respect to functions performed by osteopathic medical residents or osteopathic medical students
68 under the supervision of a licensed osteopathic physician, ordering and obtaining laboratory tests,
69 medications and other patient orders by computer or other electronic means and no other
70 provision of this code to the contrary may be construed to prohibit or limit osteopathic medical
71 residents' or osteopathic medical students' use of computers or other electronic devices in this

72 manner;

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

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

89 (e) This section may not be construed as being in any way a limitation upon the services
90 of a physician assistant performed in accordance with the provisions of article three of this
91 chapter.

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

NOTE: The purpose of this bill is to align the criminal penalties of practicing osteopathic medicine with those of practicing allopathic medicine.

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