

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4027

BY DELEGATES ELLINGTON, SUMMERS, HOUSEHOLDER,

ROHRBACH, HOLLEN AND DEAN

[Passed March 6, 2018; in effect ninety days from passage.]

1 AN ACT 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 §30-3-16, all relating to
3 creating an education permit for allopathic physician resident; prohibiting the practice of
4 medicine and surgery without an authorization from the board; removing an exemption;
5 providing an application process; providing criteria to obtain the permit; and providing
6 emergency rulemaking authority; and providing rulemaking authority.

Be it enacted by the Legislature of West Virginia:

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 or induce others to believe that he or she
8 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 audio/video
15 conferencing or similar secure audio/video services, remote monitoring, interactive video and
16 store and forward digital image or health data technology to provide or support health care delivery

17 by replicating the interaction of a traditional in person encounter between a provider and a
18 patient. The practice of telemedicine occurs in this state when the patient receiving health care
19 services through a 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 podiatric training in a program approved by the Council
33 on Podiatric Education or by the board;

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

37 (A) The United States Military;

38 (B) The Department of Defense;

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

40 (D) Any other federal agency;

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

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

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

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

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

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

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

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

65 (A) He or she has a written agreement with that sports team to provide care to team
66 members, band member, cheerleader, mascot, coaching staff and families traveling with the team
67 for a specific sporting event, team appearance or training camp occurring in this state;

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

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

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

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

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

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

88 (h) A person who is found to be engaging in the practice of medicine and: (1) Has never
89 been licensed by the board under this article; (2) holds a license which has been classified by the
90 board as expired for greater than ninety days; or (3) holds a license which has been placed in
91 inactive status, revoked, suspended or surrendered to the board is guilty of a felony and, upon
92 conviction, shall be fined not more than \$10,000 or imprisoned in a correctional facility for not less
93 than one year nor more than five years or both fined and imprisoned.

94 (i) Upon a determination by the board that any report or complaint submitted to it concerns
95 allegations of the unlawful practice of medicine and surgery by an individual who is licensed under

96 another article of this chapter, the board shall refer the complaint to the appropriate licensing
97 authority. Additionally, whenever the board receives credible information that an individual is
98 engaging in the unlawful practice of medicine and surgery or podiatry in violation of this section,
99 the board may report such information to the appropriate state and/or federal law enforcement
100 authority and/or prosecuting attorney.

§30-3-16. Educational Permit.

1 (a) Beginning July 1, 2019, no person shall participate in a program of graduate medical
2 training in this state unless such person holds a license to practice medicine and surgery in this
3 state or has been issued an educational permit issued by the board.

4 (b) An educational permit issued by the board authorizes the recipient to practice medicine
5 and surgery only within the parameters of the recipient's training program.

6 (c) An applicant for an educational permit shall file an application with the board and
7 furnish evidence establishing that the applicant has satisfied the following requirements:

8 (1) The applicant is eighteen years of age or over;

9 (2) The applicant has paid the applicable fee;

10 (3) The applicant is of good moral character;

11 (4) The applicant has:

12 (A) Graduated from an allopathic college approved by the Liaison Committee on Medical
13 Education;

14 (B) Graduated from a medical college that meets requirements for certification by the
15 Educational Commission for Foreign Medical Graduates; or

16 (C) Completed an alternate pathway for meeting initial entry requirements or prerequisite
17 or transfer requirements recognized by the Accreditation Council for Graduate Medical Education;

18 (5) The applicant:

19 (A) Is under contract as a resident in a program of post-graduate clinical training approved
20 by the Accreditation Council for Graduate Medical Education; or

21 (B) Has completed a residency program approved by the Accreditation Council for
22 Graduate Medical Education or a residency program recognized by the Educational Commission
23 for Foreign Medical Graduates and is under contract as a fellow in an approved program of post-
24 graduate clinical training sponsored by an institution that is accredited to provide graduate medical
25 education;

26 (6) The applicant has never held a license to practice medicine and surgery in West
27 Virginia; and

28 (7) The applicant has fulfilled any other reasonable requirement specified in rule by the
29 Board.

30 (d) An educational permit shall be valid for up to one year of post-graduate training. An
31 educational permit may be renewed if the holder remains eligible to receive a renewed permit.

32 (e) The Board may deny an application or suspend or revoke a permit at any time upon
33 grounds defined by the board by legislative rule.

34 (f) In order to give timely effect to this section, the board may promulgate emergency rules
35 pursuant to the provisions of §29A-3-15 of this code, including:

36 (1) An implementation schedule for the issuance of educational permits prior to July 1,
37 2019;

38 (2) The extent to which residents and fellows may practice medicine and surgery pursuant
39 to an educational permit;

40 (3) Criteria for the issuance of reciprocal educational permits for out of state allopathic
41 medical residents seeking to complete a residency rotation in West Virginia;

42 (4) Requirements for educational permits and the renewal of such permits, including
43 eligibility criteria for renewal;

44 (5) Criteria for when an educational permit application may be denied;

45 (6) Grounds for permit suspension or revocation;

46 (7) A fee schedule;

47 (8) Procedures for transitioning existing medical education trainees prior to
48 implementation; and

49 (9) Any other rules necessary to effectuate and implement the provisions of this section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2018.

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Governor