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**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2003*



**ENROLLED**

*Committee Substitute for*

**SENATE BILL NO.** *611*

(By Senator *Bailey, et al*)



**PASSED** *March 8, 2003*

**In Effect** *90 days from* **Passage**

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OFFICE OF THE CLERK  
SENATE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

### Senate Bill No. 611

(SENATORS BAILEY, FACEMYER, BOWMAN  
AND MCKENZIE, *original sponsors*)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, six, nine and ten, article twenty-three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections six-a and six-b, all relating to licenses and permits issued by the board of radiologic technologists; defining podiatric medical assistants; establishing the requirement of a permit to perform podiatric radiographs and eligibility criteria therefor; restricting the scope of practice under such permit; and requiring the promulgation of legislative rules.

*Be it enacted by the Legislature of West Virginia:*

That sections two, six, nine and ten, article twenty-three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections six-a and six-b, all to read as follows:

**ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.**

**§30-23-2. Definitions.**

1 Unless the context in which used clearly requires a  
2 different meaning, as used in this article:

3 (a) "ASPMA" means the American society of podiatric  
4 medical assistants.

5 (b) "Board" means the West Virginia radiologic technol-  
6 ogy board of examiners.

7 (c) "License" means a license granted and issued by the  
8 board for the practice of radiologic technology.

9 (d) "Licensed practitioner" means a person licensed to  
10 practice medicine, chiropractic, podiatry, osteopathy or  
11 dentistry.

12 (e) "Licensee" means any person holding a license or a  
13 temporary permit issued pursuant to the provisions of this  
14 article.

15 (f) "Permitee" means any person holding a podiatric  
16 medical assistant permit issued pursuant to the provisions  
17 of this article.

18 (g) "Podiatric medical assistant" means a person who  
19 has met the requirements of section six-a and who has  
20 been granted a permit by the board for performance of  
21 podiatric radiographs.

22 (h) "Podiatric radiographs" means radiographs confined  
23 to the foot and ankle performed on dedicated podiatric X-  
24 ray equipment.

25 (i) "Radiologic technologist" means a person, other than  
26 a licensed practitioner, who applies ionizing radiation or  
27 assists in the application of ionizing radiation to human  
28 beings for diagnostic or therapeutic purposes under the  
29 supervision of a licensed practitioner.

30 (j) "Radiologic technology" means the application of  
31 ionizing radiation or assisting in the application of  
32 ionizing radiation to human beings for diagnostic or  
33 therapeutic purposes under the supervision of a licensed  
34 practitioner.

35 (k) "Radiologist" means a licensed practitioner who  
36 specializes in the use of ionizing radiation for the diagno-  
37 sis or treatment of disease.

38 (l) "Radiology resident" means a licensed practitioner  
39 who is in training to become a radiologist and who uses  
40 ionizing radiation in the diagnosis or treatment of disease  
41 under the supervision of a radiologist.

42 (m) "Supervision" means responsibility for and control  
43 of quality, radiation safety and technical aspects in the  
44 application of ionizing radiation of human beings for  
45 diagnostic or therapeutic purposes.

46 (n) "Technology" hereinafter relates to radiologic  
47 technology.

**§30-23-6. Qualifications of applicants; exceptions; applications;  
fee.**

1 (a) To be eligible for a license to practice radiologic  
2 technology the applicant shall:

3 (1) Be of good moral character;

4 (2) Have completed four years of high school education  
5 or its equivalent;

6 (3) Have successfully completed an accredited course in  
7 radiologic study technology, as determined by an accredi-

8 tation body recognized by the board, from a school of  
9 radiologic technology that has been approved by the  
10 board;

11 (4) Have passed the examination prescribed by the  
12 board, which examination shall cover the basic subject  
13 matter of radiologic technology, skills and techniques; and

14 (5) Not have been convicted of a felony in any court in  
15 this state or any federal court in this or any other state  
16 within ten years preceding the date of application for  
17 registration, which conviction remains unreversed; and not  
18 have been convicted of a felony in any court in this state or  
19 any federal court in this or any other state at any time if  
20 the offense for which the applicant was convicted related  
21 to the practice of radiologic technology, which conviction  
22 remains unreversed.

23 (b) Any person who holds a license or certificate, includ-  
24 ing the American registry of radiologic technologists, to  
25 practice radiologic technology issued by any other state,  
26 the requirements for which license or certificate are found  
27 by the board to be at least equal to those provided in this  
28 article, shall be eligible for a license to practice radiologic  
29 technology in this state without examination.

30 (c) The following persons are not required to obtain a  
31 license in accordance with the provisions of this article:

32 (1) A technology student enrolled in or attending an  
33 approved school of technology who as part of his or her  
34 course of study applies ionizing radiation to a human  
35 being under the supervision of a licensed practitioner;

36 (2) A person acting as a dental assistant who under the  
37 supervision of a licensed dentist operates only radio-  
38 graphic dental equipment for the sole purpose of dental  
39 radiography;

40 (3) A person engaged in performing the duties of a  
41 technologist in the person's employment by an agency,  
42 bureau or division of the government of the United States;

43 (4) Any licensed practitioner, radiologist or radiology  
44 resident; and

45 (5) Any person who demonstrates to the board that as of  
46 the first day of July, one thousand nine hundred ninety-  
47 nine, he or she:

48 (A) Has engaged in the practice of radiologic technology  
49 for the limited purpose of performing bone densitometry  
50 in this state for five or more years;

51 (B) Practices under the supervision of a licensed practi-  
52 tioner; and

53 (C) Has received a densitometry technologist degree  
54 certified by the international society for clinical  
55 densitometry.

56 (d) Any person seeking a license shall submit an applica-  
57 tion therefor at such time, in such manner, on such forms  
58 and containing such information as the board may, from  
59 time to time, by legislative rule prescribe and shall pay to  
60 the board a license fee, which fee shall be returned to the  
61 applicant if the license application is denied.

62 (e) The board shall propose rules for legislative approval  
63 in accordance with the provisions of article three, chapter  
64 twenty-nine of this code setting forth fees for licenses and  
65 permits and the renewals of licenses and permits.

**§30-23-6a. Podiatric medical assistants; permit requirements.**

1 (a) No person not otherwise licensed under this article  
2 shall perform podiatric radiographs in this state unless he  
3 or she has first obtained a permit to do so from the board.

4 (b) To be eligible for a permit to perform podiatric  
5 radiographs in this state, an applicant shall:

6 (1) Be of good moral character;

7 (2) Have completed four years of high school education  
8 or its equivalent;

9 (3) Pass a written examination for certification from the  
10 American society of podiatric medical assistants (ASPMA);

11 (4) Maintain an active certification in the American  
12 society of podiatric medical assistants (ASPMA) and meet  
13 all requirements of that organization including the  
14 continuing education requirements;

15 (5) Not have been convicted of a felony in any court in  
16 this state or any federal court in this or any other state  
17 within ten years preceding the date of application for the  
18 permit, which conviction remains unreversed; and not  
19 have been convicted of a felony in any court in this state or  
20 any federal court in this or any other state at any time if  
21 the offense for which the applicant was convicted related  
22 to the practice of radiologic technology, which conviction  
23 remains unreversed; and

24 (6) Pay to the board a permit fee, which fee shall be  
25 returned to the applicant if the permit application is  
26 denied.

27 (c) Original permits shall be prominently displayed in  
28 public view in the permittee's primary place of employ-  
29 ment. A duplicate permit issued by the board may be  
30 displayed in the permittee's secondary place of employ-  
31 ment.

32 (d) Permits issued pursuant to this section are valid for  
33 one year from the date issued and may be renewed every  
34 year without examination. Applications for renewal shall  
35 be upon a form provided by the board. Upon application  
36 for renewal, the permittee shall submit documentation of  
37 an active certification in ASPMA and payment of a  
38 renewal fee.

**§30-23-6b. Scope of practice for podiatric medical assistants.**

1 (a) A podiatric medical assistant granted a permit under  
2 section six-a of this article may only use equipment,  
3 specifically designed for the performance of foot or ankle

4 podiatric radiographs, that has been approved by the  
5 board.

6 (b) All podiatric radiographs performed by a podiatric  
7 medical assistant permittee shall be performed under the  
8 supervision of a licensed podiatrist.

**§30-23-9. Suspension or revocation of license or permits.**

1 (a) The board may at any time, upon its own motion and  
2 shall upon the verified written complaint of any person,  
3 conduct an investigation to determine whether there are  
4 grounds for suspension or revocation of a license or a  
5 permit issued under the provisions of this article.

6 (b) The board shall suspend or revoke any license or  
7 permit when it finds the holder thereof has:

8 (1) Been convicted of a felony in any court in this state or  
9 any federal court in this or any other state within ten years  
10 preceding the date of the motion or complaint, which  
11 conviction remains unreversed; or been convicted of a  
12 felony in any court in this state or any federal court in this  
13 or any other state at any time if the offense for which he  
14 was convicted related to the practice of radiologic technol-  
15 ogy, which conviction remains unreversed;

16 (2) Obtained a license or permit by means of fraud or  
17 deceit;

18 (3) Been incompetent, grossly negligent or guilty of other  
19 malpractice as defined by the board by reasonable rules;

20 (4) Failed or refused to comply with the provisions of  
21 this article or any reasonable rule promulgated by the  
22 board hereunder or any order or final decision of the  
23 board; or

24 (5) Except in emergency situations, failed to obtain  
25 written authorization from the attending licensed practi-  
26 tioner or from the patient and if the patient is a minor,  
27 from a parent or a person having custody of the minor.



28 (c) The board shall also suspend or revoke any license or  
29 permit if it finds the existence of any grounds which would  
30 justify the denial of an application for such license or  
31 permit if application were then being made for it.

**§30-23-10. Procedures for hearing.**

1 (a) Whenever the board denies an application for any  
2 original or renewal license or permit or suspends or  
3 revokes any license or permit, it shall make an interim  
4 order to that effect and serve a copy thereof on the appli-  
5 cant or licensee or permittee, as the case may be, by certi-  
6 fied mail, return receipt requested. Such order shall state  
7 the grounds for the action taken and shall require that any  
8 license or temporary permit suspended or revoked thereby  
9 shall be returned to the board by the holder within twenty  
10 days after receipt of said copy of said order.

11 (b) Any person adversely affected by any such order is  
12 entitled to a hearing thereon (as to all issues not excluded  
13 from the definition of a "contested case" as set forth in  
14 article one, chapter twenty-nine-a of this code) if, within  
15 twenty days after receipt of a copy thereof, he or she files  
16 with the board a written demand for such hearing. A  
17 demand for hearing shall operate automatically to stay or  
18 suspend the execution of any order suspending or revoking  
19 a license or permit or denying an application for a renewal  
20 license or permit. The board may require the person  
21 demanding such hearing to give reasonable security for the  
22 cost thereof and if such person does not substantially  
23 prevail at such hearing such cost shall be assessed against  
24 him or her and may be collected by civil action or other  
25 proper remedy.

26 (c) Upon receipt of a written demand for such hearing,  
27 the board shall set a time and place therefor not less than  
28 ten and not more than thirty days thereafter. Any sched-  
29 uled hearing may be continued by the board upon its own  
30 motion or for good cause shown by the person demanding  
31 the hearing.

32 (d) All of the pertinent provisions of article five, chapter  
33 twenty-nine-a of this code apply to and govern the hearing  
34 and the administrative procedures in connection with and  
35 following such hearing, with like effect as if the provisions  
36 of said article five were set forth in this subsection.

37 (e) Any such hearing shall be conducted by a quorum of  
38 the board. For the purpose of conducting any such hearing  
39 any member of the board may issue subpoenas and sub-  
40 poenas duces tecum which shall be issued and served  
41 within the time, for the fees and shall be enforced as  
42 specified in section one, article five, chapter twenty-nine-a  
43 of this code, and all of the said section one provisions  
44 dealing with subpoenas and subpoenas duces tecum shall  
45 apply to subpoenas and subpoenas duces tecum issued for  
46 the purpose of a hearing hereunder.

47 (f) At any such hearing the person who demanded the  
48 same may represent himself or be represented by an  
49 attorney-at-law admitted to practice before any circuit  
50 court of this state. Upon request by the board, it shall be  
51 represented at any such hearing by the attorney general or  
52 his or her assistants without additional compensation.

53 (g) After any such hearing and consideration of all  
54 testimony, evidence and record in the case, the board shall  
55 render its decision in writing. The written decision of the  
56 board shall be accompanied by findings of fact and  
57 conclusions of law as specified in section three, article five,  
58 chapter twenty-nine-a of this code and a copy of such  
59 decision and accompanying findings and conclusions shall  
60 be served by certified mail, return receipt requested, upon  
61 the person demanding such hearing and his or her attorney  
62 of record, if any.

63 (h) The decision of the board is final unless reversed,  
64 vacated or modified upon judicial review thereof in  
65 accordance with the provisions of section eleven of this  
66 article.

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

*Lucy M. ...*  
.....  
Chairman Senate Committee

*Shaw ...*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Darrell ...*  
.....  
Clerk of the Senate

*... ..*  
.....  
Clerk of the House of Delegates

*Carl ...*  
.....  
President of the Senate

*... ..*  
.....  
Speaker House of Delegates

The within *is approved* this the *15<sup>th</sup>*  
Day of *April* *Bob Wise*, 2003.  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/27/03

Time 10:10am