

H. B. 2870

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(By Delegates Perry, Staggers, Shaver and Iaquina)
[Introduced January 26, 2011; referred to the
Committee on Health and Human Resources then the
Judiciary.]

10 A BILL to amend and reenact §30-3-13 of the Code of West Virginia,
11 1931, as amended, relating to allowing physicians to use
12 electronic signatures for orders for patients care in or
13 admission to long- term care facilities.

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

15 That §30-3-13 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

17 **ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.**

18 **§30-3-13. Unauthorized practice of medicine and surgery or**
19 **podiatry; criminal penalties; limitations.**

20 (a) A person may not engage in the practice of medicine and
21 surgery or podiatry, hold himself or herself out as qualified to
22 practice medicine and surgery or podiatry or use any title, word or
23 abbreviation to indicate to or induce others to believe that he or
24 she is licensed to practice medicine and surgery or podiatry in
25 this state unless he or she is actually licensed under the
26 provisions of this article. A person engaged in the practice of
27 telemedicine is considered to be engaged in the practice of

1 medicine within this state and is subject to the licensure
2 requirements of this article. As used in this section, the term
3 "practice of telemedicine" means the use of electronic information
4 and communication technologies to provide health care when distance
5 separates participants and includes one or both of the following:
6 (1) The diagnosis of a patient within this state by a physician
7 located outside this state as a result of the transmission of
8 individual patient data, specimens or other material by electronic
9 or other means from within this state to the physician or his or
10 her agent; or (2) the rendering of treatment to a patient within
11 this state by a physician located outside this state as a result of
12 transmission of individual patient data, specimens or other
13 material by electronic or other means from within this state to the
14 physician or his or her agent. No person may practice as a
15 physician assistant, hold himself or herself out as qualified to
16 practice as a physician assistant or use any title, word or
17 abbreviation to indicate to or induce others to believe that he or
18 she is licensed to practice as a physician assistant in this state
19 unless he or she is actually licensed under the provisions of this
20 article.

21 (b) Any person who intentionally practices, or holds himself
22 or herself out as qualified to practice, or uses any title, word or
23 abbreviation to indicate to or induce others to believe he or she
24 is licensed to practice a health care profession licensed under
25 this article with a license classified by the board as expired,
26 lapsed or terminated, for any period of time up to ninety days, is
27 guilty of a misdemeanor and, upon conviction thereof, shall be

1 fined not more than \$5,000 or confined in jail not more than twelve
2 months, or both fined and confined.

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

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

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

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

23 (3) An individual physician or podiatrist, or physician or
24 podiatrist groups, or physicians or podiatrists at a tertiary care
25 or university hospital outside this state and engaged in the
26 practice of telemedicine who consult or render second opinions
27 concerning diagnosis or treatment of patients within this state:

1 (i) In an emergency or without compensation or expectation of
2 compensation; or (ii) on an irregular or infrequent basis which
3 occurs less than once a month or less than twelve times in a
4 calendar year;

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

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

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

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

22 (8) Persons enrolled in a school of medicine approved by the
23 liaison committee on medical education or by the board, or persons
24 enrolled in a school of podiatric medicine approved by the council
25 of podiatry education or by the board, or persons enrolled in an
26 undergraduate or graduate physician assistant program approved by
27 the committee on allied health education and accreditation or its

1 successor on behalf of the American Medical Association or by the
2 board, or persons engaged in graduate medical training in a program
3 approved by the liaison committee on graduate medical education or
4 the board, or engaged in graduate podiatric training in a program
5 approved by the council on podiatric medical education or by the
6 board, who are performing functions in the course of training
7 including with respect to functions performed by medical residents
8 or medical students under the supervision of a licensed physician,
9 ordering and obtaining laboratory tests, medications and other
10 patient orders by computer or other electronic means and no other
11 provision of this code to the contrary may be construed to prohibit
12 or limit medical residents' or medical students' use of computers
13 or other electronic devices in this manner;

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

17 (10) The fitting or sale of a prosthetic or orthotic device
18 not involving any surgical procedure, in accord with a prescription
19 of a physician, osteopathic physician or where chiropractors or
20 podiatrists are authorized by law to prescribe such a prosthetic or
21 orthotic device, in accord with a prescription of a chiropractor or
22 podiatrist, by a practitioner certified in the provision of custom
23 orthotic and prosthetic devices, respectively, by a nationally
24 recognized credentialing body for orthotics and prosthetics that is
25 accredited by the National Commission for Certifying Agencies
26 (NCCA): *Provided*, That the sale of any prosthetic or orthotic
27 device by a partnership, proprietorship or corporation which

1 employs such a practitioner or registered technician who fitted the
2 prosthetic or orthotic device shall not constitute the unauthorized
3 practice of medicine: *Provided, however,* That the practitioner or
4 registered technician may, without a prescription, make
5 recommendation solely to a physician or osteopathic physician or to
6 a chiropractor or podiatrist otherwise authorized by law to
7 prescribe a particular prosthetic or orthotic device regarding any
8 prosthetic or orthotic device to be used for a patient upon a
9 request for such recommendation.

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

13 (f) Persons covered under this article may be permitted to
14 utilize electronic signature or unique electronic identification to
15 effectively sign materials, transmitted by computer or other
16 electronic means, upon which signature is required for the purpose
17 of authorized medical practice. Such signatures are deemed legal
18 and valid for purposes related to the provision of medical
19 services, including but not limited, to orders pertaining to a
20 patient's care in or admittance into a long-term care facility.

21 This subsection does not confer any new practice privilege or right
22 on any persons covered under this article.

NOTE: The purpose of this bill is to authorize physicians to use electronic signatures to admit patients to long-term care facilities and provide for their care.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would

be added.