

1 **OMMITTEE SUBSTITUTE**

2 **for**

3 **H. B. 4278**

4
5 (By Delegates Perdue, Fleischauer, Morgan,
6 Guthrie, Ellington, Staggers and Swartzmiller)

7 (Originating in the Committee on the Judiciary)

8 [February 5, 2014]

9
10 A BILL to amend and reenact §30-3-15 of the Code of West Virginia,
11 1931, as amended, relating to rewriting the procedure by which
12 corporations may obtain authorization from the West Virginia
13 Board of Medicine to practice medicine and surgery through the
14 corporation; setting forth licensing requirements; requiring
15 an application; setting forth shareholder requirements;
16 allowing fees to be set by the board; setting forth procedures
17 for medical corporations formed outside of the state; setting
18 out notice and procedural requirements for the Secretary of
19 State; allowing for employees of a medical corporation;
20 providing for a certificate of authorization; setting forth
21 conditions under which the medical corporation cease
22 operations; and providing for a misdemeanor penalty.

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

24 That §30-3-15 of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted to read as follows:

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

3 **§30-3-15. Medical corporations; podiatry corporations; application**
4 **for registration; fees; notice to Secretary of State**
5 **of issuance of certificate; action by Secretary of**
6 **State; rights and limitations generally; biennial**
7 **registration; when practice to cease; admissibility and**
8 **effect of certificate signed by secretary of board;**
9 **criminal penalty; severability.**

10 ~~(a) When one or more physicians duly licensed to practice~~
11 ~~medicine and surgery in this state under this article, or one or~~
12 ~~more physicians duly licensed under this article and one or more~~
13 ~~physicians duly licensed under article fourteen of this chapter, or~~
14 ~~one or more podiatrists duly licensed to practice podiatry in this~~
15 ~~state wish to form a medical or podiatry corporation, respectively,~~
16 ~~such physician or physicians or podiatrist or podiatrists shall~~
17 ~~file a written application therefor with the board on a form~~
18 ~~prescribed by it and shall furnish proof satisfactory to the board~~
19 ~~that each applicant is a duly licensed physician or podiatrist. A~~
20 ~~fee, not to exceed \$500, the amount of such fee to be set by the~~
21 ~~board, shall accompany each application. Upon its determination~~
22 ~~that each applicant is duly licensed, the board shall notify the~~
23 ~~Secretary of State that a certificate of authorization has been~~

1 issued to the person or persons making the application. When the
2 Secretary of State receives such notification from the board, he or
3 she shall attach such authorization to the corporation application
4 and, upon compliance by the corporation with the pertinent
5 provisions of chapter thirty one of this code, shall notify the
6 incorporators that such corporation, through duly licensed
7 physicians or through duly licensed podiatrists, may engage in the
8 practice of medicine and surgery or the practice of podiatry.

9 (b) A medical corporation may practice medicine and surgery
10 only through individual physicians duly licensed to practice
11 medicine and surgery in this state and a podiatrist may practice
12 podiatry only through individual podiatrists duly licensed to
13 practice podiatry in this state, but such physicians or podiatrists
14 may be employees rather than shareholders of such corporation, and
15 nothing herein contained shall be construed to require a license
16 for or other legal authorization of any individual employed by such
17 corporation to perform services for which no license or other legal
18 authorization is otherwise required. Nothing contained in this
19 article is meant or intended to change in any way the rights,
20 duties, privileges, responsibilities and liabilities incident to
21 the physician-patient or podiatrist-patient relationship nor is it
22 meant or intended to change in any way the personal character of
23 the physician-patient or podiatrist-patient relationship. A
24 corporation holding such certificate of authorization shall

1 register biennially, on or before June 30, on a form prescribed by
2 the board, and shall pay an annual registration fee not to exceed
3 \$300, the amount of such fee to be set by the board.

4 ~~(c) A medical or podiatry corporation holding a certificate of~~
5 ~~authorization shall cease to engage in the practice of medicine and~~
6 ~~surgery or the practice of podiatry upon being notified by the~~
7 ~~board that any of its shareholders is no longer a duly licensed~~
8 ~~physician or podiatrist, or when any shares of such corporation~~
9 ~~have been sold or disposed of to a person who is not a duly~~
10 ~~licensed physician or podiatrist: *Provided,* That the personal~~
11 ~~representative of a deceased shareholder shall have a period, not~~
12 ~~to exceed twelve months from the date of such shareholder's death,~~
13 ~~to dispose of such shares; but nothing contained herein shall be~~
14 ~~construed as affecting the existence of such corporation or its~~
15 ~~right to continue to operate for all lawful purposes other than the~~
16 ~~practice of medicine and surgery or the practice of podiatry.~~

17 ~~(d) No corporation shall practice medicine and surgery or any~~
18 ~~of its branches, or hold itself out as being capable of practicing~~
19 ~~medicine and surgery, or practice podiatry or hold itself out as~~
20 ~~being capable of practicing podiatry, without a certificate from~~
21 ~~the board; nor shall any corporation practice medicine and surgery~~
22 ~~or any of its branches or hold itself out as being capable of~~
23 ~~practicing medicine and surgery, or practice podiatry or hold~~
24 ~~itself out as being capable of practicing podiatry, after its~~

1 ~~certificate has been revoked, or if suspended, during the term of~~
2 ~~such suspension. A certificate signed by the secretary of the~~
3 ~~board to which is affixed the official seal of the board to the~~
4 ~~effect that it appears from the records of the board that no such~~
5 ~~certificate to practice medicine and surgery or any of its~~
6 ~~branches, or to practice podiatry, in the state has been issued to~~
7 ~~any such corporation specified therein or that such certificate has~~
8 ~~been revoked or suspended shall be admissible in evidence in all~~
9 ~~courts of this state and shall be prima facie evidence of the facts~~
10 ~~stated therein.~~

11 ~~(e) Any officer, shareholder or employee of such corporation~~
12 ~~who participates in a violation of any provision of this section~~
13 ~~shall be guilty of a misdemeanor and, upon conviction thereof,~~
14 ~~shall be fined not exceeding \$1,000.~~

15 (a) No corporation may practice medicine and surgery or any of
16 its branches, or hold itself out as being capable of practicing
17 medicine and surgery, or practice podiatry or hold itself out as
18 being capable of practicing podiatry in this state without a
19 certificate of authorization from the board designating the
20 corporation as an authorized medical or podiatry corporation.

21 (b) One or more physicians licensed to practice medicine and
22 surgery in this state under this article, or one or more physicians
23 licensed under this article and one or more physicians licensed
24 under article fourteen of this chapter, or one or more podiatrists

1 licensed to practice podiatry in this state may receive
2 authorization from the board as a designated medical or podiatry
3 corporation by:

4 (1) Filing a written application with the board on the
5 prescribed form;

6 (2) Furnishing proof satisfactory to the board that each
7 shareholder of the proposed medical corporation is a licensed
8 physician or podiatrist pursuant to this article or article
9 fourteen of this chapter; and

10 (3) Submitting the non-refundable application fee, the amount
11 of the fee to be set by the board's rules.

12 (c) A corporation formed outside of this state for the purpose
13 of engaging in the practice of medicine and surgery or the practice
14 of podiatry may receive authorization from the board as a
15 designated foreign medical or podiatry corporation by:

16 (1) Filing a written application with the board on the
17 prescribed form;

18 (2) Furnishing proof satisfactory to the board that the
19 corporation has received authorization from the appropriate
20 authorities as a medical corporation or professional corporation in
21 its state of incorporation and is currently in good standing with
22 that authority;

23 (3) Furnishing proof satisfactory to the board that at least
24 one shareholder of the proposed medical corporation is a licensed

1 physician or podiatrist pursuant to this article and is designated
2 as the corporate representative for all communications with the
3 board regarding the designation and continuing authorization of the
4 corporation as a foreign medical corporation;

5 (4) Furnishing proof satisfactory to the board that all of the
6 corporation's shareholders are licensed physicians or podiatrists
7 in one or more states and submitting a complete list of
8 shareholders including each shareholder's name, state or states of
9 licensure and license numbers; and

10 (5) Submitting a non-refundable application fee, the amount of
11 the fee to be set by the board's rules.

12 (d) Upon receipt of a completed application including all
13 required information, the appropriate fee, and upon the board's
14 determination that each shareholder is appropriately licensed, the
15 board shall notify the Secretary of State that a certificate of
16 authorization has been issued to the person or persons making the
17 application. When the secretary receives notification from the
18 board, he or she shall attach that authorization to the corporation
19 application and, upon compliance by the corporation with the
20 pertinent provisions of chapter thirty-one-d of this code, shall
21 notify the incorporators that the corporation, through licensed
22 physicians or through licensed podiatrists, may engage in the
23 practice of medicine and surgery or the practice of podiatry in
24 West Virginia.

1 (e) An authorized medical corporation may practice medicine
2 and surgery only through individual physicians licensed to practice
3 medicine and surgery in this state and a podiatry corporation may
4 practice podiatry only through individual podiatrists licensed to
5 practice podiatry in this state, but those physicians or
6 podiatrists may be employees rather than shareholders of the
7 corporation, and nothing in this section requires a license for or
8 other legal authorization of any individual employed by the
9 corporation to perform services for which no license or other legal
10 authorization is otherwise required.

11 (f) A corporation holding a certificate of authorization shall
12 register biennially, on or before the expiration date appearing
13 upon its certificate of authorization, on the prescribed form, and
14 shall pay a biennial registration fee, the amount of the fee to be
15 set by the board's rules.

16 (g) A certificate of authorization designating a corporation
17 as a medical or podiatry corporation or as a foreign medical or
18 podiatry corporation automatically expires two years after issuance
19 unless the corporation renews its biennial registration on or
20 before that date.

21 (h) A corporation whose certificate of authorization has
22 expired may reapply for designation as a medical or podiatry
23 corporation or as a foreign medical or podiatry corporation by
24 submitting a new application and application fee in conformity with

1 subsection (b) or (c) of this section.

2 (i) A medical or podiatry corporation formed in this state and
3 holding a certificate of authorization shall cease to engage in the
4 practice of medicine, surgery or podiatry upon being notified by
5 the board that any of its shareholders is no longer a licensed
6 physician or podiatrist, or when any shares of a corporation have
7 been sold or disposed of to a person who is not a licensed
8 physician or podiatrist: *Provided*, That the personal representative
9 of a deceased shareholder has twelve months from the date of the
10 shareholder's death, to dispose of the shares. Nothing in this
11 section affects the existence of the corporation or its right to
12 continue to operate for all lawful purposes other than the practice
13 of medicine and surgery or the practice of podiatry.

14 (j) A foreign medical or podiatry corporation holding a
15 certificate of authorization shall immediately cease to engage in
16 the practice of medicine, surgery or podiatry in this state if:

17 (1) The corporate shareholders no longer include at least one
18 shareholder who is licensed to practice as a physician or
19 podiatrist in this state;

20 (2) The corporation is notified that any of its shareholders
21 is no longer a licensed physician or podiatrist; or

22 (3) Any shares of the corporation have been sold or disposed
23 of to a person who is not a licensed physician or podiatrist:
24 *Provided*, That the personal representative of a deceased

1 shareholder has twelve months from the date of the shareholder's
2 death, to dispose of the shares. However, in order to maintain its
3 authorization to practice medicine, surgery or podiatry during the
4 twelve month disposal period, the corporation shall, at all times,
5 have at least one shareholder who is licensed as a physician or
6 podiatrist in this state. Nothing contained in this section
7 affects the existence of the corporation or its right to continue
8 to operate for all lawful purposes other than the practice of
9 medicine, surgery or podiatry.

10 (k) Within thirty days of the expiration, revocation,
11 deauthorization or suspension of a certificate of authorization by
12 the board, it shall submit, in writing, notice of the same to the
13 Secretary of State.

14 (l) No corporation may practice medicine and surgery or hold
15 itself out as being capable of practicing medicine and surgery, or
16 practice podiatry or hold itself out as being capable of practicing
17 podiatry, after its certificate has expired, been revoked or
18 deauthorized, or if suspended, during the term of the suspension.

19 (m) Nothing contained in this section changes the rights,
20 duties, privileges, responsibilities and liabilities incident to
21 the physician-patient or podiatrist-patient relationship nor does
22 it change the personal character of the physician-patient or
23 podiatrist-patient relationship.

24 (n) A certificate signed by the secretary of the board to

1 which is affixed the official seal of the board to the effect that
2 it appears from the records of the board that a certificate to
3 practice medicine and surgery or to practice podiatry, in the state
4 has not been issued to the corporation specified therein or that
5 the certificate has been expired, revoked, deauthorized or
6 suspended is admissible in evidence in all courts of this state and
7 is prima facie evidence of the facts stated therein.

8 (o) Any officer, shareholder or employee of a corporation who
9 participates in a violation of this section is guilty of a
10 misdemeanor and, upon conviction thereof, shall be fined not more
11 than \$1,000.