

1 **H. B. 4278**

2  
3 (By Delegates Perdue, Fleischauer, Morgan,  
4 Guthrie, Ellington, Staggers and Swartzmiller)

5 [Introduced January 23, 2014; referred to the  
6 Committee on Health and Human Resources then the  
7 Judiciary.]

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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 duly licensed to practice medicine  
22 and surgery in this state under this article, or one or more  
23 physicians duly licensed under this article and one or more  
24 physicians duly licensed under article fourteen of this chapter, or

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

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

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

10 (3) Submitting a reasonable application fee, the amount of the  
11 fee to be set by the board's rules, and no portion of which is  
12 refundable.

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

17 (1) Filing a written application therefore with the board on  
18 a form prescribed by it;

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

24 (3) Furnishing proof satisfactory to the board that at least

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

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

11 (5) Submitting a reasonable application fee, the amount of the  
12 fee to be set by the board's rules, and no portion of which is  
13 refundable.

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

1 licensed podiatrists, may engage in the practice of medicine and  
2 surgery or the practice of podiatry in West Virginia.

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

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

19 (g) A certificate of authorization designating a corporation  
20 as a medical or podiatry corporation or as a foreign medical or  
21 podiatry corporation automatically expires two years after issuance  
22 unless the corporation complies with the biennial registration  
23 requirement prior to that date.

24 (h) A corporation whose certificate of authorization has



1 expired may reapply for designation as a medical or podiatry  
2 corporation or as a foreign medical or podiatry corporation by  
3 submitting a new application and application fee in conformity with  
4 subsection (b) or (c) of this section.

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

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

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

24 (2) The corporation is notified that any of its shareholders

1 is no longer a duly licensed physician or podiatrist; or

2 (3) Any shares of the corporation have been sold or disposed  
3 of to a person who is not a duly licensed physician or podiatrist:

4 Provided, That the personal representative of a deceased  
5 shareholder has a period, not to exceed twelve months from the date  
6 of the shareholder's death, to dispose of the shares. However, in  
7 order to maintain its authorization to practice medicine, surgery  
8 or podiatry during the twelve month disposal period, the  
9 corporation must, at all times, have at least one shareholder who  
10 is licensed as a physician or podiatrist in this state.

11 Nothing contained herein affects the existence of the  
12 corporation or its right to continue to operate for all lawful  
13 purposes other than the practice of medicine, surgery or podiatry.

14 (k) Within thirty days of the expiration, revocation,  
15 deauthorization or suspension of a certificate of authorization by  
16 the board, it shall submit, in writing, notice of the same to the  
17 Secretary of State.

18 (l) No corporation may practice medicine and surgery or any of  
19 its branches or hold itself out as being capable of practicing  
20 medicine and surgery, or practice podiatry or hold itself out as  
21 being capable of practicing podiatry, after its certificate has  
22 expired, been revoked or otherwise deauthorized, or if suspended,  
23 during the term of the suspension.

24 (m) Nothing contained in this article is meant or intended to

1 change in any way the rights, duties, privileges, responsibilities  
2 and liabilities incident to the physician-patient or  
3 podiatrist-patient relationship nor is it meant or intended to  
4 change in any way the personal character of the physician-patient  
5 or podiatrist-patient relationship.

6 (n) A certificate signed by the secretary of the board to  
7 which is affixed the official seal of the board to the effect that  
8 it appears from the records of the board that a certificate to  
9 practice medicine and surgery or any of its branches, or to  
10 practice podiatry, in the state has not been issued to the  
11 corporation specified therein or that the certificate has been  
12 expired, revoked or suspended is admissible in evidence in all  
13 courts of this state and is prima facie evidence of the facts  
14 stated therein.

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

NOTE: The purpose of this bill is to rewrite the procedure by which corporations may obtain authorization from the West Virginia Board of Medicine to practice medicine and surgery through the corporation. The bill clarifies the mechanism by which a domestic medical corporation or podiatry corporation may obtain a certificate of authorization to practice medicine through the corporation in West Virginia through licensed physicians and podiatrists. The bill also authorizes the issuance of certificates of authorization under specific circumstances to physician-owned

corporations formed in other states who wish to practice medicine in West Virginia through the corporation. The bill also clarifies that the fee assessed on biennial registration is a biennial fee, and not an annual fee. The bill provides for a misdemeanor penalty.

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