

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 334

(By Senator Ferns)

[Originating in the Committee on Health and Human Resources;
reported February 18, 2015.]

A BILL to amend and reenact §30-3-13 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §30-3-13a; to amend said code by adding thereto a new section, designated §30-7-21; and to amend said code by adding thereto a new section, designated §30-14-16, all relating generally to practice of medicine, osteopathy and advance practice registered nursing; rewriting licensing requirements for practice of medicine and surgery or podiatry; making exceptions; providing for unauthorized practice; requiring notice; establishing criminal penalties; permitting practice of telemedicine; establishing requirements; making exceptions; defining terms; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

That §30-3-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §30-3-13a; that said code be amended by adding thereto a new section, designated §30-7-21; and that said code be amended by

[COM. SUB. FOR S. B. NO. 334]

adding thereto a new section, designated §30-14-16, all to read as follows:

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 this
3 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 to 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 not unlawful for a person:

10 (1) Who is a licensed health care provider under this code to act within his or her scope of
11 practice;

12 (2) Who is not a licensed health care professional in this state to provide first aid care in an
13 emergency situation; or

14 (3) To engage in the bona fide religious tenets of any recognized church in the administration
15 of assistance to the sick or suffering by mental or spiritual means.

16 (c) The following persons are exempt from the licensure requirements under this article:

17 (1) A person enrolled in a school of medicine approved by the Liaison Committee on Medical

[COM. SUB. FOR S. B. NO. 334]

1 Education or by the board;

2 (2) A person enrolled in a school of podiatric medicine approved by the Council of Podiatry

3 Education or by the board;

4 (3) A person engaged in graduate medical training in a program approved by the

5 Accreditation Council for Graduate Medical Education or the board;

6 (4) A person engaged in graduate podiatric training in a program approved by the Council

7 on Podiatric Education or by the board;

8 (5) A physician or podiatrist engaged in the performance of his or her official duties holding

9 one or more licenses from another state or foreign country and who is a commissioned medical

10 officer of, a member of or employed by:

11 (A) The United States Military;

12 (B) The Department of Defense;

13 (C) The United States Public Health Service;

14 (D) The Department of Council on Podiatric Education; or

15 (E) Any other federal agency;

16 (6) A physician or podiatrist holding one or more unrestricted licenses granted by another

17 state or foreign country serving as visiting medical faculty engaged in teaching or research duties at

18 a medical school or institution recognized by the board for up to six months if:

19 (A) The physician does not engage in the practice of medicine and surgery or podiatry outside

20 of the auspices of the sponsoring school or institution; and

21 (B) The sponsoring medical school or institution provides prior written notification to the

[COM. SUB. FOR S. B. NO. 334]

1 board including the physician's name, all jurisdictions of licensure and the beginning and end date
2 of the physician's visiting medical faculty status.

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

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

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

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

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

18 (A) He or she has a written agreement with that sports team to provide care to team members,
19 coaching staff and families traveling with the team for a specific sporting event, team appearance
20 or training camp occurring in this state;

21 (B) He or she may only provide care or consultation to team members, coaching staff and

[COM. SUB. FOR S. B. NO. 334]

1 families traveling with the team no longer than seven consecutive days per sporting event;

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

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

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

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

16 (f) A person who engages in unlawful practice of medicine and surgery or podiatry while
17 holding a license issued pursuant to this article which has been classified by the board as expired for
18 ninety days or fewer is guilty of a misdemeanor and, upon conviction, shall be fined not more than
19 \$5,000 or confined in jail not more than twelve months, or both fined and confined.

20 (g) A person who: (1) Has never been licensed by the board under this article; (2) holds a
21 license which has been classified by the board as expired for greater than ninety days; or (3) holds

[COM. SUB. FOR S. B. NO. 334]

1 a license which has been placed in inactive status, revoked, suspended or surrendered to the board
2 is guilty of a felony and, upon conviction, shall be fined not more than \$10,000 or imprisoned in a
3 correctional facility, or both fined and imprisoned.

4 **§30-3-13a. Telemedicine practice; requirements; exceptions; definitions; rulemaking.**

5 (a) *Definitions.* – For the purposes of this section:

6 “Store and forward telemedicine” means the asynchronous computer-based communication
7 of medical data and/or images between a patient and a physician or podiatrist at another site for the
8 purpose of diagnostic and/or therapeutic assistance.

9 “Telemedicine” means the practice of medicine using tools such as electronic
10 communication, information technology or other means of interaction between a licensed health care
11 professional in one location and a patient in another location, with or without an intervening health
12 care provider. The utilization of electronic communication in on call, cross coverage and emergency
13 services situations is not telemedicine.

14 “Telemedicine technologies” means technologies and devices enabling secure electronic
15 communications and information exchange in the practice of telemedicine and typically involve the
16 application of secure real time video conferencing or similar secure video services, remote
17 monitoring, interactive video and store and forward digital image or health data technology to
18 provide or support health care delivery by replicating the interaction of a traditional in person
19 encounter between a provider and a patient.

20 (b) The practice of medicine or surgery or podiatry occurs where the patient is located at the
21 time telemedicine technologies are used. A physician, podiatrist or physician assistant who engages

[COM. SUB. FOR S. B. NO. 334]

1 in the practice of medicine through telemedicine technologies with respect to patients located in this
2 state shall be licensed by the board.

3 (c) A physician, podiatrist or physician assistant using telemedicine technologies to practice
4 medicine or surgery or podiatry to a patient shall:

5 (1) Verify the identity and location of the patient;

6 (2) Provide the patient with confirmation of the identity, location and qualifications of the
7 physician, podiatrist or physician assistant;

8 (3) Establish and/or maintain a physician, podiatrist or physician assistant patient relationship
9 which conforms to the standard of care;

10 (4) Determine whether telemedicine technologies are appropriate for the particular patient
11 presentation for which the practice medicine or surgery or podiatry are to be rendered;

12 (5) Obtain from the patient informed consent for the use of telemedicine technologies in the
13 practice medicine or surgery or podiatry to the patient;

14 (6) Conduct all appropriate evaluations and history of the patient consistent with traditional
15 standards of care for the particular patient presentation; and

16 (7) Create and maintain healthcare records for the patient which justify the course of
17 treatment and which verify compliance with the requirements of this section.

18 (d) The requirements of subdivisions (2) and (5), subsection (c) of this section do not apply
19 the practice of pathology and radiology medicine through store and forward telemedicine.

20 (e) Where an existing physician, podiatrist or physician assistant patient relationship is not
21 present prior to the utilization to telemedicine technologies, or when services are rendered solely

[COM. SUB. FOR S. B. NO. 334]

1 through telemedicine technologies, a physician, podiatrist or physician assistant patient relationship
2 may only be established through the use of telemedicine technologies which incorporate interactive
3 audio using store and forward technology, real time videoconferencing or similar secure video
4 services during the initial physician, podiatrist or physician assistant patient encounter. However,
5 a physician patient relationship may be established through store and forward telemedicine for the
6 practice of pathology and radiology. Once a physician, podiatrist or physician assistant patient
7 relationship has been established, the physician, podiatrist or physician assistant, with the informed
8 consent of the patient, may utilize any telemedicine technology which meets the standard of care and
9 is appropriate for the particular patient presentation.

10 (f) The practice of medicine and surgery or podiatry provided via telemedicine technologies,
11 including the establishment of a physician, podiatrist or physician assistant patient relationship and
12 issuing a prescription via electronic means as part of a telemedicine encounter, are subject to the
13 same standard of care, professional practice requirements and scope of practice limitations as
14 traditional in person physician, podiatrist or physician assistant patient encounters. Treatment,
15 including issuing a prescription, based solely on an online questionnaire does not constitute an
16 acceptable standard of care.

17 (g) The utilization of telemedicine technologies to practice medicine and surgery or podiatry
18 on a patient for whom the standard of care requires an in-person, physical examination shall
19 constitute dishonorable, unethical and unprofessional conduct.

20 (h) The patient record established during the use of telemedicine technologies shall be
21 accessible and documented for both the physician, podiatrist, physician assistant and the patient,

[COM. SUB. FOR S. B. NO. 334]

1 consistent with the laws and legislative rules governing patient health care records and shall include
2 a copy of the informed consent to the practice of medicine and surgery or podiatry via telemedicine
3 technologies. All laws governing the confidentiality of health care information and governing
4 patient access to medical records shall apply to records of practice of medicine and surgery or
5 podiatry provided through telemedicine technologies. A physician, podiatrist or physician assistant
6 solely providing services using telemedicine technologies shall make documentation of the encounter
7 easily available to the patient and subject to the patient's consent, any identified care provider of the
8 patient immediately after the encounter.

9 (i) A physician, podiatrist or physician assistant who has a physician, podiatrist or physician
10 assistant patient relationship and who practices medicine and surgery or podiatry to a patient solely
11 through the utilization of telemedicine technologies may not prescribe any controlled substances
12 listed in Schedule I or II of the Uniform Controlled Substances Act.

13 (j) The board may propose rules for legislative approval in accordance with article three,
14 chapter twenty-nine-a of this code to implement standards for and limitations upon the utilization
15 of telemedicine technologies in the practice of medicine and podiatry in this state.

16 (k) Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities
17 incident to the physician, podiatrist or physician assistant patient relationship, nor is it meant or
18 intended to change in any way the personal character of the physician, podiatrist or physician
19 assistant patient relationship. This section does not alter the scope of practice of any health care
20 provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise
21 authorized by law.

[COM. SUB. FOR S. B. NO. 334]

1 **§30-7-21. Telehealth practice; requirements; exceptions; definitions; rulemaking.**

2 (a) *Definitions.* – For the purposes of this section:

3 “Telehealth” means the practice of advanced practice nursing using tools such as electronic
4 communication, information technology or other means of interaction between a licensed health care
5 professional in one location and a patient in another location, with or without an intervening health
6 care provider.

7 “Telehealth technologies” means technologies and devices enabling secure electronic
8 communications and information exchange in the practice of telehealth and typically involve the
9 application of secure real time video conferencing or similar secure video services, remote
10 monitoring, interactive audio and store and forward digital image or health data technology to
11 provide or support health care delivery by replicating the interaction of a traditional in person
12 encounter between a provider and a patient.

13 (b) The practice of advanced practice nursing occurs where the patient is located at the time
14 telehealth technologies are used. An advanced practice registered nurse who engages in the practice
15 of advanced practice registered nursing through telehealth technologies with respect to patients
16 located in this state shall be licensed by the board.

17 (c) An advanced practice registered nurse using telehealth technologies to practice advanced
18 practice nursing to a patient shall:

19 (1) Verify the identity and location of the patient;

20 (2) Provide the patient with confirmation of the identity, location and qualifications of the
21 advanced practice registered nurse;

[COM. SUB. FOR S. B. NO. 334]

1 (3) Establish and/or maintain an advanced practice registered nurse relationship which
2 conforms to the standard of care;

3 (4) Determine whether telehealth technologies are appropriate for the particular patient
4 presentation for which the practice of advanced practice nursing are to be rendered;

5 (5) Obtain from the patient informed consent for the use of telehealth technologies in the
6 practice of advanced practice nursing to the patient;

7 (6) Conduct all appropriate evaluations and history of the patient consistent with traditional
8 standards of care for the particular patient presentation; and

9 (7) Create and maintain health care records for the patient which justify the course of
10 treatment and which verify compliance with the requirements of this section.

11 (d) Where an existing advanced practice registered nurse patient relationship is not present
12 prior to the utilization to telehealth technologies, or when services are rendered solely through
13 telehealth technologies, an advanced practice registered nurse relationship may only be established
14 through the use of telehealth technologies which incorporate interactive audio using store and
15 forward technology, real time videoconferencing or similar secure video services during the initial
16 advanced practice registered nurse patient encounter. Once an advanced practice registered nurse
17 patient relationship has been established, the advanced practice registered nurse, with the informed
18 consent of the patient, may utilize any telehealth technology which meets the standard of care and
19 is appropriate for the particular patient presentation.

20 (e) The practice of advanced practice nursing provided via telehealth technologies, including
21 the establishment of an advanced practice registered nurse relationship and issuing a prescription via

[COM. SUB. FOR S. B. NO. 334]

1 electronic means as part of a telehealth encounter, are subject to the same standard of care,
2 professional practice requirements and scope of practice limitations as traditional in person advanced
3 practice registered nurse patient encounters. Treatment, including issuing a prescription, based
4 solely on an online questionnaire does not constitute an acceptable standard of care.

5 (f) The utilization of telehealth technologies to practice of advanced practice nursing on a
6 patient for whom the standard of care requires an in-person, physical examination shall constitute
7 unethical and unprofessional conduct.

8 (g) The patient record established during the use of telehealth technologies shall be accessible
9 and documented for both the advanced practice registered nurse and the patient, consistent with the
10 laws and legislative rules governing patient health care records and shall include a copy of the
11 informed consent to the practice of advanced practice registered nurse via telehealth technologies.
12 All laws governing the confidentiality of health care information and governing patient access to
13 medical records shall apply to records of the practice of advanced practice nursing provided through
14 telehealth technologies. An advanced practice registered nurse solely providing services using
15 telehealth technologies shall make documentation of the encounter easily available to the patient and,
16 subject to the patient's consent, any identified care provider of the patient immediately after the
17 encounter.

18 (h) An advanced practice registered nurse who has an advanced practice registered nurse
19 patient relationship and who practices advanced practice registered nursing to a patient solely
20 through the utilization of telehealth technologies may not prescribe any controlled substances listed
21 in Schedule I or II of the Uniform Controlled Substances Act.

[COM. SUB. FOR S. B. NO. 334]

1 (i) The board may propose rules for legislative approval in accordance with article three,
2 chapter twenty-nine-a of this code to implement standards for and limitations upon the utilization
3 of telehealth technologies in the practice of advanced practice nursing in this state.

4 (j) Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities
5 incident to the advanced practice registered nurse patient relationship, nor is it meant or intended to
6 change in any way the personal character of the advanced practice registered nurse patient
7 relationship. This section does not alter the scope of practice of any health care provider or authorize
8 the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

9 **§30-14-16. Telemedicine practice; requirements; exceptions; definitions; rulemaking.**

10 (a) *Definitions.* – For the purposes of this section:

11 “Store and forward telemedicine” means the asynchronous computer-based communication
12 of medical data and/or images between a patient and an osteopathic physician at another site for the
13 purpose of diagnostic and/or therapeutic assistance.

14 “Telemedicine” means the practice of osteopathy using tools such as electronic
15 communication, information technology or other means of interaction between a licensed health care
16 professional in one location and a patient in another location, with or without an intervening health
17 care provider. The utilization of electronic communication in on call, cross coverage and emergency
18 services situations, audio only telephone conversation, email, instant message conversation or fax
19 is not telemedicine.

20 “Telemedicine technologies” means technologies and devices enabling secure electronic
21 communications and information exchange in the practice of telemedicine and typically involve the

[COM. SUB. FOR S. B. NO. 334]

1 application of secure real time video conferencing or similar secure video services, remote
2 monitoring, interactive audio and store and forward digital image or health data technology to
3 provide or support health care delivery by replicating the interaction of a traditional in person
4 encounter between a provider and a patient.

5 (b) The practice of osteopathy occurs where the patient is located at the time telemedicine
6 technologies are used. An osteopathic physician or physician assistant who engages in the practice
7 of osteopathy through telemedicine technologies with respect to patients located in this state shall
8 be licensed by the board.

9 (c) An osteopathic physician or physician assistant using telemedicine technologies to
10 practice osteopathy to a patient shall:

11 (1) Verify the identity and location of the patient;

12 (2) Provide the patient with confirmation of the identity, location and qualifications of the
13 osteopathic physician or physician assistant;

14 (3) Establish and/or maintain an osteopathic physician or physician assistant patient
15 relationship which conforms to the standard of care;

16 (4) Determine whether telemedicine technologies are appropriate for the particular patient
17 presentation for which the practice of osteopathy are to be rendered;

18 (5) Obtain from the patient informed consent for the use of telemedicine technologies in the
19 practice of osteopathy to the patient;

20 (6) Conduct all appropriate evaluations and history of the patient consistent with traditional
21 standards of care for the particular patient presentation; and

[COM. SUB. FOR S. B. NO. 334]

1 (7) Create and maintain healthcare records for the patient which justify the course of
2 treatment and which verify compliance with the requirements of this section.

3 (d) The requirements of subdivisions (2) and (5), subsection (c) of this section do not apply
4 the practice of pathology and radiology medicine through store and forward telemedicine.

5 (e) Where an existing osteopathic physician or physician assistant patient relationship is not
6 present prior to the utilization to telemedicine technologies, or when services are rendered solely
7 through telemedicine technologies, an osteopathic physician or physician assistant patient
8 relationship may only be established through the use of telemedicine technologies which incorporate
9 interactive audio using store and forward technology, real time videoconferencing or similar secure
10 video services during the initial osteopathic physician or physician assistant patient encounter.
11 However, an osteopathic physician patient relationship may be established through store and forward
12 telemedicine for the practice of pathology and radiology. Once an osteopathic physician or physician
13 assistant patient relationship has been established, the osteopathic physician or physician assistant,
14 with the informed consent of the patient, may utilize any telemedicine technology which meets the
15 standard of care and is appropriate for the particular patient presentation.

16 (f) The practice of osteopathy provided via telemedicine technologies, including the
17 establishment of an osteopathic physician or physician assistant patient relationship and issuing a
18 prescription via electronic means as part of a telemedicine encounter, are subject to the same
19 standard of care, professional practice requirements and scope of practice limitations as traditional
20 in-person osteopathic physician or physician assistant patient encounters. Treatment, including
21 issuing a prescription, based solely on an online questionnaire does not constitute an acceptable

[COM. SUB. FOR S. B. NO. 334]

1 standard of care.

2 (g) The utilization of telemedicine technologies to practice osteopathy on a patient for whom
3 the standard of care requires an in-person, physical examination or osteopathic manipulation therapy
4 shall constitute dishonorable, unethical and unprofessional conduct.

5 (h) The patient record established during the use of telemedicine technologies shall be
6 accessible and documented for both the osteopathic physician, physician assistant and the patient,
7 consistent with the laws and legislative rules governing patient health care records and shall include
8 a copy of the informed consent to the practice of osteopathy via telemedicine technologies. All laws
9 governing the confidentiality of health care information and governing patient access to medical
10 records shall apply to records of the practice of osteopathy provided through telemedicine
11 technologies. An osteopathic physician or physician assistant solely providing services using
12 telemedicine technologies shall make documentation of the encounter easily available to the patient
13 and, subject to the patient's consent, any identified care provider of the patient immediately after the
14 encounter.

15 (i) An osteopathic physician or physician assistant who has an osteopathic physician or
16 physician assistant patient relationship and who practices osteopathy to a patient solely through the
17 utilization of telemedicine technologies may not prescribe any controlled substances listed in
18 Schedule I or II of the Uniform Controlled Substances Act.

19 (j) The board may propose rules for legislative approval in accordance with article three,
20 chapter twenty nine-a of this code to implement standards for and limitations upon the utilization
21 of telemedicine technologies in the practice of osteopathy in this state.

[COM. SUB. FOR S. B. NO. 334]

1 (k) Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities
2 incident to the osteopathic physician or physician assistant patient relationship, nor is it meant or
3 intended to change in any way the personal character of the osteopathic physician or physician
4 assistant patient relationship. This section does not alter the scope of practice of any health care
5 provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise
6 authorized by law.