

H. B. 2497

(By Delegates Ellington, Howell, Householder, Pasdon and Sobonya)

[Introduced January 29, 2015; referred to the

Committee on Health and Human Resources then the Judiciary.]

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

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; and that said code be amended by adding thereto a new section, designated §30-3-13a, 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
8 she 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
18 Education or by the board;

19 (2) A person enrolled in a school of podiatric medicine approved by the Council of Podiatry
20 Education or by the board;

21 (3) A person engaged in graduate medical training in a program approved by the
22 Accreditation Council for Graduate Medical Education or the board;

1 (4) A person engaged in graduate podiatric training in a program approved by the Council
2 on Podiatric Education or by the board;

3 (5) A physician or podiatrist engaged in the performance of his or her official duties holding
4 one or more licenses from another state or foreign country and who is a commissioned medical
5 officer of, a member of or employed by:

6 (A) The United States Military;

7 (B) The Department of Defense;

8 (C) The United States Public Health Service;

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

10 (E) Any other federal agency;

11 (6) A physician or podiatrist holding one or more unrestricted licenses granted by another
12 state or foreign country serving as visiting medical faculty engaged in teaching or research duties at
13 a medical school or institution recognized by the board for up to six months if:

14 (A) The physician does not engage in the practice of medicine and surgery or podiatry outside
15 of the auspices of the sponsoring school or institution; and

16 (B) The sponsoring medical school or institution provides prior written notification to the
17 board including the physician's name, all jurisdictions of licensure and the beginning and end date
18 of the physician's visiting medical faculty status.

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

21 (8) A physician or podiatrist holding one or more unrestricted licenses granted by another
22 state or foreign country providing a consultation on a singular occasion to a licensed physician or

1 podiatrist in this state, whether the consulting physician or podiatrists is physically present in the
2 state for the consultation or not;

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

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

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

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

15 (B) He or she may only provide care or consultation to team members, coaching staff, and
16 families traveling with the team no longer than seven consecutive days per sporting event;

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

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

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

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

9 (f) A person who engages in unlawful practice of medicine and surgery or podiatry while
10 holding a license issued pursuant to this article which has been classified by the board as expired for
11 ninety days or fewer is guilty of a misdemeanor and, upon conviction, shall be fined not more than
12 \$5,000 or confined in jail not more than twelve months, or both fined and confined.

13 (g) A person who: (1) Has never been licensed by the board under this article; (2) holds a
14 license which has been classified by the board as expired for greater than ninety days; or (3) holds
15 a license which has been placed in inactive status, revoked, suspended or surrendered to the board
16 is guilty of a felony and, upon conviction, shall be fined not more than \$10,000 or imprisoned in a
17 correctional facility, or both fined and imprisoned.

18 **§30-3-13a. Telemedicine practice; requirements; exceptions; definitions; rule making.**

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

20 "Store and forward telemedicine" means the asynchronous computer based communication
21 of medical data and/or images between a patient and a physician or podiatrist at another site for the
22 purpose of diagnostic and/or therapeutic assistance.

1 "Telemedicine" means the practice of medicine using tools such as electronic
2 communication, information technology or other means of interaction between a licensed health care
3 professional in one location and a patient in another location, with or without an intervening
4 healthcare provider. The utilization of electronic communication in on call, cross coverage and
5 emergency services situations is not telemedicine.

6 "Telemedicine technologies" means technologies and devices enabling secure electronic
7 communications and information exchange in the practice of telemedicine, and typically involve the
8 application of secure real time video conferencing or similar secure video services, remote
9 monitoring and store and forward digital image technology to provide or support healthcare delivery
10 by replicating the interaction of a traditional in person encounter between a provider and a patient.

11 (b) The practice of medicine or surgery or podiatry occurs where the patient is located at the
12 time telemedicine technologies are used. A physician, podiatrist or physician assistant who engages
13 in the practice of medicine through telemedicine technologies with respect to patients located in this
14 state shall be licensed by the board.

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

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

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

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

22 (4) Determine whether telemedicine technologies are appropriate for the particular patient

1 presentation for which the practice medicine or surgery or podiatry are to be rendered;

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

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

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

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

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

21 (f) The practice of medicine and surgery or podiatry provided via telemedicine technologies,
22 including the establishment of a physician, podiatrist or physician assistant patient relationship and

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

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

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

19 (i) A physician, podiatrist or physician assistant whose has a physician, podiatrist or
20 physician assistant patient relationship and who practices medicine and surgery or podiatry to a
21 patient solely through the utilization of telemedicine technologies may not prescribe any controlled
22 substances listed in Schedules I or II of the Uniform Controlled Substances Act.

1 (j) 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 telemedicine technologies in the practice of medicine and podiatry in this state.

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

NOTE: The purpose of this bill is to reformulate what constitutes the unauthorized practice of medicine and podiatry under the West Virginia Board of Medicine, including qualified exemptions. The bill also updates and defines telemedicine and telemedicine technologies and medical services delivery standards. The bill establishes criminal penalties for unauthorized medical practice. The bill authorizes rule-making.

§30-3-13 has been completely rewritten; therefore, it has been completely underscored.

§30-3-13a is new; therefore, it has been completely underscored.