

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 433**

BY SENATORS TAKUBO, STOLLINGS AND PLYMALE

[Introduced January 29, 2016;

Referred to the Committee on Health and Human  
Resources.]

1 A BILL to amend and reenact §16-5-19 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §16-30-3 and §16-30-25 of said code, all relating to allowing advance  
3 practice registered nurses and physician assistants to complete physician orders for scope  
4 of treatment; allowing advance practice registered nurses and physician assistants to sign  
5 death certificates; and defining terms.

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

1 That §16-5-19 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; and that §16-30-3 and §16-30-25 of said code be amended and reenacted, all to read  
3 as follows:

**ARTICLE 5. VITAL STATISTICS.**

**§16-5-19. Death registration.**

1 (a) A certificate of death for each death which occurs in this state shall be filed with the  
2 section of vital statistics, or as otherwise directed by the State Registrar, within five days after  
3 death, and prior to final disposition, and shall be registered if it has been completed and filed in  
4 accordance with this section.

5 (1) If the place of death is unknown, but the dead body is found in this state, the place  
6 where the body was found shall be shown as the place of death.

7 (2) If the date of death is unknown, it shall be approximated. If the date cannot be  
8 approximated, the date found shall be shown as the date of death.

9 (3) If death occurs in a moving conveyance in the United States and the body is first  
10 removed from the conveyance in this state, the death shall be registered in this state and the  
11 place where it is first removed shall be considered the place of death.

12 (4) If death occurs in a moving conveyance while in international waters or air space or in  
13 a foreign country or its air space and the body is first removed from the conveyance in this state,  
14 the death shall be registered in this state but the certificate shall show the actual place of death  
15 insofar as can be determined.

16 (5) In all other cases, the place where death is pronounced shall be considered the place  
17 where death occurred.

18 (b) The funeral director or other person who assumes custody of the dead body shall:

19 (1) Obtain the personal data from the next of kin or the best qualified person or source  
20 available including the deceased person's social security number or numbers, which shall be  
21 placed in the records relating to the death and recorded on the certificate of death;

22 (2) Within forty-eight hours after death, provide the certificate of death containing sufficient  
23 information to identify the decedent to the physician responsible for completing the medical  
24 certification as provided in subsection (c) of this section; and

25 (3) Upon receipt of the medical certification, file the certificate of death: *Provided*, That for  
26 implementation of electronic filing of death certificates, the person who certifies to cause of death  
27 will be responsible for filing the electronic certification of cause of death as directed by the State  
28 Registrar and in accordance with legislative rule.

29 (c) The medical certification shall be completed and signed within twenty-four hours after  
30 receipt of the certificate of death by the physician in charge of the patient's care for the illness or  
31 condition which resulted in death except when inquiry is required pursuant to chapter sixty-one,  
32 article twelve or other applicable provisions of this code.

33 (1) In the absence of the physician or with his or her approval, the certificate may be  
34 completed by his or her associate physician, any physician who has been placed in a position of  
35 responsibility for any medical coverage of the decedent, the chief medical officer of the institution  
36 in which death occurred, an advance practice registered nurse as defined in article seven, chapter  
37 thirty of this code or a physician assistant as defined in article three-e, chapter thirty of this code  
38 or the physician who performed an autopsy upon the decedent, provided inquiry is not required  
39 pursuant to chapter sixty-one, article twelve of this code.

40 (2) The person completing the cause of death shall attest to its accuracy either by  
41 signature or by an approved electronic process.

42 (d) When inquiry is required pursuant to article twelve, chapter sixty one, or other  
43 applicable provisions of this code, the state Medical Examiner or designee or county medical  
44 examiner or county coroner in the jurisdiction where the death occurred or where the body was  
45 found shall determine the cause of death and shall complete the medical certification within forty-  
46 eight hours after taking charge of the case.

47 (1) If the cause of death cannot be determined within forty-eight hours after taking charge  
48 of the case, the medical examiner shall complete the medical certification with a "Pending" cause  
49 of death to be amended upon completion of medical investigation.

50 (2) After investigation of a report of death for which inquiry is required, if the state Medical  
51 Examiner or designee or county medical examiner or county coroner decline jurisdiction, the state  
52 Medical Examiner or designee or county medical examiner or county coroner may direct the  
53 decedent's family physician or the physician who pronounces death to complete the certification  
54 of death: *Provided*, That the physician is not civilly liable for inaccuracy or other incorrect  
55 statement of death unless the physician willfully and knowingly provides information he or she  
56 knows to be false.

57 (e) When death occurs in an institution and the person responsible for the completion of  
58 the medical certification is not available to pronounce death, another physician may pronounce  
59 death. If there is no physician available to pronounce death, then a designated licensed health  
60 professional who views the body may pronounce death, attest to the pronouncement by signature  
61 or an approved electronic process, and, with the permission of the person responsible for the  
62 medical certification, release the body to the funeral director or other person for final disposition:  
63 *Provided*, That if the death occurs in an institution during court-ordered hospitalization, in a  
64 correctional facility or under custody of law-enforcement authorities, the death shall be reported  
65 directly to a medical examiner or coroner for investigation, pronouncement and certification.

66 (f) If the cause of death cannot be determined within the time prescribed, the medical  
67 certification shall be completed as provided by legislative rule. The attending physician or medical

68 examiner, upon request, shall give the funeral director or other person assuming custody of the  
69 body notice of the reason for the delay, and final disposition of the body may not be made until  
70 authorized by the attending physician, medical examiner or other persons authorized by this  
71 article to certify the cause of death.

72 (g) Upon receipt of autopsy results, additional scientific study, or where further inquiry or  
73 investigation provides additional information that would change the information on the certificate  
74 of death from that originally reported, the certifier, or any State Medical Examiner who provides  
75 such inquiry under authority of article twelve, chapter sixty-one of this code shall immediately file  
76 a supplemental report of cause of death or other information with the section of vital statistics to  
77 amend the record, but only for purposes of accuracy.

78 (h) When death is presumed to have occurred within this state but the body cannot be  
79 located, a certificate of death may be prepared by the State Registrar only upon receipt of an  
80 order of a court of competent jurisdiction which shall include the finding of facts required to  
81 complete the certificate of death. The certificate of death will be marked "Presumptive" and will  
82 show on its face the date of death as determined by the court and the date of registration, and  
83 shall identify the court and the date of the order.

84 (i) The local registrar shall transmit each month to the county clerk of his or her county a  
85 copy of the certificates of all deaths occurring in the county, and if any person dies in a county  
86 other than the county within the state in which the person last resided prior to death, then the  
87 State Registrar shall furnish a copy of the death certificate to the clerk of the county commission  
88 of the county where the person last resided, from which copies the clerk shall compile a register  
89 of deaths, in a form prescribed by the State Registrar. The register shall be a public record.

## **ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.**

### **§16-30-3. Definitions.**

1 For the purposes of this article:

2 (a) "Actual knowledge" means the possession of information of the person's wishes

3 communicated to the health care provider orally or in writing by the person, the person's medical  
4 power of attorney representative, the person's health care surrogate or other individuals resulting  
5 in the health care provider's personal cognizance of these wishes. Constructive notice and other  
6 forms of imputed knowledge are not actual knowledge.

7 (b) "Adult" means a person who is eighteen years of age or older, an emancipated minor  
8 who has been established as such pursuant to the provisions of section twenty-seven, article  
9 seven, chapter forty-nine of this code or a mature minor.

10 ~~(c) "Advanced nurse practitioner" means a registered nurse with substantial theoretical~~  
11 ~~knowledge in a specialized area of nursing practice and proficient clinical utilization of the~~  
12 ~~knowledge in implementing the nursing process, and who has met the further requirements of title~~  
13 ~~19, legislative rules for West Virginia board of examiners for registered professional nurses, series~~  
14 ~~7, who has a mutually agreed upon association in writing with a physician and has been selected~~  
15 ~~by or assigned to the person and has primary responsibility for treatment and care of the person.~~  
16 "Advance practice registered nurse" means the same as that term is defined in section one, article  
17 seven, chapter thirty of this code.

18 (d) "Attending physician" means the physician selected by or assigned to the person who  
19 has primary responsibility for treatment and care of the person and who is a licensed physician.  
20 If more than one physician shares that responsibility, any of those physicians may act as the  
21 attending physician under this article.

22 (e) "Capable adult" means an adult who is physically and mentally capable of making  
23 health care decisions and who is not considered a protected person pursuant to the provisions of  
24 chapter forty-four-a of this code.

25 (f) "Close friend" means any adult who has exhibited significant care and concern for an  
26 incapacitated person who is willing and able to become involved in the incapacitated person's  
27 health care and who has maintained regular contact with the incapacitated person so as to be  
28 familiar with his or her activities, health and religious and moral beliefs.

29 (g) "Death" means a finding made in accordance with accepted medical standards of  
30 either: (1) The irreversible cessation of circulatory and respiratory functions; or (2) the irreversible  
31 cessation of all functions of the entire brain, including the brain stem.

32 (h) "Guardian" means a person appointed by a court pursuant to the provisions of chapter  
33 forty-four-a of this code who is responsible for the personal affairs of a protected person and  
34 includes a limited guardian or a temporary guardian.

35 (i) "Health care decision" means a decision to give, withhold or withdraw informed consent  
36 to any type of health care, including, but not limited to, medical and surgical treatments, including  
37 life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a  
38 nursing home or other facility, home health care and organ or tissue donation.

39 (j) "Health care facility" means a facility commonly known by a wide variety of titles,  
40 including, but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care  
41 facility, physicians' office and clinic, extended care facility operated in connection with a hospital,  
42 nursing home, a hospital extended care facility operated in connection with a rehabilitation center,  
43 hospice, home health care and other facility established to administer health care in its ordinary  
44 course of business or practice.

45 (k) "Health care provider" means any licensed physician, dentist, nurse, physician's  
46 assistant, paramedic, psychologist or other person providing medical, dental, nursing,  
47 psychological or other health care services of any kind.

48 (l) "Incapacity" means the inability because of physical or mental impairment to appreciate  
49 the nature and implications of a health care decision, to make an informed choice regarding the  
50 alternatives presented and to communicate that choice in an unambiguous manner.

51 (m) "Life-prolonging intervention" means any medical procedure or intervention that, when  
52 applied to a person, would serve to artificially prolong the dying process or to maintain the person  
53 in a persistent vegetative state. Life-prolonging intervention includes, among other things, nutrition  
54 and hydration administered intravenously or through a feeding tube. The term "life-prolonging

55 intervention" does not include the administration of medication or the performance of any other  
56 medical procedure considered necessary to provide comfort or to alleviate pain.

57 (n) "Living will" means a written, witnessed advance directive governing the withholding or  
58 withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with  
59 the requirements of section four of this article.

60 (o) "Mature minor" means a person less than eighteen years of age who has been  
61 determined by a qualified physician, a qualified psychologist or an advanced nurse practitioner to  
62 have the capacity to make health care decisions.

63 (p) "Medical information" or "medical records" means and includes without restriction any  
64 information recorded in any form of medium that is created or received by a health care provider,  
65 health care facility, health plan, public health authority, employer, life insurer, school or university  
66 or health care clearinghouse that relates to the past, present or future physical or mental health  
67 of the person, the provision of health care to the person, or the past, present or future payment  
68 for the provision of health care to the person.

69 (q) "Medical power of attorney representative" or "representative" means a person  
70 eighteen years of age or older appointed by another person to make health care decisions  
71 pursuant to the provisions of section six of this article or similar act of another state and recognized  
72 as valid under the laws of this state.

73 (r) "Parent" means a person who is another person's natural or adoptive mother or father  
74 or who has been granted parental rights by valid court order and whose parental rights have not  
75 been terminated by a court of law.

76 (s) "Persistent vegetative state" means an irreversible state as diagnosed by the attending  
77 physician or a qualified physician in which the person has intact brain stem function but no higher  
78 cortical function and has neither self-awareness or awareness of the surroundings in a learned  
79 manner.

80 (t) "Person" means an individual, a corporation, a business trust, a trust, a partnership, an



81 association, a government, a governmental subdivision or agency or any other legal entity.

82 (u) "Physician assistant" means a person defined and licensed as set forth in article three-  
83 e, chapter thirty of this code.

84 ~~(u)~~ (v) "Physician orders for scope of treatment (POST) form" means a standardized form  
85 containing orders by a qualified physician that details a person's life-sustaining wishes as  
86 provided by section twenty-five of this article.

87 ~~(v)~~ (w) "Principal" means a person who has executed a living will or medical power of  
88 attorney.

89 ~~(w)~~ (x) "Protected person" means an adult who, pursuant to the provisions of chapter forty-  
90 four-a of this code, has been found by a court, because of mental impairment, to be unable to  
91 receive and evaluate information effectively or to respond to people, events and environments to  
92 an extent that the individual lacks the capacity to: (1) Meet the essential requirements for his or  
93 her health, care, safety, habilitation or therapeutic needs without the assistance or protection of a  
94 guardian; or (2) manage property or financial affairs to provide for his or her support or for the  
95 support of legal dependents without the assistance or protection of a conservator.

96 ~~(x)~~ (y) "Qualified physician" means a physician licensed to practice medicine who has  
97 personally examined the person.

98 ~~(y)~~ (z) "Qualified psychologist" means a psychologist licensed to practice psychology who  
99 has personally examined the person.

100 ~~(z)~~ (aa) "Surrogate decisionmaker" or "surrogate" means an individual eighteen years of  
101 age or older who is reasonably available, is willing to make health care decisions on behalf of an  
102 incapacitated person, possesses the capacity to make health care decisions and is identified or  
103 selected by the attending physician or advanced nurse practitioner in accordance with the  
104 provisions of this article as the person who is to make those decisions in accordance with the  
105 provisions of this article.

106 ~~(aa)~~ (bb) "Terminal condition" means an incurable or irreversible condition as diagnosed

107 by the attending physician or a qualified physician for which the administration of life-prolonging  
108 intervention will serve only to prolong the dying process

**§16-30-25. Physician orders for scope of treatment form.**

1 (a) No later than July 1, 2003, the secretary of the Department of Health and Human  
2 Resources shall implement the statewide distribution of standardized physician orders for scope  
3 of treatment (POST) forms.

4 (b) Physician orders for scope of treatment forms shall be standardized forms used to  
5 reflect orders by a qualified physician or an advance practice registered nurse or physician  
6 assistant as defined in this article for medical treatment of a person in accordance with that  
7 person's wishes or, if that person's wishes are not reasonably known and cannot with reasonable  
8 diligence be ascertained, in accordance with that person's best interest. The form shall be bright  
9 pink in color to facilitate recognition by emergency medical services personnel and other health  
10 care providers and shall be designed to provide for information regarding the care of the patient,  
11 including, but not limited to, the following:

12 (1) The orders of a qualified physician or an advance practice registered nurse or physician  
13 assistant as defined in this article regarding cardiopulmonary resuscitation, level of medical  
14 intervention in the event of a medical emergency, use of antibiotics and use of medically  
15 administered fluids and nutrition and the basis for the orders;

16 (2) The signature of the qualified physician or an advance practice registered nurse or  
17 physician assistant as defined in this article;

18 (3) Whether the person has completed an advance directive or had a guardian, medical  
19 power of attorney representative or surrogate appointed;

20 (4) The signature of the person or his or her guardian, medical power of attorney  
21 representative, or surrogate acknowledging agreement with the orders of the qualified physician;  
22 and

23 (5) The date, location and outcome of any review of the physician orders for scope of

24 treatment form.

25 (c) The physician advance practice registered nurse or physician assistant orders for  
26 scope of treatment form shall be kept as the first page in a person's medical record in a health  
27 care facility unless otherwise specified in the health care facility's policies and procedures and  
28 shall be transferred with the person from one health care facility to another.

NOTE: The purpose of this bill is to allow advance practice registered nurses and physician assistants to complete orders for physician orders for scope of treatment forms and to pronounce death and sign a death certificate.

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