

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Committee Substitute**

**for**

**Senate Bill 47**

BY SENATOR FERNS

[Originating in the Committee on Government  
Organization; reported on February 25, 2016]



1 A BILL to amend and reenact §30-3-13 of the Code of West Virginia, 1931, as amended, relating  
2 to practice of medicine; rewriting licensing requirements for practice of medicine and  
3 surgery or podiatry; making exceptions; providing for unauthorized practice; requiring  
4 notice; establishing criminal penalties; making exceptions; and defining terms.

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

1 That §30-3-13 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted 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  
3 this 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 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 unlawful for any person who does not hold an active, unexpired license issued  
10 pursuant to this article to engage in the practice of telemedicine within this state. As used in this  
11 section, the “practice of telemedicine” means the practice of medicine using communication tools  
12 such as electronic communication, information technology or other means of interaction between a  
13 licensed health care professional in one location and a patient in another location, with or without  
14 an intervening health care provider, and typically involves secure real time audio/video

15 conferencing or similar secure audio/video services, remote monitoring, interactive video and  
16 store and forward digital image or health data technology to provide or support health care delivery  
17 by replicating the interaction of a traditional in person encounter between a provider and a  
18 patient. The practice of telemedicine occurs in this state when the patient receiving health care  
19 services through a telemedicine encounter is physically located in this state.

20 (c) It is not unlawful for a person:

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

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

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

27 (d) The following persons are exempt from the licensure requirements under this article:

28 (1) A person enrolled in a school of medicine approved by the Liaison Committee on  
29 Medical Education or by the board;

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

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

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

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

39 (A) The United States Military;

40 (B) The Department of Defense;

41 (C) The United States Public Health Service; or

42 (D) Any other federal agency;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 (h) A person who is found to be engaging in the practice of medicine and: (1) Has never  
91 been licensed by the board under this article; (2) holds a license which has been classified by the  
92 board as expired for greater than ninety days; or (3) holds a license which has been placed in

93 inactive status, revoked, suspended or surrendered to the board is guilty of a felony and, upon  
94 conviction, shall be fined not more than \$10,000 or imprisoned in a correctional facility, or both  
95 fined and imprisoned.

96 (i) Upon a determination by the board that any report or complaint submitted to it concerns  
97 allegations of the unlawful practice of medicine and surgery by an individual who is licensed under  
98 another article of this chapter, the board shall refer the complaint to the appropriate licensing  
99 authority. Additionally, whenever the board receives credible information that an individual is  
100 engaging in the unlawful practice of medicine and surgery or podiatry in violation of this section,  
101 the board may report such information to the appropriate state and/or federal law enforcement  
102 authority and/or prosecuting attorney.

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 establishes criminal penalties for unauthorized medical practice. The bill authorizes rule-making.

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

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