

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 60

SENATORS PLYMALE AND STOLLINGS, *original sponsors*

[Passed March 6, 2019; 2019; in effect 90 days from

passage]

1 AN ACT to amend and reenact §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5, §30-
2 20A-6, and §30-20A-7 of the Code of West Virginia, 1931, as amended; and to amend
3 said code by adding thereto nine new sections, designated §30-20A-8, §30-20A-9, §30-
4 20A-10, §30-20A-11, §30-20A-12, §30-20A-13, §30-20A-14, §30-20A-15, and §30-20A-
5 16, all relating to licensing the practice of athletic training; making the practice of athletic
6 training unlawful without license or permit; establishing applicable law; defining terms;
7 establishing eligibility for license; defining the scope of practice; establishing requirements
8 for reciprocal agreements; establishing requirements for temporary permits; establishing
9 renewal requirements; establishing requirements for delinquent or expedited licenses;
10 establishing requirements for an active license; creating exemptions; requiring display of
11 license; establishing complaint process and investigation procedures; establishing
12 grounds for disciplinary action; establishing hearing procedures and right to appeal;
13 providing for judicial review of decision; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20A. ATHLETIC TRAINERS.

§30-20A-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to practice athletic training in this state
2 without a license or permit issued under the provisions of this article, or advertise or use any title
3 or description tending to convey the impression that they are an athletic trainer unless the person
4 has been duly licensed or permitted under the provisions of this article, and the license or permit
5 has not expired, been suspended, or revoked.

6 (b) A business entity may not render any service or engage in any activity which, if
7 rendered or engaged in by an individual, would constitute the practice of athletic training, except
8 through a licensee or permittee.

9 (c) A person may not advertise or represent himself or herself as an “athletic trainer”,
10 “licensed athletic trainer”, “certified athletic trainer”, “athletic trainer certified”, “L.A.T.”, “C.A.T.”,

11 and/or “ATC” or make use of any words, abbreviations, titles, or insignia that indicate, imply, or
12 represent that he or she is an athletic trainer, unless he or she is licensed by the board.

§30-20A-2. Applicable law.

1 The practices licensed under the provisions of this article and the Board of Physical
2 Therapy are subject to §30-1-1 *et seq.* and §30-20A-1 *et seq.* of this code and any rules
3 promulgated hereunder.

4 (a)The board has all the powers and duties set forth in this article, by rule, §30-1-1 *et seq.*
5 of this code, and elsewhere in law.

6 (b)The board shall:

7 (1) Hold meetings, conduct hearings, and administer examinations;

8 (2) Establish requirements for licenses and permits;

9 (3) Establish procedures for submitting, approving, and rejecting applications for licenses
10 and permits;

11 (4) Determine the qualifications of any applicant for licenses and permits;

12 (5) Prepare, conduct, administer, and grade examinations for licenses;

13 (6) Determine the passing grade for the examinations;

14 (7) Maintain records of the examinations the board or a third party administers, including
15 the number of persons taking the examination and the pass and fail rate;

16 (8) Hire, discharge, establish the job requirements, and fix the compensation of the
17 executive secretary;

18 (9) Maintain an office, and hire, discharge, establish the job requirements, and fix the
19 compensation of employees, investigators, and contracted employees necessary to enforce the
20 provisions of this article;

21 (10) Investigate alleged violations of the provisions of this article, legislative rules, orders,
22 and final decisions of the board;

23 (11) Conduct disciplinary hearings of persons regulated by the board;

- 24 (12) Determine disciplinary action and issue orders;
- 25 (13) Institute appropriate legal action for the enforcement of the provisions of this article;
- 26 (14) Maintain an accurate registry of names and addresses of all persons regulated by the
- 27 board;
- 28 (15) Keep accurate and complete records of its proceedings, and certify the same as may
- 29 be necessary and appropriate;
- 30 (16) Establish the continuing education requirements for licenses;
- 31 (17) Issue, renew, combine, deny, suspend, restrict, revoke, or reinstate licenses and
- 32 permits;
- 33 (18) Establish a fee schedule;
- 34 (19) Take all other actions necessary and proper to effectuate the purposes of this article;
- 35 (20) Propose rules for legislative approval, in accordance with the provisions of §29A-3-1
- 36 *et seq.* of this code to implement provisions of this article, including:
- 37 (A) Establish standards and requirements for licenses and permits;
- 38 (B) Establish procedures for examinations and re-examinations;
- 39 (C) Establish requirements for third parties to prepare and administer examinations and
- 40 re-examinations;
- 41 (D) Establish educational and experience requirements;
- 42 (E) Establish the passing grade on examinations;
- 43 (F) Establish standards for approval of courses and curriculum;
- 44 (G) Establish procedures for the issuance and renewal of licenses and permits;
- 45 (H) Establish a fee schedule;
- 46 (I) Establish continuing education requirements for licenses;
- 47 (J) Establish the procedures for denying, suspending, restricting, revoking, reinstating, or
- 48 limiting the practice of licensees and permittees;
- 49 (K) Adopt a standard for ethics;

50 (L) Establish requirements for inactive or revoked licenses or permits;

51 (M) Any other rules necessary to effectuate the provisions of this article; and

52 (N) All of the board's rules in effect January 1, 2020, shall remain in effect until they are
53 amended or repealed, and references to provisions of former enactments of this section are
54 interpreted to mean provisions of this article;

55 (21) All fees and other moneys, except administrative fines, received by the board shall
56 be deposited in a separate special revenue fund in the State Treasury designated the West
57 Virginia Board of Physical Therapy Fund which is continued. The fund is used by the board for
58 the administration of this article. Except as may be provided in §30-1-1 *et seq.* of this code, the
59 board retains the amount in the special revenue account from year to year. No compensation or
60 expense incurred under this article is a charge against the General Revenue Fund;

61 (22) Any amounts received as fines pursuant to this article shall be deposited into the
62 General Revenue Fund of the State Treasury.

63 (c)The board may:

64 (1) Contract with third parties to administer examinations required under the provisions of
65 this article;

66 (2) Sue and be sued in its official name as an agency of this state; and

67 (3) Confer with the Attorney General or his or her assistant in connection with legal matters
68 and questions.

§30-20A-3. Definitions.

1 As used in this article:

2 "Applicant" means any person making application for an original or renewal license to act
3 as an athletic trainer under the provisions of this article.

4 "Athletic injury or condition" means any injury or condition sustained by an individual that
5 occurs during, or as a result of, the individual's participation in organized athletic or recreational
6 athletic activity that requires physical strength, agility, flexibility, speed, stamina, or range of

7 motion or a substantially similar injury or condition resulting from occupational activity immediately
8 upon the onset of such injury or condition.

9 “Athletic trainer” is an individual engaged in the practice of athletic training who holds a
10 license under the provisions of this article.

11 “Athletic training” and “the practice of athletic training” means the care and services
12 provided by a licensed athletic trainer as described under the provisions of this article.

13 “Board” means the West Virginia Board of Physical Therapy established under §30-20-1
14 *et seq.* of this code.

15 “Consulting” means that an athletic trainer renders an opinion or advice to another athletic
16 trainer or health care provider through telecommunication or other means or electronic
17 communication.

18 “Direct supervision” means the licensed athletic trainer must be physically present and be
19 able to intervene on behalf of the athletic training student, permittee, and patient when the athletic
20 training student is providing athletic training services.

21 “General supervision” means referral by prescription to treat conditions for an athletic
22 injury or condition from a licensed doctor of medicine, doctor of osteopathy, doctor of chiropractic,
23 podiatrist, or physical therapist except that the physical presence of the licensed doctor of
24 medicine, doctor of osteopathy, doctor of chiropractic, podiatrist, or physical therapist is not
25 required if the supervising licensed doctor of medicine, doctor of osteopathy, doctor of
26 chiropractic, podiatrist, or physical therapist is readily available for consultation by direct
27 communication, radio, telephone, facsimile, telecommunication, or other electronic means.

28 “License” means an athletic trainer license or license to act as an athletic trainer issued
29 by the board under the provisions of this article.

30 “Licensee” means a person licensed as an athletic trainer under the provisions of this
31 article.

32 “Permittee” means any person holding a temporary permit issued pursuant to the provision
33 of this article.

34 “Permit” or “temporary permit” means a temporary permit issued under the provisions of
35 this article.

36 “The practice of athletic training” means the services as described in §30-20A-5 of this
37 code.

§30-20A-4. License to practice athletic training.

1 (a) To be eligible for a license to engage in the practice of athletic training, the applicant
2 must:

3 (1) Be at least 18 years of age;

4 (2) Submit an application in the form prescribed by the board;

5 (3) An athletic trainer registration issued by the board prior to January 1, 2020, is
6 considered a license issued under this article: *Provided*, That a person holding a license issued
7 prior to January 1, 2020, must renew the license pursuant to a registration and renewal schedule
8 adopted by the board and the provisions of this article;

9 (4) If subsequent to January 1, 2020, be a graduate of an accredited institution as
10 approved by the Commission on Accreditation of Athletic Training Education or successor
11 organization;

12 (5) Pass a national examination approved by the board;

13 (6) Complete a criminal background check as required by §30-1D-1 of this code;

14 (7) Pay the required fee;

15 (8) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this
16 code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of
17 the board, be evidenced by participation in a 12-step program or other similar group or process,
18 may be considered;

19 (9) Not have been convicted of a felony in any jurisdiction within 10 years preceding the
20 date of application for license which conviction remains unreversed;

21 (10) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense
22 for which he or she was convicted related to the practice of athletic training, which conviction
23 remains unreversed; and

24 (11) Has fulfilled any other requirement specified by the board.

25 (b) An athletic trainer shall use the letters "LAT" immediately following his or her name
26 followed by the "ATC" credential to designate licensure under this article.

§30-20A-5. Scope of practice of an athletic trainer.

1 (a) The practice of athletic training is defined as the application of principles, methods,
2 and procedures for managing athletic injuries or conditions, which shall include the prevention,
3 emergency care, clinical examination and assessment, therapeutic intervention, and treatment of
4 athletic injuries or conditions through the use of appropriate preventative and supportive devices,
5 and within the professional preparation and education of a licensed athletic trainer subject to the
6 general supervision within this article. Athletic training includes recognizing illness and referring
7 to the appropriate health care professional and implementation of treatment pursuant to the orders
8 of those professionals listed under "General Supervision" within this article. Athletic training also
9 includes instruction to coaches, athletes, parents, medical personnel, and communities in the
10 area of care and prevention of athletic injuries or conditions.

11 (b) The scope of practice described in this section does not include the practice of physical
12 therapy, the practice of occupational therapy, the practice of medicine, the practice of osteopathic
13 medicine, surgery, the practice of chiropractic, or the management of systemic medical or
14 neurological conditions or diseases of body systems that are not within the professional
15 preparation and education of a licensed athletic trainer.

§30-20A-6. License to practice athletic training from another jurisdiction.

1 (a) The board may issue a license to practice athletic training to an applicant who holds
2 a valid license or other authorization to practice athletic training from another state, if the applicant:

3 (1) Holds a license or other authorization to practice athletic training in another state which
4 was granted after completion of educational requirements substantially equivalent to those
5 required in this state;

6 (2) Passed an examination that is substantially equivalent to the examination required in
7 this state;

8 (3) Does not have charges pending against his or her license or other authorization to
9 practice, and has never had a license or other authorization to practice revoked;

10 (4) Has paid the applicable fee;

11 (5) Is a citizen of the United States or is eligible for employment in the United States; and

12 (6) Has fulfilled any other requirement specified by the board.

13 (b) The board may issue a license to practice athletic training to an applicant who has
14 been educated outside of the United States, if the applicant:

15 (1) Provides satisfactory evidence that the applicant's education is substantially equivalent
16 to the educational requirements for athletic trainers under the provisions of this article;

17 (2) Provides written proof that the applicant's school of athletic training is recognized by
18 its own ministry of education;

19 (3) Has undergone a credentials evaluation as directed by the board that determines that
20 the candidate has met uniform criteria for educational requirements as further established by rule;

21 (4) Has paid the applicable fee;

22 (5) Is eligible for employment in the United States; and

23 (6) Completes any additional requirements as required by the board.

24 (c) The board may issue a restricted license to an applicant who substantially meets the
25 criteria established in subsection (b) of this section.

§30-20A-7. Temporary permits.

1 (a) Upon completion of the application and payment of the nonrefundable fees, the board
2 may issue a temporary permit, for a period not to exceed 90 days, to an applicant to practice as
3 an athletic trainer in this state if the applicant has completed the educational requirements set out
4 in this article, pending the examination, and who works under the direct supervision of a licensed
5 athletic trainer.

6 (b) The temporary permit expires 30 days after the board gives written notice to the
7 permittee of the results of the first examination held following the issuance of the temporary
8 permit, if the permittee receives a passing score on the examination. The permit shall expire
9 immediately if the permittee receives a failing score on the examination.

10 (c) A temporary permit may be revoked by a majority vote of the board.

11 (d) An applicant may be issued only one temporary permit, and, upon the expiration of the
12 temporary permit, may not practice as an athletic trainer until he or she is fully licensed under the
13 provisions of this article.

§30-20A-8. Renewal requirements.

1 (a) All persons regulated by this article shall annually or biennially by June 30 renew his
2 or her license by completing a form prescribed by the board and submitting any other information
3 required by the board.

4 (b) The board shall charge a fee for each renewal of a license and shall charge a late fee
5 for any renewal not paid by the due date.

6 (c) The board shall require as a condition of renewal that each licensee complete
7 continuing education as defined by rule.

8 (d) The board may deny an application for renewal for any reason which would justify the
9 denial of an original application for a license.

§30-20A-9. Delinquent and expired license requirements.

1 (a) If a license is not renewed when due, then the board shall automatically place the
2 licensee on delinquent status.

3 (b) The fee for a person on delinquent status shall increase at a rate, determined by the
4 board, for each month or fraction thereof that the renewal fee is not paid, up to a maximum of 36
5 months.

6 (c) Within 36 months of being placed on delinquent status, if a licensee wants to return to
7 active practice, he or she must complete all the continuing education requirements and pay all
8 the applicable fees as set by rule.

9 (d) After 36 months of being placed on delinquent status, a license is automatically placed
10 on expired status and cannot be renewed. A person whose license has expired must reapply for
11 a new license.

§30-20A-10. Inactive license requirements.

1 (a) A licensee who does not want to continue an active practice shall notify the board in
2 writing and be granted inactive status.

3 (b) A person granted inactive status is not subject to the payment of any fee and may not
4 practice athletic training in this state.

5 (c) When the person wants to return to the practice of athletic training, the person shall
6 submit an application for renewal along with all applicable fees as set by rule.

§30-20A-11. Exemptions from licensure.

1 The following persons are exempt from licensing requirements under the provisions of this
2 article:

3 (1) A person who practices athletic training pursuant to a course of study at an institution
4 of higher learning including, but not limited to, activities conducted at the institution of higher
5 learning and activities conducted outside the institution if under the direct supervision of a licensed
6 athletic trainer;

7 (2) An athletic trainer who practices athletic training in the United States armed services,
8 United States Public Health Service or Veterans Administration pursuant to federal regulations
9 for state licensure of health care providers;

10 (3) An athletic trainer who is licensed in another jurisdiction of the United States or
11 credentialed to practice athletic training in another country if that person is teaching,
12 demonstrating, or providing athletic training services in connection with teaching or participating
13 in an educational seminar of no more than 60 calendar days in a calendar year;

14 (4) An athletic trainer who is licensed in another state if that person is consulting;

15 (5) An athletic trainer who is licensed in another jurisdiction, if that person by contract or
16 employment is providing athletic training to individuals affiliated with or employed by established
17 athletic teams, athletic organizations, or performing arts companies temporarily practicing,
18 competing, or performing in the state for no more than 60 calendar days in a calendar year;

19 (6) An athletic trainer who is licensed in another jurisdiction who enters this state to provide
20 athletic training during a declared local, state, or national disaster or emergency. This exemption
21 applies for no longer than 60 calendar days in a calendar year following the declaration of the
22 emergency. The athletic trainer shall notify the board of his or her intent to practice;

23 (7) An athletic trainer licensed in another jurisdiction who is forced to leave his or her
24 residence or place of employment due to a declared local, state, or national disaster or emergency
25 and due to the displacement seeks to practice as an athletic trainer. This exemption applies for
26 no longer than 60 calendar days in a calendar year following the declaration of the emergency.
27 The athletic trainer shall notify the board of his or her intent to practice;

28 (8) Nothing in this article may be construed to prohibit or otherwise limit the use of the
29 term “athletic trainer” in secondary school settings by persons who were practicing athletic training
30 under a West Virginia Board of Education Athletic Certification, provided the practice is in
31 accordance with Board of Education policy in effect prior to July 1, 2011: *Provided*, That this
32 provision only applies to persons practicing athletic training certified by the West Virginia Board
33 of Education prior to July 1, 2011, and any additional persons practicing athletic training excluding
34 these specified individuals, shall meet the provisions of this article; and

35 (9) Nothing contained in this article prohibits a person from practicing within his or her
36 scope of practice as authorized by law.

§30-20A-12. Display of license.

1 (a) The board shall prescribe the form for a license and permit, and may issue a duplicate
2 license or permit upon payment of a fee.

3 (b) Any person regulated by the article shall conspicuously display his or her license or
4 permit at his or her principal business location.

**§30-20A-13. Complaints; investigations; due process procedure; grounds for disciplinary
action.**

1 (a) The board may upon its own motion based on credible information and shall upon the
2 written complaint of any person cause an investigation to be made to determine whether grounds
3 exist for disciplinary action under this article or the legislative rules promulgated pursuant to this
4 article.

5 (b) Upon initiation or receipt of the complaint, the board shall provide a copy of the
6 complaint to the licensee or permittee.

7 (c) After reviewing any information obtained through an investigation, the board shall
8 determine if probable cause exists that the licensee or permittee has violated subsection (g) of
9 this section or rules promulgated pursuant to this article.

10 (d) Upon a finding that probable cause exists that the licensee or permittee has violated
11 subsection (g) of this section or rules promulgated pursuant to this article, the board may enter
12 into a consent decree or hold a hearing for the suspension or revocation of the license or permit
13 or the imposition of sanctions against the licensee or permittee. Any hearing shall be held in
14 accordance with the provisions of this article.

15 (e) Any member of the board or the executive secretary of the board may issue subpoenas
16 and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of
17 allegations against any person regulated by the article.

18 (f) Any member of the board or its executive secretary may sign a consent decree or other
19 legal document on behalf of the board.

20 (g) The board may, after notice and opportunity for hearing, deny or refuse to renew,
21 suspend, restrict, or revoke the license or permit of, or impose probationary conditions upon or
22 take disciplinary action against, any licensee or permittee for any of the following reasons once a
23 violation has been proven by a preponderance of the evidence:

24 (1) Obtaining a license or permit by fraud, misrepresentation, or concealment of material
25 facts;

26 (2) Being convicted of a felony or other crime involving moral turpitude;

27 (3) Being guilty of unprofessional conduct which placed the public at risk, as defined by
28 legislative rule of the board;

29 (4) Intentional violation of a lawful order or legislative rule of the board;

30 (5) Having had a license or other authorization revoked or suspended, other disciplinary
31 action taken, or an application for licensure or other authorization revoked or suspended by the
32 proper authorities of another jurisdiction;

33 (6) Aiding or abetting unlicensed practice; or

34 (7) Engaging in an act while acting in a professional capacity which has endangered or is
35 likely to endanger the health, welfare, or safety of the public.

36 (h) For the purposes of subsection (g) of this section, effective January 1, 2020,
37 disciplinary action may include:

38 (1) Reprimand;

39 (2) Probation;

40 (3) Restrictions;

41 (4) Administrative fine, not to exceed \$1,000 per day per violation;

42 (5) Mandatory attendance at continuing education seminars or other training;

43 (6) Practicing under supervision or other restriction; or

44 (7) Requiring the licensee or permittee to report to the board for periodic interviews for a
45 specified period of time.

46 (i) In addition to any other sanction imposed, the board may require a licensee or permittee
47 to pay the costs of the proceeding.

§30-20A-14. Procedures for hearing; right of appeal.

1 (a) Hearings are governed by §30-1-8 of this code.

2 (b) The board may conduct the hearing or elect to have an administrative law judge
3 conduct the hearing.

4 (c) If the hearing is conducted by an administrative law judge, at the conclusion of a
5 hearing he or she shall prepare a proposed written order containing findings of fact and
6 conclusions of law. The proposed order may contain proposed disciplinary actions if the board so
7 directs. The board may accept, reject, or modify the decision of the administrative law judge.

8 (d) Any member or the executive secretary of the board has the authority to administer
9 oaths, examine any person under oath, and issue subpoenas and subpoenas duces tecum.

10 (e) If, after a hearing, the board determines the licensee or permittee has violated
11 provisions of this article or the board's rules, a formal written decision shall be prepared which
12 contains findings of fact, conclusions of law, and a specific description of the disciplinary actions
13 imposed.

§30-20A-15. Judicial review.

1 Any licensee or permittee adversely affected by a decision of the board entered after a
2 hearing may obtain judicial review of the decision in accordance with §29A-5-4 of this code, and
3 may appeal any ruling resulting from judicial review in accordance with §29A-6-1 *et seq.* of this
4 code.

§30-20A-16. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article or otherwise, the board has
2 reason to believe that a licensee or permittee has committed a criminal offense under this article,
3 the board may bring its information to the attention of an appropriate law-enforcement official.

4 (b) A person violating §30-20A-1 of this code is guilty of a misdemeanor and, upon
5 conviction thereof, shall be fined not less than \$100 nor more than \$5,000, or confined in jail not
6 more than six months, or both fined and confined.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2019.

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Governor