

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 3089

BY DELEGATES MILEY, PUSHKIN, STAGGERS, ESTEP-
BURTON, ANGELUCCI, LAVENDER-BOWE, BATES AND
WALKER

[Introduced February 12, 2019; Referred
to the Committee on Health and Human Resources
then the Judiciary.]

1 A BILL to amend and reenact §30-3-13 and §30-3-13a of the Code of West Virginia, 1931, as
 2 amended, all relating to modifying licensing requirements for the practice of telemedicine
 3 and surgery or podiatry; and providing exceptions, notice requirements, and criminal
 4 penalties.

Be it enacted by the Legislature of West Virginia:

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
 13 a 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 telephonic communication or
 15 similar secure real time audio-only communication, secure real time audio/video conferencing or
 16 similar secure audio/video services, remote monitoring, interactive video and store and forward
 17 digital image or health data technology to provide or support health care delivery by replicating
 18 the interaction of a traditional in person encounter between a provider and a patient. The practice

19 of telemedicine occurs in this state when the patient receiving health care services through a
20 telemedicine encounter is physically located in this state.

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

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

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

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

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

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

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

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

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

38 (A) The United States Military;

39 (B) The Department of Defense;

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

41 (D) Any other federal agency;

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

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

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

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

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

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

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

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

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

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

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

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

77 (e) A physician or podiatrist who does not hold a license issued by the board and who is
78 practicing medicine in this state pursuant to the exceptions to licensure set forth in this section
79 may practice in West Virginia under one or more of the licensure exceptions for no greater than
80 a cumulative total of 30 days in any one calendar year.

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

85 (g) A person who engages in the unlawful practice of medicine and surgery or podiatry
86 while holding a license issued pursuant to this article which has been classified by the board as
87 expired for 90 days or fewer is guilty of a misdemeanor and, upon conviction, shall be fined not
88 more than \$5,000 or confined in jail not more than twelve months, or both fined and confined.

89 (h) A person who is found to be engaging in the practice of medicine and: (1) Has never
90 been licensed by the board under this article; (2) holds a license which has been classified by the
91 board as expired for greater than 90 days; or (3) holds a license which has been placed in inactive
92 status, revoked, suspended or surrendered to the board is guilty of a felony and, upon conviction,
93 shall be fined not more than \$10,000 or imprisoned in a correctional facility for not less than one
94 year nor more than five years or both fined and imprisoned.

95 (i) Upon a determination by the board that any report or complaint submitted to it concerns
96 allegations of the unlawful practice of medicine and surgery by an individual who is licensed under

97 another article of this chapter, the board shall refer the complaint to the appropriate licensing
98 authority. Additionally, whenever the board receives credible information that an individual is
99 engaging in the unlawful practice of medicine and surgery or podiatry in violation of this section,
100 the board may report such information to the appropriate state and/or federal law enforcement
101 authority and/or prosecuting attorney.

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

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

2 (1) “Chronic nonmalignant pain” means pain that has persisted after reasonable medical
3 efforts have been made to relieve the pain or cure its cause and that has continued, either
4 continuously or episodically, for longer than three continuous months. “Chronic nonmalignant
5 pain” does not include pain associated with a terminal condition or illness or with a progressive
6 disease that, in the normal course of progression, may reasonably be expected to result in a
7 terminal condition or illness.

8 (2) “Physician” means a person licensed by the West Virginia Board of Medicine to practice
9 allopathic medicine in West Virginia.

10 (3) “Store and forward telemedicine” means the asynchronous computer-based
11 communication of medical data or images from an originating location to a physician or podiatrist
12 at another site for the purpose of diagnostic or therapeutic assistance.

13 (4) “Telemedicine” means the practice of medicine using tools such as electronic
14 communication, secure telephonic communication or similar secure real time audio-only
15 communication, secure real-time audio/video conferencing or similar secure video services,
16 information technology, store and forward telecommunication, or other means of interaction
17 between a physician or podiatrist in one location and a patient in another location, with or without
18 an intervening health care provider.

19 (5) “Telemedicine technologies” means technologies and devices which enable secure
20 electronic communications and information exchange in the practice of telemedicine, and typically

21 involve the application of secure telephonic communication or similar secure real time audio-only
22 communication, secure real-time audio/video conferencing or similar secure video services,
23 remote monitoring or store and forward digital image technology to provide or support health care
24 delivery by replicating the interaction of a traditional in-person encounter between a physician or
25 podiatrist and a patient.

26 (b) *Licensure* –

27 (1) The practice of medicine occurs where the patient is located at the time the
28 telemedicine technologies are used.

29 (2) A physician or podiatrist who practices telemedicine must be licensed as provided in
30 this article.

31 (3) This section does not apply to:

32 (A) An informal consultation or second opinion, at the request of a physician or podiatrist
33 who is licensed to practice medicine or podiatry in this state, provided that the physician or
34 podiatrist requesting the opinion retains authority and responsibility for the patient's care; and

35 (B) Furnishing of medical assistance by a physician or podiatrist in case of an emergency
36 or disaster, if no charge is made for the medical assistance.

37 (c) *Physician-patient or Podiatrist-patient relationship through telemedicine encounter* –

38 (1) A physician-patient or podiatrist-patient relationship may not be established through:

39 (A) Audio-only communication, if the physician or podiatrist, in his or her sole discretion
40 and professional judgment, determines that interactive video using store and forward technology,
41 real-time videoconferencing or similar secure video services is necessary to conform to the
42 standard of care;

43 (B) Text-based communications such as e-mail, Internet questionnaires, text-based
44 messaging or other written forms of communication; or

45 (C) Any combination thereof.

46 (2) If an existing physician-patient or podiatrist-patient relationship does not exist prior to

47 the utilization to telemedicine technologies, or if services are rendered solely through telemedicine
48 technologies, a physician-patient or podiatrist-patient relationship may only be established:

49 (A) Through the use of secure telephonic communication or similar secure real time audio-
50 only communication during the initial physician-patient or podiatrist-patient encounter; or

51 ~~(A)~~ (B) Through the use of telemedicine technologies which incorporate interactive ~~audio~~
52 video using store and forward technology, real-time videoconferencing or similar secure video
53 services during the initial physician-patient or podiatrist-patient encounter, if the physician or
54 podiatrist, in his or her sole discretion and professional judgment, determines that use of those
55 technologies is necessary to conform to the standard of care; or

56 ~~(B)~~ (C) For the practice of pathology and radiology, a physician-patient relationship may
57 be established through store and forward telemedicine or other similar technologies.

58 (3) Once a physician-patient or podiatrist-patient relationship has been established, either
59 through an in-person encounter or in accordance with subdivision (2) of this subsection, the
60 physician or podiatrist may utilize any telemedicine technology that meets the standard of care
61 and is appropriate for the particular patient presentation.

62 (d) *Telemedicine practice* – A physician or podiatrist using telemedicine technologies to
63 practice medicine or podiatry shall:

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

65 (2) Provide the patient with confirmation of the identity and qualifications of the physician
66 or podiatrist;

67 (3) Provide the patient with the physical location and contact information of the physician;

68 (4) Establish or maintain a physician-patient or podiatrist-patient relationship that conforms
69 to the standard of care;

70 (5) Determine whether telemedicine technologies are appropriate for the particular patient
71 presentation for which the practice of medicine or podiatry is to be rendered;

72 (6) Obtain from the patient appropriate consent for the use of telemedicine technologies;

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

75 (8) Create and maintain health care records for the patient which justify the course of
76 treatment and which verify compliance with the requirements of this section; and

77 (9) The requirements of subdivisions (1) through (8), inclusive, of this subsection do not
78 apply to the practice of pathology or radiology medicine through store and forward telemedicine.

79 (e) *Standard of care* –

80 The practice of medicine or podiatry provided via telemedicine technologies, including the
81 establishment of a physician-patient or podiatrist-patient relationship and issuing a prescription
82 via electronic means as part of a telemedicine encounter, are subject to the same standard of
83 care, professional practice requirements and scope of practice limitations as traditional in-person
84 physician-patient or podiatrist-patient encounters. Treatment, including issuing a prescription,
85 based solely on an online questionnaire, does not constitute an acceptable standard of care.

86 (f) *Patient records* –

87 The patient record established during the use of telemedicine technologies shall be
88 accessible and documented for both the physician or podiatrist and the patient, consistent with
89 the laws and legislative rules governing patient health care records. All laws governing the
90 confidentiality of health care information and governing patient access to medical records shall
91 apply to records of practice of medicine or podiatry provided through telemedicine technologies.
92 A physician or podiatrist solely providing services using telemedicine technologies shall make
93 documentation of the encounter easily available to the patient, and subject to the patient's
94 consent, to any identified care provider of the patient.

95 (g) *Prescribing limitations* –

96 (1) A physician or podiatrist who practices medicine to a patient solely through the
97 utilization of telemedicine technologies may not prescribe to that patient any controlled
98 substances listed in Schedule II of the Uniform Controlled Substances Act: *Provided*, That the

99 prescribing limitations do not apply when a physician is providing treatment to patients who are
100 minors , or if 18 years of age or older, who are enrolled in a primary or secondary education
101 program who are diagnosed with intellectual or developmental disabilities, neurological disease,
102 Attention Deficit Disorder, Autism, or a traumatic brain injury in accordance with guidelines as set
103 forth by organizations such as the American Psychiatric Association, the American Academy of
104 Child and Adolescent Psychiatry or the American Academy of Pediatrics: *Provided, however,* That
105 the physician must maintain records supporting the diagnosis and the continued need of
106 treatment.

107 (2) A physician or podiatrist may not prescribe any pain-relieving controlled substance
108 listed in Schedules II through V of the Uniform Controlled Substance Act as part of a course of
109 treatment for chronic nonmalignant pain solely based upon a telemedicine encounter.

110 (3) A physician or health care provider may not prescribe any drug with the intent of
111 causing an abortion. The term “abortion” has the same meaning ascribed to it in §16-2F-2 of this
112 code.

113 (h) *Exceptions –*

114 This article does not prohibit the use of audio-only or text-based communications by a
115 physician or podiatrist who is:

116 (1) Responding to a call for patients with whom a physician-patient or podiatrist-patient
117 relationship has been established through an in-person encounter by the physician or podiatrist;

118 (2) Providing cross coverage for a physician or podiatrist who has established a physician-
119 patient or podiatrist-patient relationship with the patient through an in-person encounter; or

120 (3) Providing medical assistance in the event of an emergency situation.

121 (i) *Rulemaking –*

122 The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine
123 may propose joint rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code
124 to implement standards for and limitations upon the utilization of telemedicine technologies in the

125 practice of medicine and podiatry in this state.

126 (j) *Preserving traditional physician-patient or podiatrist-patient relationship –*

127 Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities
128 incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to
129 change in any way the personal character of the physician-patient or podiatrist-patient
130 relationship. This section does not alter the scope of practice of any health care provider or
131 authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized
132 by law.

NOTE: The purpose of this bill is to allow a physician-patient or podiatrist-patient relationship to be established through audio-only communication, unless the physician or podiatrist, in her or her sole discretion and professional judgment, determines that interactive video using store and forward technology, real-time videoconferencing or similar secure video services is necessary to conform to the standard of care; and to enable physicians and podiatrists to practice telemedicine using secure telephonic communication or similar secure real time audio-only communication.

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