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SECRETARY OF STATE

SB 184
50184

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000

ENROLLED

SENATE BILL NO. 184

(By Senator Miner)

PASSED March 9, 2000

In Effect ninety days from Passage

ENROLLED

Senate Bill No. 184

(BY SENATOR MINEAR)

[Passed March 9, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section thirteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to acts which do not constitute the practice of medicine; and amending the reference to certification of persons who provide orthotic and prosthetic devices by a particular credentialing body.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13. Unauthorized practice of medicine and surgery or podiatry; criminal penalties; limitations.

- 1 (a) A person shall not engage in the practice of medicine
- 2 and surgery or podiatry, hold himself or herself out as

3 qualified to practice medicine and surgery or podiatry or
4 use any title, word or abbreviation to indicate to or induce
5 others to believe that he or she is licensed to practice
6 medicine and surgery or podiatry in this state unless he or
7 she is actually licensed under the provisions of this article.
8 A person engaged in the practice of telemedicine is consid-
9 ered to be engaged in the practice of medicine within this
10 state and is subject to the licensure requirements of this
11 article. As used in this section, the term “practice of
12 telemedicine” means the use of electronic information and
13 communication technologies to provide health care when
14 distance separates participants and includes one or both of
15 the following: (1) The diagnosis of a patient within this
16 state by a physician located outside this state as a result of
17 the transmission of individual patient data, specimens or
18 other material by electronic or other means from within
19 this state to the physician or his or her agent; or (2) the
20 rendering of treatment to a patient within this state by a
21 physician located outside this state as a result of transmis-
22 sion of individual patient data, specimens or other mate-
23 rial by electronic or other means from within this state to
24 the physician or his or her agent. No person may practice
25 as a physician’s assistant, hold himself or herself out as
26 qualified to practice as a physician’s assistant, or use any
27 title, word or abbreviation to indicate to or induce others
28 to believe that he or she is licensed to practice as a physi-
29 cian’s assistant in this state unless he or she is actually
30 licensed under the provisions of this article. Any person
31 who violates the provisions of this subsection is guilty of
32 a misdemeanor and, upon conviction thereof, shall be fined
33 not more than ten thousand dollars, or imprisoned in the
34 county jail not more than twelve months, or both fined and
35 imprisoned.

36 (b) The provisions of this section do not apply to:

37 (1) Persons who are duly licensed health care providers
38 under other pertinent provisions of this code and are
39 acting within the scope of their license;

40 (2) Physicians or podiatrists licensed in other states or
41 foreign countries who are acting in a consulting capacity
42 with physicians or podiatrists duly licensed in this state,
43 for a period of not more than three months: *Provided,*
44 That this exemption is applicable on a one-time only basis;

45 (3) An individual physician or podiatrist, or physician or
46 podiatrist, or physician or podiatrist groups, or physicians
47 or podiatrists at a tertiary care or university hospital
48 outside this state and engaged in the practice of
49 telemedicine who consult or render second opinions
50 concerning diagnosis or treatment of patients within this
51 state: (i) In an emergency or without compensation or
52 expectation of compensation; or (ii) on an irregular or
53 infrequent basis which occurs less than once a month or
54 less than twelve times in a calendar year;

55 (4) Persons holding licenses granted by another state or
56 foreign country who are commissioned medical officers of,
57 a member of or employed by the armed forces of the
58 United States, the United States public health service, the
59 veterans' administration of the United States, any federal
60 institution or any other federal agency while engaged in
61 the performance of their official duties;

62 (5) Any person providing first-aid care in emergency
63 situations;

64 (6) The practice of the religious tenets of any recognized
65 church in the administration of assistance to the sick or
66 suffering by mental or spiritual means;

67 (7) Visiting medical faculty engaged in teaching or
68 research duties at a medical school or institution recog-
69 nized by the board and who are in this state for periods of

70 not more than six months: *Provided*, That the individuals
71 do not otherwise engage in the practice of medicine or
72 podiatry outside of the auspices of their sponsoring
73 institutions;

74 (8) Persons enrolled in a school of medicine approved by
75 the liaison committee on medical education or by the
76 board, or persons enrolled in a school of podiatric medi-
77 cine approved by the council of podiatry education or by
78 the board, or persons enrolled in an undergraduate or
79 graduate physician assistant program approved by the
80 committee on allied health education and accreditation or
81 its successor on behalf of the American medical associa-
82 tion or by the board, or persons engaged in graduate
83 medical training in a program approved by the liaison
84 committee on graduate medical education or the board, or
85 engaged in graduate podiatric training in a program
86 approved by the council on podiatric medical education or
87 by the board, who are performing functions in the course
88 of training including with respect to functions performed
89 by medical residents or medical students under the
90 supervision of a licensed physician, ordering and obtaining
91 laboratory tests, medications and other patient orders by
92 computer or other electronic means and no other provision
93 of this code to the contrary may be construed to prohibit
94 or limit medical residents' or medical students' use of
95 computers or other electronic devices in this manner;

96 (9) The fitting, recommending or sale of corrective shoes,
97 arch supports or similar mechanical appliances in com-
98 mercial establishments; and

99 (10) The fitting or sale of a prosthetic or orthotic device
100 not involving any surgical procedure, in accord with a
101 prescription of a physician, osteopathic physician, or
102 where chiropractors or podiatrists are authorized by law
103 to prescribe such a prosthetic or orthotic device, in accord
104 with a prescription of a chiropractor or podiatrist, by a

105 practitioner certified in the provision of custom orthotic
106 and prosthetic devices, respectively, by a nationally
107 recognized credentialing body for orthotics and prosthetics
108 that is accredited by the National Commission for Certify-
109 ing Agencies (NCCA): *Provided*, That the sale of any
110 prosthetic or orthotic device by a partnership, proprietor-
111 ship or corporation which employs such a practitioner or
112 registered technician who fitted the prosthetic or orthotic
113 device shall not constitute the unauthorized practice of
114 medicine: *Provided, however*, That the practitioner or
115 registered technician may, without a prescription, make
116 recommendation solely to a physician or osteopathic
117 physician or to a chiropractor or podiatrist otherwise
118 authorized by law to prescribe a particular prosthetic or
119 orthotic device, regarding any prosthetic or orthotic device
120 to be used for a patient upon a request for such recommen-
121 dation.

122 (c) This section shall not be construed as being in any
123 way a limitation upon the services of a physician's assis-
124 tant performed in accordance with the provisions of this
125 article.

126 (d) Persons covered under this article may be permitted
127 to utilize electronic signature or unique electronic identifi-
128 cation to effectively sign materials, transmitted by com-
129 puter or other electronic means, upon which signature is
130 required for the purpose of authorized medical practice.
131 Such signatures are deemed legal and valid for purposes
132 related to the provision of medical services. This subsec-
133 tion does not confer any new practice privilege or right on
134 any persons covered under this article.

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

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within..... *approved* this the *5th*
Day of..... *April* 2000
[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/12

Time 2:45 pm