

SB 293

FILED

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WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

WEST VIRGINIA
SECRETARY OF STATE



ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 293

(SENATORS FOSTER, STOLLINGS, JENKINS,
BOWMAN, PREZIOSO, GREEN, PLYMALE, DEEM,
PALUMBO, KESSLER, GUILLS, WHITE
AND WILLIAMS, *original sponsors*)

[Passed April 11, 2009; in effect ninety days from passage.]

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AN ACT to amend and reenact §30-3-13 of the Code of West Virginia, 1931, as amended, relating to unauthorized practice of medicine and surgery or podiatry or as a physician assistant; criminal penalties; reducing the amount of fine for a person practicing on an expired, lapsed or terminated license for less than ninety days; and specifying as a felony the intentional unauthorized practice of medicine and surgery or podiatry or as a physician assistant in all other instances.

Be it enacted by the Legislature of West Virginia:

That §30-3-13 of the Code of West Virginia, 1931, 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 may 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
9 considered to be engaged in the practice of medicine
10 within this state and is subject to the licensure require-
11 ments of this article. As used in this section, the term
12 "practice of telemedicine" means the use of electronic
13 information and communication technologies to provide
14 health care when distance separates participants and
15 includes one or both of the following: (1) The diagnosis of
16 a patient within this state by a physician located outside
17 this state as a result of the transmission of individual
18 patient data, specimens or other material by electronic or
19 other means from within this state to the physician or his
20 or her agent; or (2) the rendering of treatment to a patient
21 within this state by a physician located outside this state
22 as a result of transmission of individual patient data,
23 specimens or other material by electronic or other means
24 from within this state to the physician or his or her agent.
25 No person may practice as a physician assistant, hold
26 himself or herself out as qualified to practice as a physi-
27 cian assistant or use any title, word or abbreviation to
28 indicate to or induce others to believe that he or she is
29 licensed to practice as a physician assistant in this state
30 unless he or she is actually licensed under the provisions
31 of this article.

32 (b) Any person who intentionally practices, or holds
33 himself or herself out as qualified to practice, or uses any
34 title, word or abbreviation to indicate to or induce others
35 to believe he or she is licensed to practice a health care
36 profession licensed under this article with a license
37 classified by the board as expired, lapsed or terminated,
38 for any period of time up to ninety days, is guilty of a
39 misdemeanor and, upon conviction thereof, shall be fined
40 not more than \$5,000 or confined in jail not more than
41 twelve months, or both fined and confined.

42 (c) Any person who intentionally practices, or holds
43 himself or herself out as qualified to practice, or uses any
44 title, word or abbreviation to indicate to or induce others
45 to believe he or she is licensed to practice as a physician,
46 podiatrist or physician assistant without obtaining an
47 active, valid West Virginia license to practice that profes-
48 sion or with a license that is: (1) Expired, terminated or
49 lapsed, for over ninety days; or (2) inactive, revoked,
50 suspended or surrendered, is guilty of a felony and, upon
51 conviction thereof, shall be fined not more than \$10,000 or
52 imprisoned in a state correctional facility for not less than
53 one year nor more than five years, or both fined and
54 imprisoned.

55 (d) The provisions of this section do not apply to:

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

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

64 (3) An individual physician or podiatrist, or physician or
65 podiatrist groups, or physicians or podiatrists at a tertiary

66 care or university hospital outside this state and engaged
67 in the practice of telemedicine who consult or render
68 second opinions concerning diagnosis or treatment of
69 patients within this state: (i) In an emergency or without
70 compensation or expectation of compensation; or (ii) on an
71 irregular or infrequent basis which occurs less than once
72 a month or less than twelve times in a calendar year;

73 (4) Persons holding licenses granted by another state or
74 foreign country who are commissioned medical officers of,
75 a member of or employed by the armed forces of the
76 United States, the United States Public Health Service,
77 the Veterans' Administration of the United States, any
78 federal institution or any other federal agency while
79 engaged in the performance of their official duties;

80 (5) Any person providing first-aid care in emergency
81 situations;

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

85 (7) Visiting medical faculty engaged in teaching or
86 research duties at a medical school or institution recog-
87 nized by the board and who are in this state for periods of
88 not more than six months: *Provided*, That the individuals
89 do not otherwise engage in the practice of medicine or
90 podiatry outside of the auspices of their sponsoring
91 institutions;

92 (8) Persons enrolled in a school of medicine approved by
93 the liaison committee on medical education or by the
94 board, or persons enrolled in a school of podiatric medi-
95 cine approved by the council of podiatry education or by
96 the board, or persons enrolled in an undergraduate or
97 graduate physician assistant program approved by the
98 committee on allied health education and accreditation or
99 its successor on behalf of the American Medical Associa-

100 tion or by the board, or persons engaged in graduate
101 medical training in a program approved by the liaison
102 committee on graduate medical education or the board, or
103 engaged in graduate podiatric training in a program
104 approved by the council on podiatric medical education or
105 by the board, who are performing functions in the course
106 of training including with respect to functions performed
107 by medical residents or medical students under the
108 supervision of a licensed physician, ordering and obtaining
109 laboratory tests, medications and other patient orders by
110 computer or other electronic means and no other provision
111 of this code to the contrary may be construed to prohibit
112 or limit medical residents' or medical students' use of
113 computers or other electronic devices in this manner;

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

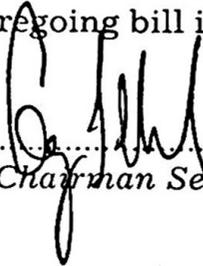
117 (10) The fitting or sale of a prosthetic or orthotic device
118 not involving any surgical procedure, in accord with a
119 prescription of a physician, osteopathic physician or where
120 chiropractors or podiatrists are authorized by law to
121 prescribe such a prosthetic or orthotic device, in accord
122 with a prescription of a chiropractor or podiatrist, by a
123 practitioner certified in the provision of custom orthotic
124 and prosthetic devices, respectively, by a nationally
125 recognized credentialing body for orthotics and prosthet-
126 ics that is accredited by the National Commission for
127 Certifying Agencies (NCCA): *Provided*, That the sale of
128 any prosthetic or orthotic device by a partnership, propri-
129 etorship or corporation which employs such a practitioner
130 or registered technician who fitted the prosthetic or
131 orthotic device shall not constitute the unauthorized
132 practice of medicine: *Provided, however*, That the practi-
133 tioner or registered technician may, without a prescrip-
134 tion, make recommendation solely to a physician or
135 osteopathic physician or to a chiropractor or podiatrist

136 otherwise authorized by law to prescribe a particular
137 prosthetic or orthotic device regarding any prosthetic or
138 orthotic device to be used for a patient upon a request for
139 such recommendation.

140 (e) This section may not be construed as being in any
141 way a limitation upon the services of a physician assistant
142 performed in accordance with the provisions of this
143 article.

144 (f) Persons covered under this article may be permitted
145 to utilize electronic signature or unique electronic identifi-
146 cation to effectively sign materials, transmitted by com-
147 puter or other electronic means, upon which signature is
148 required for the purpose of authorized medical practice.
149 Such signatures are deemed legal and valid for purposes
150 related to the provision of medical services. This subsec-
151 tion does not confer any new practice privilege or right on
152 any persons covered under this article.

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

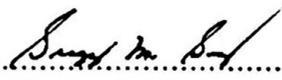

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Chairman Senate Committee


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Chairman House Committee

Originated in the Senate.

In effect ninety 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 House of Delegates

The within is appended this the 5th
Day of May, 2009.


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Governor

PRESENTED TO THE
GOVERNOR

MAY 7 2009

Time 11:20a