WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

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.]
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.

(a) A person may not engage in the practice of medicine and surgery or podiatry, hold himself or herself out as qualified to practice medicine and surgery or podiatry or use any title, word or abbreviation to indicate to or induce others to believe that he or she is licensed to practice medicine and surgery or podiatry in this state unless he or she is actually licensed under the provisions of this article.

A person engaged in the practice of telemedicine is considered to be engaged in the practice of medicine within this state and is subject to the licensure requirements of this article. As used in this section, the term "practice of telemedicine" means the use of electronic information and communication technologies to provide health care when distance separates participants and includes one or both of the following: (1) The diagnosis of a patient within this state by a physician located outside this state as a result of the transmission of individual patient data, specimens or other material by electronic or other means from within this state to the physician or his or her agent; or (2) the rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data, specimens or other material by electronic or other means from within this state to the physician or his or her agent.

No person may practice as a physician assistant, hold himself or herself out as qualified to practice as a physician assistant or use any title, word or abbreviation to indicate to or induce others to believe that he or she is licensed to practice as a physician assistant in this state unless he or she is actually licensed under the provisions of this article.
(b) Any person who intentionally practices, or holds himself or herself out as qualified to practice, or uses any title, word or abbreviation to indicate to or induce others to believe he or she is licensed to practice a health care profession licensed under this article with a license classified by the board as expired, lapsed or terminated, for any period of time up to ninety days, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or confined in jail not more than twelve months, or both fined and confined.

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

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

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

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

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

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

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

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

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

(8) Persons enrolled in a school of medicine approved by the liaison committee on medical education or by the board, or persons enrolled in a school of podiatric medicine approved by the council of podiatry education or by the board, or persons enrolled in an undergraduate or graduate physician assistant program approved by the committee on allied health education and accreditation or its successor on behalf of the American Medical Associa-
tion or by the board, or persons engaged in graduate
medical training in a program approved by the liaison
committee on graduate medical education or the board, or
engaged in graduate podiatric training in a program
approved by the council on podiatric medical education or
by the board, who are performing functions in the course
of training including with respect to functions performed
by medical residents or medical students under the
supervision of a licensed physician, ordering and obtaining
laboratory tests, medications and other patient orders by
computer or other electronic means and no other provision
of this code to the contrary may be construed to prohibit
or limit medical residents' or medical students' use of
computers or other electronic devices in this manner;

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

(10) The fitting or sale of a prosthetic or orthotic device
not involving any surgical procedure, in accord with a
prescription of a physician, osteopathic physician or where
chiropractors or podiatrists are authorized by law to
prescribe such a prosthetic or orthotic device, in accord
with a prescription of a chiropractor or podiatrist, by a
practitioner certified in the provision of custom orthotic
and prosthetic devices, respectively, by a nationally
recognized credentialing body for orthotics and prosthet-
ics that is accredited by the National Commission for
Certifying Agencies (NCCA): Provided, That the sale of
any prosthetic or orthotic device by a partnership, propri-
etorship or corporation which employs such a practitioner
or registered technician who fitted the prosthetic or
orthotic device shall not constitute the unauthorized
practice of medicine: Provided, however, That the practi-
tioner or registered technician may, without a prescrip-
tion, make recommendation solely to a physician or
osteopathic physician or to a chiropractor or podiatrist
otherwise authorized by law to prescribe a particular prosthetic or orthotic device regarding any prosthetic or orthotic device to be used for a patient upon a request for such recommendation.

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

(f) Persons covered under this article may be permitted to utilize electronic signature or unique electronic identification to effectively sign materials, transmitted by computer or other electronic means, upon which signature is required for the purpose of authorized medical practice. Such signatures are deemed legal and valid for purposes related to the provision of medical services. This subsection does not confer any new practice privilege or right on any persons covered under this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the Day of May, 2009.

Governor
PRESENTED TO THE GOVERNOR

MAY 7 2009

Time 11:20a