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HOUSE BILL 451

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Edward C. Sandoval

AN ACT

RELATING TO PSYCHOLOGISTS; GRANTING PRESCRIPTIVE AUTHORITY TO CERTAIN PSYCHOLOGISTS; PROVIDING FOR CERTIFICATION; PROVIDING QUALIFICATIONS AND LIMITATIONS; REQUIRING MALPRACTICE INSURANCE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended) is amended to read:

"26-1-2. DEFINITIONS. --As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

B. "person" includes individual, partnership, corporation, association, institution or establishment;

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1 C. "biological product" means any virus,
2 therapeutic serum, toxin, antitoxin or analogous product
3 applicable to the prevention, treatment or cure of diseases or
4 injuries of man and domestic animals and, as used within the
5 meaning of this definition:

6 (1) a "virus" is interpreted to be a product
7 containing the minute living cause of an infectious disease
8 and includes filterable viruses, bacteria, rickettsia, fungi
9 and protozoa;

10 (2) a "therapeutic serum" is a product
11 obtained from blood by removing the clot or clot components
12 and the blood cells;

13 (3) a "toxin" is a product containing a
14 soluble substance poisonous to laboratory animals or man in
15 doses of one milliliter or less of the product and having the
16 property, following the injection of nonfatal doses into an
17 animal, or causing to be produced therein another soluble
18 substance that specifically neutralizes the poisonous
19 substance and that is demonstrable in the serum of the animal
20 thus immunized; and

21 (4) an "antitoxin" is a product containing
22 the soluble substance in serum or other body fluid of an
23 immunized animal that specifically neutralizes the toxin
24 against which the animal is immune;

25 D. "controlled substance" means any drug,

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1 substance or immediate precursor enumerated in Schedules I
2 through V of the Controlled Substances Act;

3 E. "drug" means:

4 (1) articles recognized in an official
5 compendium;

6 (2) articles intended for use in the
7 diagnosis, cure, mitigation, treatment or prevention of
8 disease in man or other animals and includes the domestic
9 animal biological products regulated under the federal Virus-
10 Serum-Toxin Act, 37 Stat 832-833, 21 U.S.C. 151-158 and the
11 biological products applicable to man regulated under Federal
12 58 Stat 690, as amended, 42 U.S.C. 216, Section 351, 58 Stat
13 702, as amended, and 42 U.S.C. 262;

14 (3) articles other than food that affect the
15 structure or any function of the body of man or other animals;
16 and

17 (4) articles intended for use as a component
18 of Paragraph (1), (2) or (3) of this subsection, but does not
19 include devices or their component parts or accessories;

20 F. "dangerous drug" means a drug, other than a
21 controlled substance enumerated in Schedule I of the
22 Controlled Substances Act, that because of a potentiality for
23 harmful effect or the method of its use or the collateral
24 measures necessary to its use is not safe except under the
25 supervision of a practitioner licensed by law to direct the

1 use of such drug and hence for which adequate directions for
2 use cannot be prepared. "Adequate directions for use" means
3 directions under which the layman can use a drug or device
4 safely and for the purposes for which it is intended. A drug
5 shall be dispensed only upon the prescription of a
6 practitioner licensed by law to administer or prescribe such
7 drug if it:

8 (1) is a habit-forming drug and contains any
9 quantity of a narcotic or hypnotic substance or a chemical
10 derivative of such substance that has been found under the
11 federal act and the board to be habit forming;

12 (2) because of its toxicity or other
13 potential for harmful effect or the method of its use or the
14 collateral measures necessary to its use is not safe for use
15 except under the supervision of a practitioner licensed by law
16 to administer or prescribe the drug;

17 (3) is limited by an approved application by
18 Section 505 of the federal act to the use under the
19 professional supervision of a practitioner licensed by law to
20 administer or prescribe the drug;

21 (4) bears the legend: "Caution: federal law
22 prohibits dispensing without prescription. ";

23 (5) bears the legend: "Caution: federal law
24 restricts this drug to use by or on the order of a licensed
25 veterinarian. "; or

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1 (6) bears the legend "RX only";

2 G. "counterfeit drug" means a drug other than a
3 controlled substance that, or the container or labeling of
4 which, without authorization, bears the trademark, trade name
5 or other identifying mark, imprint or device or any likeness
6 of a drug manufacturer, processor, packer or distributor other
7 than the person who manufactured, processed, packed or
8 distributed the drug and that falsely purports or is
9 represented to be the product of or to have been packed or
10 distributed by such other drug manufacturer, processor, packer
11 or distributor;

12 H. "device", except when used in Subsection P of
13 this section and in Subsection G of Section 26-1-3, Subsection
14 L and Paragraph (4) of Subsection A of Section 26-1-11 and
15 Subsection C of Section 26-1-24 NMSA 1978, means an
16 instrument, apparatus, implement, machine, contrivance,
17 implant, in vitro reagent or other similar or related article,
18 including any component, part or accessory, that is:

19 (1) recognized in an official compendium;

20 (2) intended for use in the diagnosis of
21 disease or other conditions or in the cure, mitigation,
22 treatment or prevention of disease in man or other animals; or

23 (3) intended to affect the structure or a
24 function of the body of man or other animals and that does not
25 achieve any of its principal intended purposes through

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1 chemical action within or on the body of man or other animals
2 and that is not dependent on being metabolized for achievement
3 of any of its principal intended purposes;

4 I. "prescription" means an order given
5 individually for the person for whom prescribed, either
6 directly from the prescriber to the pharmacist or indirectly
7 by means of a written order signed by the prescriber, and
8 bearing the name and address of the prescriber, his license
9 classification, the name and address of the patient, the name
10 and quantity of the drug prescribed, directions for use and
11 the date of issue. No person other than a practitioner shall
12 prescribe or write a prescription;

13 J. "practitioner" means a physician, doctor of
14 oriental medicine, dentist, veterinarian, certified nurse
15 practitioner, clinical nurse specialist, pharmacist clinician,
16 certified nurse-midwife, prescribing psychologist or other
17 person licensed or certified to prescribe and administer drugs
18 that are subject to the New Mexico Drug, Device and Cosmetic
19 Act;

20 K. "cosmetic" means:

21 (1) articles intended to be rubbed, poured,
22 sprinkled or sprayed on, introduced into or otherwise applied
23 to the human body or any part thereof for cleansing,
24 beautifying, promoting attractiveness or altering the
25 appearance; and

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1 (2) articles intended for use as a component
2 of any articles enumerated in Paragraph (1) of this
3 subsection, except that the term shall not include soap;

4 L. "official compendium" means the official United
5 States pharmacopoeia national formulary or the official
6 homeopathic pharmacopoeia of the United States or any
7 supplement to either of them;

8 M. "label" means a display of written, printed or
9 graphic matter upon the immediate container of an article. A
10 requirement made by or under the authority of the New Mexico
11 Drug, Device and Cosmetic Act that any word, statement or
12 other information appear on the label shall not be considered
13 to be complied with unless the word, statement or other
14 information also appears on the outside container or wrapper,
15 if any, of the retail package of the article or is easily
16 legible through the outside container or wrapper;

17 N. "immediate container" does not include package
18 liners;

19 O. "labeling" means all labels and other written,
20 printed or graphic matter:

21 (1) on an article or its containers or
22 wrappers; or

23 (2) accompanying an article;

24 P. "misbranded" means a label to an article that
25 is misleading. In determining whether the label is

1 misleading, there shall be taken into account, among other
2 things, not only representations made or suggested by
3 statement, word, design, device or any combination of the
4 foregoing, but also the extent to which the label fails to
5 reveal facts material in the light of such representations or
6 material with respect to consequences that may result from the
7 use of the article to which the label relates under the
8 conditions of use prescribed in the label or under such
9 conditions of use as are customary or usual;

10 Q. "advertisement" means all representations
11 disseminated in any manner or by any means, other than by
12 labeling, for the purpose of inducing, or that are likely to
13 induce, directly or indirectly, the purchase of drugs, devices
14 or cosmetics;

15 R. "antiseptic", when used in the labeling or
16 advertisement of an antiseptic, shall be considered to be a
17 representation that it is a germicide, except in the case of a
18 drug purporting to be or represented as an antiseptic for
19 inhibitory use as a wet dressing, ointment, dusting powder or
20 such other use as involves prolonged contact with the body;

21 S. "new drug" means any drug:

22 (1) the composition of which is such that the
23 drug is not generally recognized, among experts qualified by
24 scientific training and experience to evaluate the safety and
25 efficacy of drugs, as safe and effective for use under the

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1 conditions prescribed, recommended or suggested in the
2 labeling thereof; or

3 (2) the composition of which is such that the
4 drug, as a result of investigation to determine its safety and
5 efficacy for use under such conditions, has become so
6 recognized, but that has not, otherwise than in such
7 investigations, been used to a material extent or for a
8 material time under such conditions;

9 T. "contaminated with filth" applies to a drug,
10 device or cosmetic not securely protected from dirt, dust and,
11 as far as may be necessary by all reasonable means, from all
12 foreign or injurious contaminations, or a drug, device or
13 cosmetic found to contain dirt, dust, foreign or injurious
14 contamination or infestation;

15 U. "selling of drugs, devices or cosmetics" shall
16 be considered to include the manufacture, production,
17 processing, packing, exposure, offer, possession and holding
18 of any such article for sale and the sale and the supplying or
19 applying of any such article in the conduct of a drug or
20 cosmetic establishment;

21 V. "color additive" means a material that:

22 (1) is a dye, pigment or other substance made
23 by a process of synthesis or similar artifice or extracted,
24 isolated or otherwise derived, with or without intermediate or
25 final change of identity, from a vegetable, mineral, animal or

1 other source; or

2 (2) when added or applied to a drug or
3 cosmetic or to the human body or a part thereof, is capable,
4 alone or through reaction with other substances, of imparting
5 color thereto; except that such term does not include any
6 material that has been or hereafter is exempted under the
7 federal act;

8 W. "federal act" means the Federal Food, Drug and
9 Cosmetic Act;

10 X. "restricted device" means a device for which
11 the sale, distribution or use is lawful only upon the written
12 or oral authorization of a practitioner licensed by law to
13 administer, prescribe or use the device and for which the
14 federal food and drug administration requires special training
15 or skills of the practitioner to use or prescribe. This
16 definition does not include custom devices defined in the
17 federal act and exempt from performance standards or premarket
18 approval requirements under Section 520(b) of the federal act;
19 and

20 Y. "prescription device" means a device that,
21 because of its potential for harm, the method of its use or
22 the collateral measures necessary to its use, is not safe
23 except under the supervision of a practitioner licensed in
24 this state to direct the use of such device and for which
25 "adequate directions for use" cannot be prepared, but that

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1 bears the label: "Caution: federal law restricts this device
2 to sale by or on the order of a _____", the blank to be
3 filled with the word "physician", "doctor of oriental
4 medicine", "dentist", "veterinarian", "certified nurse
5 practitioner", "clinical nurse specialist", "pharmacist
6 clinician", "certified nurse-midwife" or with the descriptive
7 designation of any other practitioner licensed in this state
8 to use or order the use of the device."

9 Section 2. Section 30-31-2 NMSA 1978 (being Laws 1972,
10 Chapter 84, Section 2, as amended) is amended to read:

11 "30-31-2. DEFINITIONS.--As used in the Controlled
12 Substances Act:

13 A. "administer" means the direct application of a
14 controlled substance by any means to the body of a patient or
15 research subject by a practitioner or his agent;

16 B. "agent" includes an authorized person who acts
17 on behalf of a manufacturer, distributor or dispenser. It
18 does not include a common or contract carrier, public
19 warehouseman or employee of the carrier or warehouseman;

20 C. "board" means the board of pharmacy;

21 D. "bureau" means the narcotic and dangerous drug
22 section of the criminal division of the United States
23 department of justice, or its successor agency;

24 E. "controlled substance" means a drug or
25 substance listed in Schedules I through V of the Controlled

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1 Substances Act or ~~[regulations]~~ rules adopted thereto;

2 F. "counterfeit substance" means a controlled
3 substance that bears the unauthorized trademark, trade name,
4 imprint, number, device or other identifying mark or likeness
5 of a manufacturer, distributor or dispenser other than the
6 person who in fact manufactured, distributed or dispensed the
7 controlled substance;

8 G. "deliver" means the actual, constructive or
9 attempted transfer from one person to another of a controlled
10 substance or controlled substance analog, whether or not there
11 is an agency relationship;

12 H. "dispense" means to deliver a controlled
13 substance to an ultimate user or research subject pursuant to
14 the lawful order of a practitioner, including the
15 administering, prescribing, packaging, labeling or compounding
16 necessary to prepare the controlled substance for that
17 delivery;

18 I. "dispenser" means a practitioner who dispenses
19 and includes hospitals, pharmacies and clinics where
20 controlled substances are dispensed;

21 J. "distribute" means to deliver other than by
22 administering or dispensing a controlled substance or
23 controlled substance analog;

24 K. "drug" or "substance" means substances
25 recognized as drugs in the official United States

1 pharmacopoeia, official homeopathic pharmacopoeia of the
2 United States or official national formulary or any respective
3 supplement to those publications. It does not include devices
4 or their components, parts or accessories;

5 L. "hashish" means the resin extracted from any
6 part of marijuana, whether growing or not, and every compound,
7 manufacture, salt, derivative, mixture or preparation of such
8 resins;

9 M. "manufacture" means the production,
10 preparation, compounding, conversion or processing of a
11 controlled substance or controlled substance analog by
12 extraction from substances of natural origin or independently
13 by means of chemical synthesis or by a combination of
14 extraction and chemical synthesis and includes any packaging
15 or repackaging of the substance or labeling or relabeling of
16 its container, except that this term does not include the
17 preparation or compounding of a controlled substance:

18 (1) by a practitioner as an incident to his
19 administering or dispensing of a controlled substance in the
20 course of his professional practice; or

21 (2) by a practitioner, or by his agent under
22 his supervision, for the purpose of or as an incident to
23 research, teaching or chemical analysis and not for sale;

24 N. "marijuana" means all parts of the plant
25 Cannabis, including any and all varieties, species and

1 subspecies of the genus Cannabis, whether growing or not, the
2 seeds thereof and every compound, manufacture, salt,
3 derivative, mixture or preparation of the plant or its seeds.
4 It does not include the mature stalks of the plant, hashish,
5 tetrahydrocannabinols extracted or isolated from marijuana,
6 fiber produced from the stalks, oil or cake made from the
7 seeds of the plant, any other compound, manufacture, salt,
8 derivative, mixture or preparation of the mature stalks,
9 fiber, oil or cake, or the sterilized seed of the plant that
10 is incapable of germination;

11 0. "narcotic drug" means any of the following,
12 whether produced directly or indirectly by extraction from
13 substances of vegetable origin or independently by means of
14 chemical synthesis or by a combination of extraction and
15 chemical synthesis:

16 (1) opium and opiate and any salt, compound,
17 derivative or preparation of opium or opiate;

18 (2) any salt, compound, isomer, derivative or
19 preparation that is a chemical equivalent of any of the
20 substances referred to in Paragraph (1) of this subsection,
21 except the isoquinoline alkaloids of opium;

22 (3) opium poppy and poppy straw, including
23 all parts of the plant of the species Papaver somniferum L.
24 except its seeds; or

25 (4) coca leaves and any salt, compound,

1 derivative or preparation of coca leaves, any salt, compound,
2 isomer, derivative or preparation that is a chemical
3 equivalent of any of these substances except decocainized coca
4 leaves or extractions of coca leaves that do not contain
5 cocaine or ecgonine;

6 P. "opiate" means any substance having an
7 addiction-forming or addiction-sustaining liability similar to
8 morphine or being capable of conversion into a drug having
9 addiction-forming or addiction-sustaining liability. "Opiate"
10 does not include, unless specifically designated as controlled
11 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of
12 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
13 "Opiate" does include its racemic and levorotatory forms;

14 Q. "person" means an individual, partnership,
15 corporation, association, institution, political subdivision,
16 government agency or other legal entity;

17 R. "practitioner" means a physician, doctor of
18 oriental medicine, dentist, physician assistant, certified
19 nurse practitioner, clinical nurse specialist, certified
20 nurse-midwife, prescribing psychologist, veterinarian or other
21 person licensed or certified to prescribe and administer drugs
22 that are subject to the Controlled Substances Act;

23 S. "prescription" means an order given
24 individually for the person for whom is prescribed a
25 controlled substance, either directly from the prescriber to

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1 the pharmacist or indirectly by means of a written order
2 signed by the prescriber, in accordance with the Controlled
3 Substances Act or [~~regulations~~] rules adopted thereto;

4 T. "scientific investigator" means a person
5 registered to conduct research with controlled substances in
6 the course of his professional practice or research and
7 includes analytical laboratories;

8 U. "ultimate user" means a person who lawfully
9 possesses a controlled substance for his own use or for the
10 use of a member of his household or for administering to an
11 animal under the care, custody and control of the person or by
12 a member of his household;

13 V. "drug paraphernalia" means all equipment,
14 products and materials of any kind that are used, intended for
15 use or designed for use in planting, propagating, cultivating,
16 growing, harvesting, manufacturing, compounding, converting,
17 producing, processing, preparing, testing, analyzing,
18 packaging, repackaging, storing, containing, concealing,
19 injecting, ingesting, inhaling or otherwise introducing into
20 the human body a controlled substance or controlled substance
21 analog in violation of the Controlled Substances Act. It
22 includes:

23 (1) kits used, intended for use or designed
24 for use in planting, propagating, cultivating, growing or
25 harvesting any species of plant that is a controlled substance

1 or controlled substance analog or from which a controlled
2 substance can be derived;

3 (2) kits used, intended for use or designed
4 for use in manufacturing, compounding, converting, producing,
5 processing or preparing controlled substances or controlled
6 substance analogs;

7 (3) isomerization devices used, intended for
8 use or designed for use in increasing the potency of any
9 species of plant that is a controlled substance;

10 (4) testing equipment used, intended for use
11 or designed for use in identifying or in analyzing the
12 strength, effectiveness or purity of controlled substances or
13 controlled substance analogs;

14 (5) scales or balances used, intended for use
15 or designed for use in weighing or measuring controlled
16 substances or controlled substance analogs;

17 (6) diluents and adulterants, such as quinine
18 hydrochloride, mannitol, mannite dextrose and lactose, used,
19 intended for use or designed for use in cutting controlled
20 substances or controlled substance analogs;

21 (7) separation gins and sifters used,
22 intended for use or designed for use in removing twigs and
23 seeds from, or in otherwise cleaning and refining, marijuana;

24 (8) blenders, bowls, containers, spoons and
25 mixing devices used, intended for use or designed for use in

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1 compounding controlled substances or controlled substance
2 analog;

3 (9) capsules, balloons, envelopes and other
4 containers used, intended for use or designed for use in
5 packaging small quantities of controlled substances or
6 controlled substance analogs;

7 (10) containers and other objects used,
8 intended for use or designed for use in storing or concealing
9 controlled substances or controlled substance analogs;

10 (11) hypodermic syringes, needles and other
11 objects used, intended for use or designed for use in
12 parenterally injecting controlled substances or controlled
13 substance analogs into the human body;

14 (12) objects used, intended for use or
15 designed for use in ingesting, inhaling or otherwise
16 introducing marijuana, cocaine, hashish or hashish oil into
17 the human body, such as:

18 (a) metal, wooden, acrylic, glass,
19 stone, plastic or ceramic pipes, with or without screens,
20 permanent screens, hashish heads or punctured metal bowls;

21 (b) water pipes;

22 (c) carburetion tubes and devices;

23 (d) smoking and carburetion masks;

24 (e) roach clips, meaning objects used
25 to hold burning material, such as a marijuana cigarette, that

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1 has become too small to hold in the hand;

2 (f) miniature cocaine spoons and
3 cocaine vials;

4 (g) chamber pipes;

5 (h) carburetor pipes;

6 (i) electric pipes;

7 (j) air-driven pipes;

8 (k) chilams;

9 (l) bongs; or

10 (m) ice pipes or chillers; and

11 (13) in determining whether an object is drug
12 paraphernalia, a court or other authority should consider, in
13 addition to all other logically relevant factors, the
14 following:

15 (a) statements by the owner or by
16 anyone in control of the object concerning its use;

17 (b) the proximity of the object, in
18 time and space, to a direct violation of the Controlled
19 Substances Act or any other law relating to controlled
20 substances or controlled substance analogs;

21 (c) the proximity of the object to
22 controlled substances or controlled substance analogs;

23 (d) the existence of any residue of a
24 controlled substance or controlled substance analog on the
25 object;

- 1 (e) instructions, written or oral,
2 provided with the object concerning its use;
3 (f) descriptive materials accompanying
4 the object that explain or depict its use;
5 (g) the manner in which the object is
6 displayed for sale; and
7 (h) expert testimony concerning its
8 use;

9 W. "controlled substance analog" means a substance
10 other than a controlled substance that has a chemical
11 structure substantially similar to that of a controlled
12 substance in Schedule I, II, III, IV or V or that was
13 specifically designed to produce effects substantially similar
14 to that of controlled substances in Schedule I, II, III, IV or
15 V. Examples of chemical classes in which controlled substance
16 analogs are found include the following:

- 17 (1) phenethyl amines;
18 (2) N-substituted piperidines;
19 (3) morphinans;
20 (4) ecgonines;
21 (5) quinazolines;
22 (6) substituted indoles; and
23 (7) arylcycloalkyl amines.

24 Specifically excluded from the definition of "controlled
25 substance analog" are those substances that are generally

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1 recognized as safe and effective within the meaning of the
2 Federal Food, Drug and Cosmetic Act or have been manufactured,
3 distributed or possessed in conformance with the provisions of
4 an approved new drug application or an exemption for
5 investigational use within the meaning of Section 505 of the
6 Federal Food, Drug and Cosmetic Act;

7 X. "human consumption" includes application,
8 injection, inhalation, ingestion or any other manner of
9 introduction; and

10 Y. "drug-free school zone" means a public school
11 or property that is used for public school purposes and the
12 area within one thousand feet of the school property line, but
13 it does not mean any post-secondary school. "

14 Section 3. Section 61-3-3 NMSA 1978 (being Laws 1991,
15 Chapter 190, Section 2, as amended) is amended to read:

16 "61-3-3. DEFINITIONS. --As used in the Nursing Practice
17 Act:

18 A. "advanced practice" means the practice of
19 professional registered nursing by a registered nurse who has
20 been prepared through additional formal education as provided
21 in Sections 61-3-23.2 through 61-3-23.4 NMSA 1978 to function
22 beyond the scope of practice of professional registered
23 nursing, including certified nurse practitioners, certified
24 registered nurse anesthetists and clinical nurse specialists;

25 B. "board" means the board of nursing;

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1 C. "certified nurse practitioner" means a
2 registered nurse who is licensed by the board for advanced
3 practice as a certified nurse practitioner and whose name and
4 pertinent information are entered on the list of certified
5 nurse practitioners maintained by the board;

6 D. "certified registered nurse anesthetist" means
7 a registered nurse who is licensed by the board for advanced
8 practice as a certified registered nurse anesthetist and whose
9 name and pertinent information are entered on the list of
10 certified registered nurse anesthetists maintained by the
11 board;

12 E. "clinical nurse specialist" means a registered
13 nurse who is licensed by the board for advanced practice as a
14 clinical nurse specialist and whose name and pertinent
15 information are entered on the list of clinical nurse
16 specialists maintained by the board;

17 F. "collaboration" means the cooperative working
18 relationship with another health care provider in the
19 provision of patient care, and such collaborative practice
20 includes the discussion of patient diagnosis and cooperation
21 in the management and delivery of health care;

22 G. "licensed practical nurse" means a nurse who
23 practices licensed practical nursing and whose name and
24 pertinent information are entered in the register of licensed
25 practical nurses maintained by the board;

1 H. "licensed practical nursing" means the practice
2 of a directed scope of nursing requiring basic knowledge of
3 the biological, physical, social and behavioral sciences and
4 nursing procedures, which practice is at the direction of a
5 registered nurse, physician, prescribing psychologist or
6 dentist licensed to practice in this state. This practice
7 includes [~~but is not limited to~~]:

8 (1) contributing to the assessment of the
9 health status of individuals, families and communities;

10 (2) participating in the development and
11 modification of the plan of care;

12 (3) implementing appropriate aspects of the
13 plan of care commensurate with education and verified
14 competence;

15 (4) collaborating with other health care
16 professionals in the management of health care; and

17 (5) participating in the evaluation of
18 responses to interventions;

19 I. "nursing diagnosis" means a clinical judgment
20 about individual, family or community responses to actual or
21 potential health problems or life processes, which judgment
22 provides a basis for the selection of nursing interventions to
23 achieve outcomes for which the person making the judgment is
24 accountable;

25 J. "practice of nursing" means assisting

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1 individuals, families or communities in maintaining or
2 attaining optimal health, assessing and implementing a plan of
3 care to accomplish defined goals and evaluating responses to
4 care and treatment. This practice is based on specialized
5 knowledge, judgment and nursing skills acquired through
6 educational preparation in nursing and in the biological,
7 physical, social and behavioral sciences and includes [~~but is~~
8 ~~not limited to~~]:

9 (1) initiating and maintaining comfort
10 measures;

11 (2) promoting and supporting optimal human
12 functions and responses;

13 (3) establishing an environment conducive to
14 well-being or to the support of a dignified death;

15 (4) collaborating on the health care regimen;

16 (5) administering medications and performing
17 treatments prescribed by a person authorized in this state or
18 in any other state in the United States to prescribe them;

19 (6) recording and reporting nursing
20 observations, assessments, interventions and responses to
21 health care;

22 (7) providing counseling and health teaching;

23 (8) delegating and supervising nursing
24 interventions that may be performed safely by others and are
25 not in conflict with the Nursing Practice Act; and

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1 (9) maintaining accountability for safe and
2 effective nursing care;

3 K. "professional registered nursing" means the
4 practice of the full scope of nursing requiring substantial
5 knowledge of the biological, physical, social and behavioral
6 sciences and of nursing theory and may include advanced
7 practice pursuant to the Nursing Practice Act. This practice
8 includes [~~but is not limited to~~]:

9 (1) assessing the health status of
10 individuals, families and communities;

11 (2) establishing a nursing diagnosis;

12 (3) establishing goals to meet identified
13 health care needs;

14 (4) developing a plan of care;

15 (5) determining nursing intervention to
16 implement the plan of care;

17 (6) implementing the plan of care
18 commensurate with education and verified competence;

19 (7) evaluating responses to interventions;

20 (8) teaching based on the theory and practice
21 of nursing;

22 (9) managing and supervising the practice of
23 nursing;

24 (10) collaborating with other health care
25 professionals in the management of health care; and

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1 (11) conducting nursing research;

2 L. "registered nurse" means a nurse who practices
3 professional registered nursing and whose name and pertinent
4 information are entered in the register of licensed registered
5 nurses maintained by the board; and

6 M "scope of practice" means the parameters within
7 which nurses practice based upon education, experience,
8 licensure, certification and expertise. "

9 Section 4. Section 61-3-23.2 NMSA 1978 (being Laws 1991,
10 Chapter 190, Section 14, as amended) is amended to read:

11 "61-3-23.2. CERTIFIED NURSE PRACTITIONER--
12 QUALIFICATIONS-- PRACTICE-- EXAMINATION. --

13 A. The board may license for advanced practice as
14 a certified nurse practitioner an applicant who furnishes
15 evidence satisfactory to the board that the applicant:

16 (1) is a registered nurse;

17 (2) has successfully completed a graduate
18 program for the education and preparation of nurse
19 practitioners; provided that if the applicant is initially
20 licensed by the board or a board in another jurisdiction after
21 January 1, 2001, the program shall be at the master's level or
22 higher;

23 (3) has successfully completed the national
24 certifying examination in the applicant's specialty area; and

25 (4) is certified by a national nursing

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1 organization.

2 B. Certified nurse practitioners may:

3 (1) perform an advanced practice that is
4 beyond the scope of practice of professional registered
5 nursing; and

6 (2) make independent decisions regarding
7 health care needs of the individual, family or community and
8 carry out health regimens, including the prescription and
9 [~~distributing~~] distribution of dangerous drugs, including
10 controlled substances included in Schedules II through V of
11 the Controlled Substances Act.

12 C. Certified nurse practitioners who have
13 fulfilled requirements for prescriptive authority may
14 prescribe in accordance with rules, regulations, guidelines
15 and formularies for individual certified nurse practitioners
16 promulgated by the board. As used in this subsection,
17 "prescriptive authority" means the ability of the certified
18 nurse practitioner to practice independently, serve as a
19 primary health care provider and as necessary collaborate with
20 licensed medical doctors, osteopathic physicians, prescribing
21 psychologists or podiatrists.

22 D. Certified nurse practitioners who have
23 fulfilled requirements for prescriptive authority may
24 distribute to their patients dangerous drugs, including
25 controlled substances included in Schedules II through V of

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1 the Controlled Substances Act, that have been prepared,
2 packaged or fabricated by a registered pharmacist or doses of
3 drugs that have been prepackaged by a pharmaceutical
4 manufacturer in accordance with the Pharmacy Act and the New
5 Mexico Drug, Device and Cosmetic Act.

6 E. Certified nurse practitioners licensed by the
7 board on and after December 2, 1985 shall successfully
8 complete a national certifying examination and shall maintain
9 national professional certification in their specialty area.
10 Certified nurse practitioners licensed by a board prior to
11 December 2, 1985 are not required to sit for a national
12 certification examination or be certified by a national
13 organization. "

14 Section 5. Section 61-9-1 NMSA 1978 (being Laws 1963,
15 Chapter 92, Section 1) is amended to read:

16 "61-9-1. SHORT TITLE. -- ~~[This act]~~ Chapter 61, Article 9
17 NMSA 1978 may be cited as the "Professional Psychologist
18 Act". "

19 Section 6. Section 61-9-3 NMSA 1978 (being Laws 1963,
20 Chapter 92, Section 3, as amended) is amended to read:

21 "61-9-3. DEFINITIONS. -- As used in the Professional
22 Psychologist Act:

23 A. "board" means the New Mexico state board of
24 psychologist examiners;

25 B. "person" includes an individual, firm,

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1 partnership, association or corporation;

2 C. "psychologist" means [~~any~~] a person who engages
3 in the practice of psychology or holds himself out to the
4 public by any title or description of services representing
5 himself as a psychologist [~~which~~] that incorporates the words
6 "psychological", "psychologist", "psychology" or when a person
7 describes himself as [~~above~~] such and, under such title or
8 description, offers to render or renders services involving
9 the application of principles, methods and procedures of the
10 science and profession of psychology to persons for
11 compensation or other personal gain;

12 D. "psychotropic medication" means a controlled
13 substance or dangerous drug that may not be dispensed or
14 administered without a prescription and whose primary
15 indication for use has been approved by the federal food and
16 drug administration for the treatment of mental disorders and
17 is listed as a psychotherapeutic agent in drug facts and
18 comparisons or the American hospital formulary service;

19 [~~D.~~] E. "practice of psychology" means the
20 observation, description, evaluation, interpretation and
21 modification of human behavior by the application of
22 psychological principles, methods and procedures for the
23 purpose of preventing or eliminating symptomatic, maladaptive
24 or undesired behavior and of enhancing interpersonal
25 relationships, work and life adjustment, personal

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1 effectiveness, behavioral health and mental health, and
2 further means the rendering of such psychological services to
3 ~~[individuals]~~ persons, families or groups regardless of
4 whether payment is received for services rendered. The
5 practice of psychology includes psychological testing or
6 neuropsychological testing and the evaluation or assessment of
7 personal characteristics such as intelligence, personality,
8 abilities, interests, aptitudes and neuropsychological
9 functioning; counseling, psychoanalysis, psychotherapy,
10 hypnosis, biofeedback, behavior analysis and therapy;
11 diagnosis and treatment of any mental and emotional disorder
12 or disability, alcoholism and substance abuse, disorders of
13 habit or conduct and the psychological aspects of physical
14 illness, accident, injury and disability; and
15 psychoeducational evaluation, therapy, remediation and
16 consultation; ~~[and]~~

17 F. "prescribing psychologist" means a doctoral-
18 level psychologist who holds a certificate issued by the board
19 that has not been suspended or revoked that allows the holder
20 to prescribe psychotropic medication; and

21 ~~[E.-]~~ G. "school" or "college" means [any] a
22 university or other institution of higher education that is
23 regionally accredited and that offers a full-time graduate
24 course of study in psychology as defined by rule of the board
25 or that is approved by the American psychological

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1 association. "

2 Section 7. Section 61-9-17 NMSA 1978 (being Laws 1963,
3 Chapter 92, Section 16, as amended) is amended to read:

4 "61-9-17. DRUGS-- ~~[MEDICINES]~~ LIMITATIONS-- PRESCRIBING
5 PSYCHOLOGISTS. -- ~~[Nothing in the Professional Psychologist Act~~
6 ~~shall be construed as permitting]~~

7 A. Except as provided in Subsection B of this
8 section, psychologists or psychologist associates [licensed
9 under the Professional Psychologist Act to] shall not
10 administer or prescribe drugs or medicine or in any manner
11 engage in the practice of medicine as defined by the laws of
12 this state.

13 B. Prescribing psychologists may administer and
14 prescribe psychotropic medication within the recognized scope
15 of the profession, including the ordering and review of
16 laboratory tests in conjunction with the prescription, for the
17 treatment of mental disorders.

18 C. When prescribing psychotropic medication for a
19 patient, the prescribing psychologist shall maintain an
20 ongoing collaborative relationship with the health care
21 practitioner who oversees the patient's general medical care
22 to ensure that necessary medical examinations are conducted,
23 the psychotropic medication is appropriate for the patient's
24 medical condition and significant changes in the patient's
25 medical or psychological condition is discussed. If the

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1 patient does not have a health care practitioner, the
2 prescribing psychologist shall refer the patient to a health
3 care practitioner for a physical assessment prior to
4 prescribing psychotropic medication. If the prescribing
5 psychologist and the health care practitioner cannot agree on
6 an appropriate psychotropic medication regimen that meets the
7 patient's physical and psychological needs, the prescribing
8 psychologist shall not prescribe for the patient.

9 D. For the purpose of this section:

10 (1) "collaborative relationship" means a
11 cooperative working relationship between a prescribing
12 psychologist and a health care practitioner in the provision
13 of patient care, including diagnosis and cooperation in the
14 management and delivery of physical and mental health care;
15 and

16 (2) "health care practitioner" means a
17 physician, osteopathic physician or nurse practitioner."

18 Section 8. A new section of the Professional
19 Psychologist Act is enacted to read:

20 "[NEW MATERIAL] PRESCRIBING PSYCHOLOGISTS--
21 CERTIFICATION-- APPLICATION-- RENEWAL-- DENIAL, SUSPENSION OR
22 REVOCATION. --

23 A. The board may adopt and promulgate rules for
24 the certification of prescribing psychologists to prescribe
25 and dispense psychotropic medication, order laboratory tests

1 and perform examinations as needed for the safe administration
2 of psychotropic medication. The rules shall include the
3 following requirements:

4 (1) successful completion of pharmacological
5 training from an institution of higher education approved by
6 the board or from a provider of continuing education approved
7 by the board; and

8 (2) passage of a national certification
9 examination approved by the board that tests the applicant's
10 knowledge of pharmacology in the diagnosis, care and treatment
11 of mental disorders.

12 B. A psychologist who applies for certification as
13 a prescribing psychologist shall demonstrate by evidence
14 satisfactory to the board that the applicant:

15 (1) has completed a doctoral program in
16 psychology from an accredited institution of higher education
17 or professional school or, if the program was not accredited
18 at the time of graduation by the applicant, the program meets
19 recognized acceptable professional standards as determined by
20 the board;

21 (2) holds a current license to practice
22 psychology in New Mexico;

23 (3) has completed an organized program of
24 education of intensive didactic instruction of no fewer than
25 three hundred credit hours in psychopharmacology as defined by

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1 the board within five years immediately preceding the date of
2 application, which program consisted of at least the following
3 core areas of instruction:

- 4 (a) neuroscience;
- 5 (b) pharmacology;
- 6 (c) psychopharmacology;
- 7 (d) physiology;
- 8 (e) pathophysiology;
- 9 (f) appropriate and relevant physical

10 and laboratory assessment; and

- 11 (g) clinical pharmacotherapeutics;

12 (4) has completed, within five years
13 immediately preceding the date of application, supervised and
14 relevant clinical experience of no less than an eighty-hour
15 practicum in clinical assessment and pathophysiology and an
16 additional practicum of at least four hundred hours treating
17 no less than one hundred patients with mental disorders as
18 defined by the board under the direction of qualified health
19 care practitioners as determined by the board sufficient to
20 attain competency in the treatment of a diverse patient
21 population;

22 (5) has passed a certifying examination
23 approved by the board; and

24 (6) shows satisfactory evidence of
25 malpractice insurance.

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1 C. The board may waive the coursework for an
2 applicant who has comparable prescriptive authority under
3 another license or who has completed the department of defense
4 psychopharmacology demonstration project.

5 D. The board shall provide by rule for the method
6 of certification as a prescribing psychologist at the time of
7 or in conjunction with the renewal of licenses. The rule
8 shall provide continuing education requirements of no fewer
9 than twenty hours each year for prescribing psychologists.

10 E. The board shall provide by rule the grounds
11 upon which certification may be denied, suspended or revoked,
12 including failure to maintain malpractice insurance.
13 Suspension or revocation of a certificate may result in the
14 suspension or revocation of a license to practice psychology,
15 as determined by the board. Denial, suspension or revocation,
16 shall be in accordance with the Uniform Licensing Act. "

17 Section 9. A new section of the Professional
18 Psychologist Act is enacted to read:

19 "[NEW MATERIAL] PRESCRIBING PRACTICES. --

20 A. A prescription written by a prescribing
21 psychologist shall:

22 (1) comply with applicable state and federal
23 laws;

24 (2) be identified as issued by the
25 psychologist as "psychologist certified to prescribe"; and

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1 (3) include the prescribing psychologist's
2 board-assigned identification number.

3 B. A prescribing psychologist shall not delegate
4 prescriptive authority to any other person. Records of all
5 prescriptions shall be maintained in patient records.

6 C. When authorized to prescribe controlled
7 substances, a prescribing psychologist shall file with the
8 board in a timely manner all individual federal drug
9 enforcement agency registrations and numbers. The board shall
10 maintain current records on every prescribing psychologist,
11 including federal registrations and numbers.

12 D. The board shall provide to the board of
13 pharmacy an annual list of prescribing psychologists that
14 contains the information agreed upon. The board shall
15 promptly notify the board of pharmacy of prescribing
16 psychologists who are added or deleted from the list."

17 Section 10. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2001.