

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 900

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

INTRODUCED BY

Ron Godbey

AN ACT

RELATING TO HEALTH CARE; ADDING DEFINITIONS; CLARIFYING BOARD POWERS; CLARIFYING LICENSE AND RENEWAL REQUIREMENTS; PROVIDING PENALTIES; PROVIDING FOR TRAINING LICENSES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS.

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

Section 1. Section 61-10-1 NMSA 1978 (being Laws 1933, Chapter 117, Section 1, as amended) is amended to read:

"61-10-1. ~~[DEFINITION]~~ DEFINITIONS. -- [~~"Osteopathic medicine and surgery"~~] As used in [~~Sections 67-8-1 through 67-8-18 NMSA 1953 is the name of that complete system or school of medicine and surgery governed by this act~~] Chapter 61, Article 10 NMSA 1978:

A. "board" means the board of osteopathic medical examiners; and

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1                    B. "osteopathic medicine and surgery" means that  
2                    complete science system or school of medicine and surgery  
3                    regulated pursuant to Chapter 61, Article 10 NMSA 1978. "

4                    Section 2. Section 61-10-5 NMSA 1978 (being Laws 1933,  
5                    Chapter 117, Section 4, as amended) is amended to read:

6                    "61-10-5. BOARD OF EXAMINERS-- APPOINTMENT-- TERMS--  
7                    MEETINGS-- MEMBERSHIP-- ~~[EXAMINATIONS]~~ DUTIES AND POWERS. --

8                    A. There is created the "board of osteopathic  
9                    medical examiners". The board consists of five members  
10                    appointed by the governor; three members shall be regularly  
11                    licensed osteopathic physicians in good standing in New  
12                    Mexico, who have been so engaged for a period of at least two  
13                    years immediately prior to their appointment and who are  
14                    possessed of all the qualifications for applicants for  
15                    licensure specified in Section 61-10-8 NMSA 1978, and two  
16                    members shall represent the public. The public members of the  
17                    board shall not have been licensed as osteopathic physicians,  
18                    nor shall the public members have any significant financial  
19                    interest, direct or indirect, in the occupation regulated.

20                    B. Board members' terms shall be for five years.  
21                    The vacancy of the term of any member shall be filled by  
22                    appointment by the governor to the unexpired portion of the  
23                    five-year term. A board member whose term has expired shall  
24                    serve until his successor is appointed.

25                    C. The board shall ~~[meet during the first quarter~~

underscored material = new  
[bracketed material] = delete

1 ~~of the fiscal]~~ hold four meetings each year and at the first  
2 meeting shall elect officers for the ensuing fiscal year. The  
3 board shall elect a president and a secretary-treasurer, and  
4 the president shall preside over meetings of the board. The  
5 board may hold other special meetings as it deems necessary.  
6 A majority of the members of the board constitutes a quorum.  
7 Actions by the board require a majority vote of a quorum.

8 D. The board shall have and use a common seal and  
9 is authorized to make and adopt all necessary rules and  
10 regulations relating to the enforcement of the provisions of  
11 Chapter 61, Article 10 NMSA 1978.

12 E. [~~Examinations shall be made~~] The board shall  
13 conduct a personal interview of each applicant for licensure.  
14 The board shall schedule time periods for interviewing at  
15 least twice a year at [the] a time and place fixed by the  
16 board. All applicants shall be given prior written notice of  
17 [~~examinations at a reasonable prior date~~] the personal  
18 interview.

19 F. Members of the board shall be reimbursed as  
20 provided in the Per Diem and Mileage Act, but shall receive no  
21 other compensation, perquisite or allowance, for each day  
22 necessarily spent in the discharge of their duties.

23 G. [~~Any~~] A board member failing to attend three  
24 consecutive meetings, either regular or special, shall  
25 automatically be removed as a member of the board unless

underscored material = new  
[bracketed material] = delete

1 excused from attendance by the board for good cause.

2 H. The board may establish committees to carry out  
3 board business. Members of committees appointed by the board  
4 shall be paid pursuant to the Per Diem and Mileage Act and  
5 shall receive no other compensation, perquisite or allowance.

6 I. The board may hire or contract with  
7 investigators to investigate possible violations of Chapter  
8 61, Article 10 NMSA 1978.

9 J. The board may hire an attorney or contract for  
10 legal services for advice and counsel relating to a matter  
11 connected with the duties of the board, to represent the board  
12 in a legal proceeding or to aid in the enforcement of the  
13 provisions of Chapter 61, Article 10 NMSA 1978 and may fix the  
14 compensation to be paid; provided that the compensation shall  
15 be expended from the funds of the board.

16 K. The board may issue investigative subpoenas for  
17 the purpose of investigating complaints against osteopathic  
18 physicians or osteopathic physician assistants licensed  
19 pursuant to Chapter 61, Article 10 NMSA 1978. Board-issued  
20 subpoenas shall be enforced by the district courts."

21 Section 3. Section 61-10-6 NMSA 1978 (being Laws 1933,  
22 Chapter 117, Section 5, as amended) is amended to read:

23 "61-10-6. APPLICANTS--REQUIREMENTS.--~~Each~~ An applicant  
24 for a license to practice osteopathic medicine and surgery, as  
25 provided in Chapter 61, Article 10 NMSA 1978, shall ~~comply~~

underscored material = new  
[bracketed material] = delete

1 ~~with the following requirements]:~~

2 A. make application for examination on blank forms  
3 prepared and furnished by the board;

4 B. submit evidence verified on oath and  
5 satisfactory to the board that the applicant has reached the  
6 age of majority, is of good moral character and is a graduate  
7 of a college of osteopathic medicine and surgery accredited by  
8 the American osteopathic association; ~~[and]~~

9 C. pay appropriate fees as provided in Section  
10 61-10-6.1 NMSA 1978;

11 D. receive a passing score on an examination  
12 administered or approved by the board and meeting the  
13 requirements as provided in Section 61-10-10 NMSA 1978; and

14 E. when notified, appear before the board for a  
15 personal interview. "

16 Section 4. Section 61-10-6.1 NMSA 1978 (being Laws 1989,  
17 Chapter 371, Section 3) is amended to read:

18 "61-10-6.1. FEES. --

19 A. The board may charge the following fees:

20 [~~A.-~~] (1) an examination fee equal to the cost  
21 of purchasing the examination plus an administration fee not  
22 to exceed fifty percent of the examination fee;

23 [~~B.-~~] (2) an application fee not to exceed  
24 five hundred dollars (\$500) for licensure by examination;

25 [~~C.-~~] (3) an application fee not to exceed

136401.1

underscored material = new  
[bracketed material] = delete

1 five hundred dollars (\$500) for licensure pursuant to Section  
2 61-10-12 NMSA 1978;

3 [~~D.—an annual~~] (4) a triennial renewal fee  
4 not to exceed [~~two hundred dollars (\$200)~~] eight hundred fifty  
5 dollars (\$850);

6 [~~E.~~] (5) an interim license fee not to exceed  
7 two hundred dollars (\$200);

8 [~~F.~~] (6) a late renewal fee not to exceed two  
9 hundred dollars (\$200) for [~~applicants who fail~~] licensees  
10 failing to [register] renew their licenses on or before July 1  
11 [~~of each year~~] of the licensee's renewal year;

12 [~~G.~~] (7) a reinstatement fee not to exceed  
13 [~~five hundred dollars (\$500)~~] eight hundred fifty dollars  
14 (\$850) for reinstatement of a revoked, suspended or inactive  
15 license;

16 [~~H.~~] (8) a reasonable administrative fee for  
17 verification of license, publications and copying charges;  
18 [~~and~~]

19 [~~I.~~] (9) an impaired physician fee not to  
20 exceed one hundred dollars (\$100); and

21 (10) a post-graduate training license fee not  
22 to exceed two hundred dollars (\$200).

23 B. All fees are nonrefundable and shall be used by  
24 the board to carry out its duties. "

25 Section 5. Section 61-10-10 NMSA 1978 (being Laws 1933,  
136401. 1

underscored material = new  
[bracketed material] = delete

1 Chapter 117, Section 8, as amended) is amended to read:

2 "61-10-10. EXAMINATION. --

3 A. The board may administer a board-approved  
4 licensing examination [of] to those who desire a license to  
5 practice [under this act shall embrace those general subjects  
6 and topics including:

- 7 1. ~~anatomy;~~
- 8 2. ~~chemistry;~~
- 9 3. ~~physiology;~~
- 10 4. ~~pathology;~~
- 11 5. ~~preventive medicine;~~
- 12 6. ~~diagnosis;~~
- 13 7. ~~toxicology;~~
- 14 8. ~~therapeutics;~~
- 15 9. ~~surgery;~~
- 16 10. ~~gynecology;~~
- 17 11. ~~obstetrics;~~
- 18 12. ~~medical jurisprudence;~~
- 19 13. ~~practice of osteopathic medicine; and]~~

20 osteopathic medicine and surgery pursuant to Chapter 61,  
21 Article 10 NMSA 1978.

22 B. Examinations for licensure shall be approved by  
23 the board and the board shall determine a score constituting  
24 successful passing of the examination. Testing in the  
25 practice of osteopathic medicine, a knowledge of which is

underscored material = new  
[bracketed material] = delete

1 commonly and generally required of candidates for the degree  
2 of doctor of osteopathic medicine by a standard osteopathic  
3 college in the United States, is required.

4 C. The board may accept for licensure in this  
5 state an applicant's successful completion of an examination  
6 administered in this or another state; provided the applicant  
7 shall provide the board with proof of achieving a passing  
8 score as approved by the board administering the examination."

9 Section 6. Section 61-10-11 NMSA 1978 (being Laws 1933,  
10 Chapter 117, Section 9, as amended) is amended to read:

11 "61-10-11. LICENSE ISSUED. -- ~~[Each]~~ An applicant for a  
12 license to practice osteopathic medicine and surgery as  
13 provided in Chapter 61, Article 10 NMSA 1978 who ~~[successfully]~~  
14 successfully passes the examination ~~[shall]~~ as provided in  
15 Section 61-10-10 NMSA 1978 and meets all other requirements  
16 provided in Section 61-10-6 NMSA 1978 may be entitled to a  
17 license ~~[which]~~ that carries with it the title doctor and  
18 physician with the right to practice as taught and practiced  
19 in the standard colleges of osteopathic medicine and surgery."

20 Section 7. A new Section 61-10-11.1 NMSA 1978 is enacted  
21 to read:

22 "61-10-11.1. [NEW MATERIAL] POST-GRADUATE TRAINING  
23 LICENSE. --

24 A. The board may grant a post-graduate training  
25 license to an intern, resident or fellow appointed in a

136401.1



underscored material = new  
[bracketed material] = delete

1 training program accredited and approved by the board. A  
2 post-graduate training license is a restricted license  
3 allowing the licensee to serve in the assigned rotation and  
4 perform the assigned duties in the internship or residency  
5 training program.

6 B. An applicant for a post-graduate training  
7 license shall submit an application and request for a license  
8 through a post-graduate training program.

9 C. The post-graduate training license shall be  
10 renewed annually by the licensee and shall be renewable for a  
11 period not to exceed eight years or shall expire on the date  
12 the licensee completes the internship or residency training  
13 program, whichever occurs first.

14 D. An applicant for a post-graduate training  
15 license shall pay the fees as provided in Section 61-10-6.1  
16 NMSA 1978.

17 E. The board may require an applicant for a post-  
18 graduate training license to appear before the board or a  
19 designated member of the board for an interview. "

20 Section 8. Section 61-10-15 NMSA 1978 (being Laws 1933,  
21 Chapter 117, Section 13, as amended) is amended to read:

22 "61-10-15. REFUSAL, [AND] REVOCATION, SUSPENSION OR  
23 DISCIPLINE OF LICENSE. --

24 A. The board [~~of osteopathic medical examiners~~]  
25 may [~~either~~] refuse to issue or may suspend [~~or~~], revoke [~~any~~

underscored material = new  
[bracketed material] = delete

1 license] or discipline a license pursuant to the provisions of  
2 the Uniform Licensing Act for [~~any one or any combination of~~]  
3 the following [~~causes~~]:

4 [A-] (1) conviction of a felony, as shown by  
5 a certified copy of the record of the court of conviction;

6 [B-] (2) the obtaining of or an attempt to  
7 obtain a license or renewal of a license or the practice in  
8 the profession for money or any other thing of value by  
9 fraudulent misrepresentation;

10 [C-~~gross~~] (3) malpractice or gross  
11 negligence in the practice of osteopathic medicine and  
12 surgery;

13 [D-] (4) advertising, practicing or  
14 attempting to practice under a misleading or deceptive name or  
15 a name other than one's own;

16 [E-] (5) advertising or soliciting patients  
17 by means of knowingly false, misleading or deceptive  
18 statements or making false, misleading or deceptive statements  
19 in communications with patients or potential patients;

20 [F-~~habitual drunkenness or habitual addiction to~~]  
21 (6) the inappropriate or illegal use of  
22 [~~morphine, cocaine or other habit-forming~~] drugs or alcohol;  
23 [or

24 G-~~immoral, dishonorable or unprofessional~~]

25 (7) conduct likely to deceive, defraud or

underscored material = new  
[bracketed material] = delete

1 harm the public;

2 (8) suspension, revocation or disciplinary  
3 action of the physician's license to practice osteopathic  
4 medicine and surgery in another state;

5 (9) failure to report to the board an action  
6 taken against the osteopathic physician's license in another  
7 state by a board, peer review body, health care entity,  
8 medical society, association, law enforcement or government  
9 agency;

10 (10) failure to adequately supervise a  
11 medical or surgical assistant, technician or professional  
12 licensee who renders medical care under the supervision of the  
13 osteopathic physician;

14 (11) engaging in sexual contact or sexual  
15 penetration with a patient; or

16 (12) conduct that is unbecoming, immoral,  
17 unprofessional or dishonorable.

18 B. The board may [~~neither~~] not refuse to issue,  
19 [~~nor to~~] refuse to renew, [~~nor~~] suspend [~~nor~~], revoke [~~any~~] or  
20 discipline a license, [~~however, for any of these causes~~]  
21 unless the person accused [~~has been~~] is given at least twenty  
22 days' notice in writing of the charge against him and a public  
23 hearing by the board [~~of osteopathic medical examiners~~] is  
24 held with right of review of the board's decision by the  
25 district court of the first judicial district by certiorari on

136401. 1

underscored material = new  
[bracketed material] = delete

1 petition of the party against whom the board's decision is  
2 rendered.

3 C. The board [~~of osteopathic medical examiners~~]  
4 shall have the power to compel the attendance of witnesses and  
5 the production of relevant books and papers for the  
6 investigation of matters that may come before [~~them and~~] it.  
7 The presiding officer of [~~said~~] the board may administer the  
8 requisite oaths, and [~~said~~] the board shall have the same  
9 authority to compel the giving of testimony as is conferred on  
10 courts of justice. "

11 Section 9. Section 61-10-16 NMSA 1978 (being Laws 1933,  
12 Chapter 117, Section 14, as amended) is amended to read:

13 "61-10-16. PENALTIES. -- [~~Each~~] A person who commits one  
14 of the following acts [constitutes a misdemeanor punishable  
15 upon conviction by a fine of not less than twenty-five dollars  
16 (\$25.00) nor more than two hundred dollars (\$200)] is guilty  
17 of a fourth degree felony and shall be sentenced in accordance  
18 with the provisions of Section 31-18-15 NMSA 1978:

19 A. the practice of osteopathic medicine or surgery  
20 or an attempt to practice osteopathic medicine or surgery  
21 without a license;

22 B. the obtaining of or attempting to obtain a  
23 license or the practice [in the profession] of osteopathic  
24 medicine or surgery for money or any other [things] thing of  
25 value by fraudulent misrepresentation;

136401. 1

underscored material = new  
[bracketed material] = delete

1 C. the making of ~~[any wilfully]~~ a willfully false  
2 oath or affirmation when an oath or affirmation is required by  
3 ~~[this act]~~ Chapter 61, Article 10 NMSA 1978; or

4 D. advertising, practicing or attempting to  
5 practice osteopathic medicine or surgery under a name other  
6 than ~~[one's]~~ his own. "

7 Section 10. Section 61-10-19 NMSA 1978 (being Laws 1971,  
8 Chapter 140, Section 1, as amended) is amended to read:

9 "61-10-19. ~~[ANNUAL]~~ RENEWAL OF LICENSE--CERTIFICATE--  
10 FEE. --

11 A. ~~[All persons legally]~~ A person licensed to  
12 practice osteopathic medicine and surgery ~~[in this state]~~  
13 pursuant to Chapter 61, Article 10 NMSA 1978 shall, on or  
14 before July 1 of ~~[each]~~ the licensee's renewal year, submit  
15 proof of completion of continuing education requirements as  
16 required by the board and pay to ~~[the secretary of]~~ the board  
17 ~~[an annual]~~ a renewal fee as provided in Section 61-10-6.1  
18 NMSA 1978 ~~[for the renewal of his license to practice~~  
19 ~~osteopathic medicine and surgery]~~. Upon payment of fees and  
20 proof of completion of continuing education requirements, the  
21 board shall issue the licensee a certificate of ~~[annual]~~  
22 renewal of license.

23 B. ~~[The secretary of]~~ The board shall send a  
24 written notice to ~~[every person holding a legal certificate to~~  
25 ~~practice osteopathic medicine in this state]~~ a licensee at

136401. 1

underscored material = new  
[bracketed material] = delete

1 least thirty days prior to July 1 of ~~[each]~~ the licensee's  
2 renewal year, directed to the last known address of the  
3 licensee, and notify him ~~[that it will be necessary for him to~~  
4 ~~pay the annual]~~ of the renewal date and renewal fee. Proper  
5 renewal forms shall accompany the notice, and the licensee  
6 shall make application for the renewal of his ~~[certificate]~~  
7 license on ~~[these]~~ those forms. ~~[The fact that a practitioner~~  
8 ~~has not received his blank]~~ Failure of a licensee to receive a  
9 renewal form from the board shall not ~~[however]~~ relieve him of  
10 the duty to ~~[register]~~ renew his license on or before July 1  
11 of his renewal year nor shall the board's failure to mail the  
12 forms ~~[operate to]~~ exempt ~~[him]~~ the licensee from the  
13 penalties for nonrenewal or late renewal provided in Chapter  
14 61, Article 10 NMSA 1978. "

15 Section 11. Section 61-10-21 NMSA 1978 (being Laws 1945,  
16 Chapter 79, Section 7, as amended) is amended to read:

17 "61-10-21. FAILURE TO COMPLY-- CANCELLATION OF LICENSE--  
18 REINSTATEMENT-- TEMPORARY CANCELLATION AT LICENSEE' S REQUEST. --

19 A. ~~[In the event any]~~ If a licensee fails to  
20 comply with the renewal requirements ~~[of]~~ provided in Section  
21 61-10-19 NMSA 1978, he shall, upon order of the board ~~[of~~  
22 ~~osteopathic medical examiners]~~, forfeit his right to practice  
23 osteopathic medicine and surgery ~~[in this state]~~, and his  
24 license and certificate shall be canceled; provided, however,  
25 that ~~[the secretary of]~~ the board may reinstate ~~[him]~~ his

136401. 1

underscored material = new  
[bracketed material] = delete

1 license upon the payment of all fees due and upon the  
2 presentation of satisfactory ~~[evidence]~~ proof of the  
3 ~~[attendance at an educational program]~~ licensee's completion  
4 of continuing education requirements as provided ~~[for]~~ in  
5 Chapter 61, Article 10 NMSA 1978.

6 B. ~~[It is further provided that any]~~ A person  
7 licensed to practice osteopathic medicine and surgery ~~[in New~~  
8 ~~Mexico]~~ desiring to withdraw from ~~[the]~~ active practice ~~[of~~  
9 ~~his profession in this state shall have the right to]~~ may  
10 apply to the ~~[secretary of the]~~ board ~~[of osteopathic medical~~  
11 ~~examiners]~~ for a temporary suspension of his ~~[certificate to~~  
12 ~~practice osteopathic medicine in this state]~~ license with the  
13 right to renew and reinstate his ~~[certificate if he so~~  
14 ~~desires]~~ license upon a showing that he has paid the  
15 appropriate fees on or before July 1 of ~~[each]~~ the  
16 reinstatement year. "