

underscored material = new  
[bracketed material] = delete

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

SENATE BILL 90

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Mary Kay Papen and Sander Rue

AN ACT

RELATING TO HEALTH CARE; UPDATING PROVISIONS OF THE  
PROFESSIONAL PSYCHOLOGIST ACT RELATING TO PRESCRIBING  
PSYCHOLOGISTS AND PSYCHOLOGISTS WITH A CONDITIONAL PRESCRIPTION  
CERTIFICATE; DECLARING AN EMERGENCY.

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

**SECTION 1.** Section 61-9-3 NMSA 1978 (being Laws 1963,  
Chapter 92, Section 3, as amended) is amended to read:

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

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

B. "conditional prescription certificate" means a  
document issued by the board to a licensed psychologist that  
permits the holder to prescribe psychotropic medication under

underscored material = new  
[bracketed material] = delete

1 the supervision of a [~~licensed physician~~] supervising clinician  
2 pursuant to the Professional Psychologist Act;

3 C. "independently licensed prescribing clinician"  
4 means a physician, osteopathic physician, nurse practitioner,  
5 psychiatric nurse practitioner, clinical nurse specialist or  
6 prescribing psychologist;

7 [~~G.~~] D. "person" includes an individual, firm,  
8 partnership, association or corporation;

9 [~~D.~~] E. "prescribing psychologist" means a licensed  
10 psychologist who holds a valid prescription certificate;

11 [~~E.~~] F. "prescription certificate" means a document  
12 issued by the board to a licensed psychologist that permits the  
13 holder to prescribe psychotropic medication pursuant to the  
14 Professional Psychologist Act;

15 [~~F.~~] G. "psychotropic medication" means a  
16 controlled substance or dangerous drug that may not be  
17 dispensed or administered without a prescription and whose  
18 primary indication for use has been approved by the federal  
19 food and drug administration for the treatment of mental  
20 disorders [~~and~~] or is listed as a psychotherapeutic agent in  
21 Drug Facts and Comparisons 2016, or the most recent edition of  
22 that book, or in the American hospital formulary service;

23 [~~G.~~] H. "psychologist" means a person who engages  
24 in the practice of psychology or holds [~~himself~~] the person's  
25 self out to the public by any title or description of services

.205117.5

underscoring material = new  
~~[bracketed material] = delete~~

1 representing [~~himself~~] the person as a psychologist, which  
2 incorporates the words "psychological", "psychologist",  
3 "psychology", or when a person describes [~~himself~~] the person's  
4 own self as above and, under such title or description, offers  
5 to render or renders services involving the application of  
6 principles, methods and procedures of the science and  
7 profession of psychology to persons for compensation or other  
8 personal gain;

9           [~~H-~~] I. "practice of psychology" means the  
10 observation, description, evaluation, interpretation and  
11 modification of human behavior by the application of  
12 psychological principles, methods and procedures for the  
13 purpose of preventing or eliminating symptomatic, maladaptive  
14 or undesired behavior and of enhancing interpersonal  
15 relationships, work and life adjustment, personal  
16 effectiveness, behavioral health and mental health, and further  
17 means the rendering of such psychological services to  
18 individuals, families or groups regardless of whether payment  
19 is received for services rendered. The practice of psychology  
20 includes psychological testing or neuropsychological testing  
21 and the evaluation or assessment of personal characteristics  
22 such as intelligence, personality, abilities, interests,  
23 aptitudes and neuropsychological functioning; counseling,  
24 psychoanalysis, psychotherapy, hypnosis, biofeedback, behavior  
25 analysis and therapy; diagnosis and treatment of [~~any~~] a mental

.205117.5

underscored material = new  
[bracketed material] = delete

1 and emotional disorder or disability, alcoholism and substance  
2 abuse, disorders of habit or conduct and the psychological  
3 aspects of physical illness, accident, injury and disability;  
4 and psychoeducational evaluation, therapy, remediation and  
5 consultation; [~~and~~

6 ~~F.]~~ J. "school" or "college" means a university or  
7 other institution of higher education that is regionally  
8 accredited and that offers a full-time graduate course of study  
9 in psychology as defined by rule of the board or that is  
10 approved by the American psychological association; and

11 K. "supervising clinician" means a licensed  
12 physician, osteopathic physician, psychiatric nurse  
13 practitioner, clinical nurse specialist or prescribing  
14 psychologist who is supervising a psychologist in the  
15 prescribing of psychotropic medication."

16 SECTION 2. Section 61-9-10 NMSA 1978 (being Laws 1963,  
17 Chapter 92, Section 9, as amended) is amended to read:

18 "61-9-10. LICENSURE OF PSYCHOLOGISTS FROM OTHER AREAS--  
19 RECIPROCITY.--Subject to the provisions of Section 61-9-10.1  
20 NMSA 1978, upon application accompanied by a fee as required by  
21 the Professional Psychologist Act, the board may, without  
22 written or oral examination, issue a license to a person who  
23 furnishes, upon a form and in such manner as the board  
24 prescribes, evidence satisfactory to the board that the person  
25 has been licensed or certified as a psychologist or prescribing

.205117.5

underscored material = new  
[bracketed material] = delete

1 psychologist by another state, a territorial possession of the  
2 United States, the District of Columbia or another country for  
3 a minimum of five years. An applicant seeking reciprocity  
4 shall demonstrate to the satisfaction of the board that the  
5 training and education received by the applicant is equivalent  
6 to the requirements for a doctoral degree in psychology as  
7 provided in the Professional Psychologist Act."

8 SECTION 3. Section 61-9-13 NMSA 1978 (being Laws 1963,  
9 Chapter 92, Section 12, as amended) is amended to read:

10 "61-9-13. DENIAL, REVOCATION OR SUSPENSION OF LICENSE.--

11 A. The board, by an affirmative vote of at least  
12 five of its eight members, shall withhold, deny, revoke or  
13 suspend a psychologist or psychologist associate license issued  
14 or applied for in accordance with the provisions of the  
15 Professional Psychologist Act or otherwise discipline a  
16 licensed psychologist or psychologist associate upon proof that  
17 the applicant, licensed psychologist or psychologist associate:

18 (1) has been convicted of a felony or an  
19 offense involving moral turpitude, the record of conviction  
20 being conclusive evidence thereof;

21 (2) is using a drug, substance or alcoholic  
22 beverage to an extent or in a manner dangerous to the  
23 psychologist or psychologist associate, any other person or the  
24 public or to an extent that the use impairs the psychologist's  
25 or psychologist associate's ability to perform the work of a

.205117.5

1 professional psychologist or psychologist associate with safety  
2 to the public;

3 (3) has impersonated another person holding a  
4 psychologist or psychologist associate license or allowed  
5 another person to use the psychologist's or psychologist  
6 associate's license;

7 (4) has used fraud or deception in applying  
8 for a license or in taking an examination provided for in the  
9 Professional Psychologist Act;

10 (5) has accepted commissions or rebates or  
11 other forms of remuneration for referring clients to other  
12 professional persons;

13 (6) has allowed the psychologist's or  
14 psychologist associate's name or license issued under the  
15 Professional Psychologist Act to be used in connection with a  
16 person who performs psychological services outside of the area  
17 of that person's training, experience or competence;

18 (7) is legally adjudicated insane or mentally  
19 incompetent, the record of such adjudication being conclusive  
20 evidence thereof;

21 (8) has willfully or negligently violated the  
22 provisions of the Professional Psychologist Act;

23 (9) has violated any code of conduct adopted  
24 by the board;

25 (10) has been disciplined by another state for

underscoring material = new  
~~[bracketed material] = delete~~

1 acts similar to acts described in this subsection, and a  
2 certified copy of the record of discipline of the state  
3 imposing the discipline is conclusive evidence;

4 (11) is incompetent to practice psychology;

5 (12) has failed to furnish to the board or its  
6 representative information requested by the board;

7 (13) has abandoned patients or clients;

8 (14) has failed to report to the board adverse  
9 action taken against the licensee by:

10 (a) another licensing jurisdiction;

11 (b) a professional psychologist  
12 association of which the psychologist or psychologist associate  
13 is or has been a member;

14 (c) a government agency; or

15 (d) a court for actions or conduct  
16 similar to acts or conduct that would constitute grounds for  
17 action as described in this subsection;

18 (15) has failed to report to the board  
19 surrender of a license or other authorization to practice  
20 psychology in another jurisdiction or surrender of membership  
21 on a health care staff or in a professional association  
22 following, in lieu of or while under a disciplinary  
23 investigation by any of those authorities for acts or conduct  
24 that would constitute grounds for action as defined in this  
25 subsection;

.205117.5

underscored material = new  
[bracketed material] = delete

1 (16) has failed to adequately supervise a  
2 psychologist associate or a licensed psychologist holding a  
3 conditional prescription certificate;

4 (17) has employed abusive billing practices;  
5 or

6 (18) has aided or abetted the practice of  
7 psychology by a person not licensed by the board.

8 B. A person who has been refused a license or whose  
9 license has been restricted or suspended under the provisions  
10 of this section may reapply for licensure after more than two  
11 years have elapsed from the date the restriction or suspension  
12 is terminated."

13 SECTION 4. Section 61-9-17 NMSA 1978 (being Laws 1963,  
14 Chapter 92, Section 16, as amended) is amended to read:

15 "61-9-17. DRUGS--MEDICINES.--

16 A. Except as provided in Subsections B and C of  
17 this section, psychologists or psychologist associates shall  
18 not administer or prescribe drugs or medicine or in any manner  
19 engage in the practice of medicine as defined by the laws of  
20 this state.

21 B. A licensed psychologist holding a conditional  
22 prescription certificate may prescribe psychotropic medication  
23 under the supervision of a [~~licensed physician~~] supervising  
24 clinician pursuant to the Professional Psychologist Act.

25 C. A prescribing psychologist may prescribe



underscored material = new  
[bracketed material] = delete

1 psychotropic medication pursuant to the Professional  
2 Psychologist Act."

3 SECTION 5. Section 61-9-17.1 NMSA 1978 (being Laws 2002,  
4 Chapter 100, Section 6) is amended to read:

5 "61-9-17.1. CONDITIONAL PRESCRIPTION CERTIFICATE--  
6 PRESCRIPTION CERTIFICATE--APPLICATION--REQUIREMENTS--RULEMAKING  
7 BY BOARD--ISSUANCE, DENIAL, RENEWAL AND REVOCATION OF  
8 CERTIFICATION.--

9 A. A psychologist may apply to the board for a  
10 conditional prescription certificate. The application shall be  
11 made on a form approved by the board and be accompanied by  
12 evidence satisfactory to the board that the applicant:

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

19 (2) holds a current license to practice  
20 psychology in New Mexico;

21 (3) has successfully completed pharmacological  
22 training from an institution of higher education approved by  
23 the board and the New Mexico medical board [~~of medical~~  
24 ~~examiners~~] or from a provider of continuing education approved  
25 by the board and the New Mexico medical board [~~of medical~~

.205117.5

underscored material = new  
[bracketed material] = delete

1 ~~examiners~~];

2 (4) has passed a national certification  
3 examination approved by the board and the New Mexico medical  
4 board [~~of medical examiners~~] that tests the applicant's  
5 knowledge of pharmacology in the diagnosis, care and treatment  
6 of mental disorders;

7 (5) within the five years immediately  
8 preceding the date of application, has successfully completed  
9 either:

10 (a) an organized program of education  
11 approved by the board and the New Mexico medical board [~~of~~  
12 ~~medical examiners~~] and consisting of didactic instruction of no  
13 fewer than four hundred fifty classroom hours in at least the  
14 following core areas of instruction: [~~(a)~~] 1) neuroscience;  
15 [~~(b)~~] 2) pharmacology; [~~(c)~~] 3) psychopharmacology; [~~(d)~~] 4)  
16 physiology; [~~(e)~~] 5) pathophysiology; [~~(f)~~] 6) appropriate and  
17 relevant physical and laboratory assessment; and [~~(g)~~] 7)  
18 clinical pharmacotherapeutics; or

19 (b) a training program in  
20 psychopharmacology designated by a national psychology  
21 association approved by the board;

22 (6) within the five years immediately  
23 preceding the date of application, has been certified by each  
24 of the applicant's supervising [~~psychiatrist or physician~~]  
25 independently licensed prescribing clinicians as having

.205117.5

underscored material = new  
[bracketed material] = delete

1 successfully completed a supervised and relevant clinical  
2 experience, approved by the board and the New Mexico medical  
3 board [~~of medical examiners~~], of:

4 (a) no less than an eighty-hour  
5 practicum in clinical assessment and pathophysiology under the  
6 supervision of a licensed physician, osteopathic physician,  
7 nurse practitioner or clinical nurse specialist; and

8 (b) an additional supervised practicum  
9 of at least four hundred hours treating no fewer than one  
10 hundred patients with mental disorders, the practica to have  
11 been supervised by any one or a combination of a psychiatrist  
12 or other appropriately trained physician, osteopathic  
13 physician, psychiatric nurse practitioner, clinical nurse  
14 specialist or prescribing psychologist and determined by the  
15 board and the New Mexico medical board [~~of medical examiners~~]  
16 to be sufficient to competently train the applicant in the  
17 treatment of a diverse patient population. One-to-one  
18 supervision shall be provided either face-to-face,  
19 telephonically or by video conference;

20 (7) has malpractice insurance in place,  
21 sufficient to satisfy the rules adopted by the board and the  
22 New Mexico medical board [~~of medical examiners~~], that will  
23 cover the applicant during the period the conditional  
24 prescription certificate is in effect; and

25 (8) meets all other requirements, as

.205117.5

underscored material = new  
[bracketed material] = delete

1 determined by rule of the board, for obtaining a conditional  
2 prescription certificate.

3 B. The board shall issue a conditional prescription  
4 certificate if it finds that the applicant has met the  
5 requirements of Subsection A of this section. The certificate  
6 shall be valid for a period of two years, at the end of which  
7 the holder may again apply pursuant to the provisions of  
8 Subsection A of this section. A psychologist with a  
9 conditional prescription certificate may prescribe psychotropic  
10 medication under the supervision of a [~~licensed physician~~]  
11 supervising clinician subject to the following conditions:

12 (1) the psychologist shall continue to hold a  
13 current license to practice psychology in New Mexico and  
14 continue to maintain malpractice insurance;

15 [~~(2) the psychologist shall inform the board~~  
16 ~~and the New Mexico board of medical examiners of the name of~~  
17 ~~the physician under whose supervision the psychologist will~~  
18 ~~prescribe psychotropic medication and promptly inform the board~~  
19 ~~and the New Mexico board of medical examiners of any change of~~  
20 ~~the supervising physician; and~~

21 [~~(3) a physician supervising a psychologist~~  
22 ~~prescribing psychotropic medication pursuant to a conditional~~  
23 ~~prescription certificate shall inform the board and the New~~  
24 ~~Mexico board of medical examiners that he is supervising the~~  
25 ~~psychologist. The physician shall be individually responsible~~

.205117.5

underscored material = new  
[bracketed material] = delete

1 ~~for the acts and omissions of the psychologist while under his~~  
2 ~~supervision. This provision does not relieve the psychologist~~  
3 ~~from liability for his acts and omissions]~~

4 (2) the psychologist shall notify the board of  
5 the name of the psychologist's supervising clinician;

6 (3) a supervising clinician shall notify the  
7 supervising clinician's own licensing board of the name of each  
8 psychologist under the supervising clinician's supervision; and

9 (4) a prescribing psychologist who has  
10 continuously prescribed psychotropic medication for sixty  
11 calendar months as a prescribing psychologist or under the  
12 authority of a conditional prescription certificate and who has  
13 remained in good standing with the board during such time may  
14 supervise a psychologist with a conditional prescription  
15 certificate.

16 C. A supervising clinician shall not be liable for  
17 the acts of a psychologist under the supervising clinician's  
18 supervision unless the injury or loss arises from the  
19 psychologist's prescribing of psychotropic medication while  
20 under the direction and control of the supervising clinician.

21 ~~[G.]~~ D. A psychologist may apply to the board for a  
22 prescription certificate. The application shall be made on a  
23 form approved by the board and be accompanied by evidence  
24 satisfactory to the board that the applicant:

25 (1) has been issued a conditional prescription

.205117.5

underscored material = new  
[bracketed material] = delete

1 certificate and has successfully completed two years of  
2 prescribing psychotropic medication as certified by the  
3 supervising [~~licensed physician~~] clinician;

4 (2) has successfully undergone a process of  
5 independent peer review approved by the board and the New  
6 Mexico medical board [~~of medical examiners~~];

7 (3) holds a current license to practice  
8 psychology in New Mexico;

9 (4) has malpractice insurance in place,  
10 sufficient to satisfy the rules adopted by the board, that will  
11 cover the applicant as a prescribing psychologist; and

12 (5) meets all other requirements, as  
13 determined by rule of the board, for obtaining a prescription  
14 certificate.

15 [~~D-~~] E. The board shall issue a prescription  
16 certificate if it finds that the applicant has met the  
17 requirements of Subsection [~~E~~] D of this section. A  
18 psychologist with a prescription certificate may prescribe  
19 psychotropic medication pursuant to the provisions of the  
20 Professional Psychologist Act if the psychologist:

21 (1) continues to hold a current license to  
22 practice psychology in New Mexico and continues to maintain  
23 malpractice insurance; and

24 (2) annually satisfies the continuing  
25 education requirements for prescribing psychologists, as set by

.205117.5

underscoring material = new  
[bracketed material] = delete

1 the board, which shall be no fewer than twenty hours each year.

2 ~~[F-]~~ F. The board shall promulgate rules providing  
3 for the procedures to be followed in obtaining a conditional  
4 prescription certificate, a prescription certificate and  
5 renewals of a prescription certificate. The board may set  
6 reasonable application and renewal fees.

7 ~~[F-]~~ G. The board shall promulgate rules  
8 establishing the grounds for denial, suspension or revocation  
9 of conditional prescription certificates and prescription  
10 certificates authorized to be issued pursuant to this section,  
11 including a provision for suspension or revocation of a license  
12 to practice psychology upon suspension or revocation of a  
13 certificate. Actions of denial, suspension or revocation of a  
14 certificate shall be in accordance with the Uniform Licensing  
15 Act."

16 **SECTION 6.** Section 61-9-17.2 NMSA 1978 (being Laws 2002,  
17 Chapter 100, Section 7) is amended to read:

18 "61-9-17.2. PRESCRIBING PRACTICES.--

19 A. A prescribing psychologist or a psychologist  
20 with a conditional prescription certificate may administer and  
21 prescribe psychotropic medication within the recognized scope  
22 of the profession, including the ordering and review of  
23 laboratory tests in conjunction with the prescription, for the  
24 treatment of mental disorders.

25 B. When prescribing psychotropic medication for a

.205117.5

underscored material = new  
[bracketed material] = delete

1 patient, the prescribing psychologist or the psychologist with  
2 a conditional prescription certificate shall maintain an  
3 ongoing collaborative relationship with the health care  
4 practitioner who oversees the patient's general medical care to  
5 ensure that necessary medical examinations are conducted, the  
6 psychotropic medication is appropriate for the patient's  
7 medical condition and significant changes in the patient's  
8 medical or psychological condition are discussed.

9 C. The ongoing collaborative relationship shall be  
10 maintained pursuant to guidelines developed by the board and  
11 the New Mexico medical board [~~of medical examiners~~], which  
12 shall optimize patient care.

13 D. The guidelines shall ensure that the prescribing  
14 psychologist or the psychologist with a conditional  
15 prescription certificate and the [~~treating physician~~] health  
16 care practitioner coordinate, and collaborate on, the care of  
17 the patient to provide optimal care. Nothing in this  
18 subsection shall require a prescribing psychologist or  
19 psychologist with a conditional prescription certificate to  
20 give prior notice to or obtain prior approval from a health  
21 care practitioner to prescribe psychotropic medication to an  
22 established patient of the psychologist; provided that the  
23 psychologist provides written notice of the prescription to the  
24 health care practitioner within twenty-four hours of its  
25 issuance to such patient.

.205117.5



underscored material = new  
[bracketed material] = delete

1           E. A committee composed of members of [~~both boards~~]  
2 the board and the New Mexico medical board shall be established  
3 and, pursuant to the guidelines, shall evaluate complaints.  
4 The committee shall report its findings and recommendations to  
5 each board for each board's appropriate actions.

6           [~~E.~~] F. A prescription written by a prescribing  
7 psychologist or a psychologist with a conditional prescription  
8 certificate shall:

9                   (1) comply with applicable state and federal  
10 laws;

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

13                   (3) include the psychologist's board-assigned  
14 identification number.

15           [~~D.~~] G. A prescribing psychologist or a  
16 psychologist with a conditional prescription certificate shall  
17 not delegate prescriptive authority to any other person.  
18 Records of all prescriptions shall be maintained in patient  
19 records.

20           [~~E.~~] H. When authorized to prescribe controlled  
21 substances, a prescribing psychologist or a psychologist with a  
22 conditional prescription certificate shall file with the board  
23 in a timely manner all individual federal drug enforcement  
24 [~~agency~~] administration registrations and numbers. The board  
25 and the New Mexico medical board [~~of medical examiners~~] shall

.205117.5

underscored material = new  
[bracketed material] = delete

1 maintain current records on every psychologist, including  
2 federal registrations and numbers.

3 ~~[F-]~~ I. The board shall provide to the board of  
4 pharmacy and the New Mexico medical board ~~[of medical~~  
5 ~~examiners]~~ an annual list of prescribing psychologists and  
6 psychologists with conditional prescription certificates that  
7 contains the information agreed upon between the board, the New  
8 Mexico medical board ~~[of medical-examiners]~~ and the board of  
9 pharmacy. The board shall promptly notify the board of  
10 pharmacy of psychologists who are added to or deleted from the  
11 list.

12 ~~[G-]~~ J. For the purpose of this section:

13 (1) "collaborative relationship" means a  
14 cooperative working relationship between a prescribing  
15 psychologist or a psychologist with a conditional prescription  
16 certificate and a health care practitioner in the provision of  
17 patient care, including diagnosis and cooperation in the  
18 management and delivery of physical and mental health care; and

19 (2) "health care practitioner" means a  
20 physician, osteopathic physician, ~~[or]~~ nurse practitioner,  
21 physician assistant or clinical nurse specialist."

22 **SECTION 7.** A new section of the Nursing Practice Act is  
23 enacted to read:

24 "[NEW MATERIAL] SUPERVISION OF PSYCHOLOGIST IN THE  
25 PRESCRIBING OF PSYCHOTROPIC MEDICATION BY NURSE PRACTITIONER OR

.205117.5

underscored material = new  
[bracketed material] = delete

1 CLINICAL NURSE SPECIALIST.--

2 A. Subject to rules promulgated by the board, a  
3 nurse practitioner or clinical nurse specialist may supervise a  
4 psychologist in the prescribing of psychotropic medication  
5 pursuant to the Professional Psychologist Act.

6 B. No later than January 1, 2018, the board shall  
7 promulgate regulations for a nurse practitioner or clinical  
8 nurse specialist who supervises a psychologist in the  
9 prescribing of psychotropic medication pursuant to the  
10 Professional Psychologist Act."

11 SECTION 8. A new section of the Osteopathic Medicine Act  
12 is enacted to read:

13 "[NEW MATERIAL] SUPERVISION OF PSYCHOLOGIST IN THE  
14 PRESCRIBING OF PSYCHOTROPIC MEDICATION BY OSTEOPATHIC  
15 PHYSICIAN.--

16 A. Subject to rules promulgated by the board, an  
17 osteopathic physician may supervise a psychologist in the  
18 prescribing of psychotropic medication pursuant to the  
19 Professional Psychologist Act.

20 B. No later than January 1, 2018, the board shall  
21 promulgate regulations for an osteopathic physician who  
22 supervises a psychologist in the prescribing of psychotropic  
23 medication pursuant to the Professional Psychologist Act."

24 SECTION 9. EMERGENCY.--It is necessary for the public  
25 peace, health and safety that this act take effect immediately.

.205117.5