

1 SENATE BILL 355

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Michael Padilla

5
6
7
8
9
10 AN ACT

11 RELATING TO THE PRACTICE OF MEDICINE; PROVIDING FOR
12 COLLABORATION BETWEEN A PHYSICIAN ASSISTANT AND A LICENSED
13 PHYSICIAN.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 61-6-6 NMSA 1978 (being Laws 1973,
17 Chapter 361, Section 1, as amended) is amended to read:

18 "61-6-6. DEFINITIONS.--As used in Chapter 61, Article 6
19 NMSA 1978:

20 A. "approved postgraduate training program" means a
21 program approved by the [~~accrediting~~] accreditation council
22 [~~on~~] for graduate medical education [~~of the American medical~~
23 ~~association or by the board~~];

24 B. "board" means the New Mexico medical board;

25 C. "collaboration" means the process by which a

.206261.6

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 licensed physician and a physician assistant jointly contribute
2 to the health care and medical treatment of patients; provided
3 that:

4 (1) each collaborator performs actions that
5 the collaborator is licensed or otherwise authorized to
6 perform; and

7 (2) collaboration shall not be construed to
8 require the physical presence of the licensed physician at the
9 time and place services are rendered;

10 ~~[G.]~~ D. "licensed physician" means a medical doctor
11 licensed under the Medical Practice Act to practice medicine in
12 New Mexico;

13 ~~[D.]~~ E. "licensee" means a medical doctor,
14 physician assistant, polysomnographic technologist,
15 anesthesiologist assistant or naprapath licensed by the board
16 to practice in New Mexico;

17 ~~[E.]~~ F. "medical college or school in good
18 standing" means a board-approved medical college or school that
19 has as high a standard as that required by the association of
20 American medical colleges and the council on medical education
21 of the American medical association;

22 ~~[F.]~~ G. "medical student" means a student enrolled
23 in a board-approved medical college or school in good standing;

24 ~~[G.]~~ H. "physician assistant" means a health
25 professional who is licensed by the board to practice as a

underscoring material = new
[bracketed material] = delete

1 physician assistant and who provides services to patients
2 [~~under~~] with the supervision [~~and direction~~] of or in
3 collaboration with a licensed physician;

4 [~~H.~~] I. "intern" means a first-year postgraduate
5 student upon whom a degree of doctor of medicine and surgery or
6 equivalent degree has been conferred by a medical college or
7 school in good standing;

8 [~~F.~~] J. "resident" means a graduate of a medical
9 college or school in good standing who is in training in a
10 board-approved and accredited residency training program in a
11 hospital or facility affiliated with an approved hospital and
12 who has been appointed to the position of "resident" or
13 "fellow" for the purpose of postgraduate medical training;

14 [~~J.~~] K. "the practice of medicine" consists of:

15 (1) advertising, holding out to the public or
16 representing in any manner that one is authorized to practice
17 medicine in this state;

18 (2) offering or undertaking to administer,
19 dispense or prescribe a drug or medicine for the use of another
20 person, except as authorized pursuant to a professional or
21 occupational licensing statute set forth in Chapter 61 NMSA
22 1978;

23 (3) offering or undertaking to give or
24 administer, dispense or prescribe a drug or medicine for the
25 use of another person, except as directed by a licensed

underscored material = new
[bracketed material] = delete

1 physician;

2 (4) offering or undertaking to perform an
3 operation or procedure upon a person;

4 (5) offering or undertaking to diagnose,
5 correct or treat in any manner or by any means, methods,
6 devices or instrumentalities any disease, illness, pain, wound,
7 fracture, infirmity, deformity, defect or abnormal physical or
8 mental condition of a person;

9 (6) offering medical peer review, utilization
10 review or diagnostic service of any kind that directly
11 influences patient care, except as authorized pursuant to a
12 professional or occupational licensing statute set forth in
13 Chapter 61 NMSA 1978; or

14 (7) acting as the representative or agent of a
15 person in doing any of the things listed in this subsection;

16 [~~K-~~] L. "the practice of medicine across state
17 lines" means:

18 (1) the rendering of a written or otherwise
19 documented medical opinion concerning diagnosis or treatment of
20 a patient within this state by a physician located outside this
21 state as a result of transmission of individual patient data by
22 electronic, telephonic or other means from within this state to
23 the physician or the physician's agent; or

24 (2) the rendering of treatment to a patient
25 within this state by a physician located outside this state as

.206261.6

underscored material = new
[bracketed material] = delete

1 a result of transmission of individual patient data by
2 electronic, telephonic or other means from within this state to
3 the physician or the physician's agent;

4 ~~[L-]~~ M. "sexual contact" means touching the primary
5 genital area, groin, anus, buttocks or breast of a patient or
6 allowing a patient to touch another's primary genital area,
7 groin, anus, buttocks or breast in a manner that is commonly
8 recognized as outside the scope of acceptable medical practice;

9 ~~[M-]~~ N. "sexual penetration" means sexual
10 intercourse, cunnilingus, fellatio or anal intercourse, whether
11 or not there is any emission, or introducing any object into
12 the genital or anal openings of another in a manner that is
13 commonly recognized as outside the scope of acceptable medical
14 practice; and

15 ~~[N-]~~ O. "United States" means the fifty states, its
16 territories and possessions and the District of Columbia."

17 **SECTION 2.** Section 61-6-7 NMSA 1978 (being Laws 1973,
18 Chapter 361, Section 3, as amended) is amended to read:

19 "61-6-7. SHORT TITLE--LICENSURE AS A PHYSICIAN
20 ASSISTANT--SCOPE OF PRACTICE--BIENNIAL REGISTRATION OF
21 SUPERVISION--LICENSE RENEWAL--FEES.--

22 A. Sections 61-6-7 through 61-6-10 NMSA 1978 may be
23 cited as the "Physician Assistant Act".

24 B. The board may license as a physician assistant a
25 qualified person who has graduated from a physician assistant

.206261.6

underscored material = new
[bracketed material] = delete

1 ~~[or surgeon assistant]~~ program accredited by the national
2 accrediting body as established by rule and has passed a
3 physician assistant national certifying examination as
4 established by rule. The board may also license as a physician
5 assistant a person who passed the physician assistant national
6 certifying examination administered by the national commission
7 on certification of physician assistants prior to 1986.

8 C. A person shall not perform, attempt to perform
9 or hold ~~[himself]~~ the person's own self out as a physician
10 assistant without first applying for and obtaining a license
11 from the board ~~[and without registering his supervising~~
12 ~~licensed physician in accordance with board rules]~~.

13 D. Physician assistants may prescribe, administer,
14 dispense and distribute dangerous drugs other than controlled
15 substances in Schedule I of the Controlled Substances Act
16 pursuant to rules adopted by the board after consultation with
17 the board of pharmacy if the prescribing, administering,
18 dispensing and distributing are done ~~[under]~~ with the
19 ~~[direction]~~ supervision of a ~~[supervising]~~ licensed physician
20 ~~[and within the parameters of a board-approved formulary and~~
21 ~~guidelines established under Subsection C of Section 61-6-9~~
22 ~~NMSA 1978]~~ or in collaboration with a licensed physician. The
23 distribution process shall comply with state laws concerning
24 prescription packaging, labeling and recordkeeping
25 requirements. ~~[Physician assistants shall not otherwise~~

.206261.6

underscored material = new
[bracketed material] = delete

1 ~~dispense dangerous drugs or controlled substances.]~~

2 E. A physician assistant shall perform only the
3 acts and duties ~~[assigned to the physician assistant by a~~
4 ~~supervising licensed physician that are within the scope of~~
5 ~~practice of the supervising licensed physician]~~ that are within
6 the physician assistant's scope of practice.

7 F. An applicant for licensure as a physician
8 assistant shall complete application forms supplied by the
9 board and shall pay a licensing fee as provided in Section
10 61-6-19 NMSA 1978.

11 ~~[G. A physician assistant shall biennially submit~~
12 ~~proof of current certification by the national commission on~~
13 ~~certification of physician assistants and shall renew the~~
14 ~~license and registration of supervision of the physician~~
15 ~~assistant with the board. Applications for licensure or~~
16 ~~registration of supervision shall include the applicant's name,~~
17 ~~current address, the name and office address of the supervising~~
18 ~~licensed physician and other additional information as the~~
19 ~~board deems necessary.~~

20 ~~H. Before starting work, a physician assistant~~
21 ~~shall ensure that the supervising licensed physician of the~~
22 ~~physician assistant is registered by the board. The license of~~
23 ~~a physician assistant shall only be valid when the physician~~
24 ~~assistant works under the supervision of a board-registered~~
25 ~~licensed physician.]~~

.206261.6

underscored material = new
[bracketed material] = delete

1 G. A physician assistant shall not practice
2 medicine until the physician assistant has established a
3 relationship with a supervising or collaborating licensed
4 physician in accordance with rules adopted by the board.

5 [~~F.~~] H. Each biennial renewal of licensure shall be
6 accompanied by a fee as provided in Section 61-6-19 NMSA 1978."

7 SECTION 3. Section 61-6-9 NMSA 1978 (being Laws 1973,
8 Chapter 361, Section 5, as amended) is amended to read:

9 "61-6-9. PHYSICIAN ASSISTANTS--RULES.--The board may
10 adopt and enforce reasonable rules for:

11 A. education, skill and experience for licensure of
12 a person as a physician assistant and providing forms and
13 procedures for biennial [~~licensure and registration of~~
14 ~~supervision by a licensed physician~~] license renewal;

15 B. examining and evaluating an applicant for
16 licensure as a physician assistant as to skill, knowledge and
17 experience of the applicant in the field of medical care;

18 C. establishing when and for how long physician
19 assistants are permitted to prescribe, administer, dispense and
20 distribute dangerous drugs other than controlled substances in
21 Schedule I of the Controlled Substances Act pursuant to rules
22 adopted by the board after consultation with the board of
23 pharmacy;

24 D. allowing a supervising or collaborating licensed
25 physician to temporarily delegate [~~supervisory~~] supervision or

underscored material = new
[bracketed material] = delete

1 collaboration responsibilities for a physician assistant to
2 another licensed physician;

3 E. ~~[allowing]~~ establishing when a physician
4 assistant ~~[to temporarily serve under the supervision of a~~
5 ~~licensed physician other than the supervising]~~ may engage in
6 the practice of medicine in collaboration with a licensed
7 physician ~~[of record]~~; and

8 F. carrying out all other provisions of the
9 Physician Assistant Act."

10 SECTION 4. Section 61-6-10 NMSA 1978 (being Laws 1973,
11 Chapter 361, Section 6, as amended) is amended to read:

12 "61-6-10. SUPERVISING OR COLLABORATING LICENSED
13 PHYSICIAN--RESPONSIBILITY.--

14 A. As a condition of licensure, all physician
15 assistants practicing in New Mexico shall ~~[inform the board of~~
16 ~~the name of the licensed physician under whose supervision they~~
17 ~~will practice. All supervising physicians shall be licensed~~
18 ~~under the Medical Practice Act and shall be approved by the~~
19 ~~board.~~

20 B. ~~Every licensed physician supervising a licensed~~
21 ~~physician assistant shall be individually responsible and~~
22 ~~liable for the performance of the acts and omissions delegated~~
23 ~~to the physician assistant. Nothing in this section shall be~~
24 ~~construed to relieve the physician assistant of responsibility~~
25 ~~and liability for the acts and omissions of the physician~~

.206261.6

underscored material = new
[bracketed material] = delete

1 ~~assistant.]~~ be supervised by or collaborate with a licensed
2 physician pursuant to the Medical Practice Act.

3 [G.] B. A physician assistant shall be supervised
4 by or collaborate with a physician [~~as approved~~] in accordance
5 with rules adopted by the board.

6 C. Physician assistants are responsible for the
7 care they provide. Nothing in the Physician Assistant Act
8 requires or implies that a supervising or collaborating
9 licensed physician is responsible or liable for the care
10 provided by a physician assistant unless a physician assistant
11 is acting on the specific instructions of a supervising or
12 collaborating licensed physician."

13 SECTION 5. Section 61-6-17 NMSA 1978 (being Laws 1973,
14 Chapter 361, Section 8, as amended) is amended to read:

15 "61-6-17. EXCEPTIONS TO ACT.--The Medical Practice Act
16 shall not apply to or affect:

- 17 A. gratuitous services rendered in cases of
- 18 emergency;
- 19 B. the domestic administration of family remedies;
- 20 C. the practice of midwifery as regulated in this
- 21 state;
- 22 D. commissioned medical officers of the armed
- 23 forces of the United States and medical officers of the
- 24 commissioned corps of the United States public health service
- 25 or [~~the veterans administration of~~] the United States

underscored material = new
[bracketed material] = delete

1 department of veterans affairs in the discharge of their
2 official duties or within federally controlled facilities;
3 provided that such persons who hold medical licenses in New
4 Mexico shall be subject to the provisions of the Medical
5 Practice Act; and provided further that all such persons shall
6 be fully licensed to practice medicine in one or more
7 jurisdictions of the United States;

8 E. the practice of medicine by a physician,
9 unlicensed in New Mexico, who performs emergency medical
10 procedures in air or ground transportation on a patient from
11 inside of New Mexico to another state or back; provided that
12 the physician is duly licensed in that state;

13 F. the practice, as defined and limited under their
14 respective licensing laws, of:

- 15 (1) osteopathy;
- 16 (2) dentistry;
- 17 (3) podiatry;
- 18 (4) nursing;
- 19 (5) optometry;
- 20 (6) psychology;
- 21 (7) chiropractic;
- 22 (8) pharmacy;
- 23 (9) acupuncture and oriental medicine; or
- 24 (10) physical therapy;

25 G. an act, task or function performed by a

underscored material = new
[bracketed material] = delete

1 physician assistant, at the direction of and [~~under~~] with the
2 supervision of or in collaboration with, a licensed physician,
3 when:

4 (1) the physician assistant is currently
5 licensed by the board;

6 (2) the act, task or function is performed [~~at~~
7 ~~the direction of and under~~] with the supervision of a licensed
8 physician or in collaboration with a licensed physician in
9 accordance with rules promulgated by the board; and

10 (3) the acts of the physician assistant are
11 within the scope of duties assigned or delegated by the
12 supervising or collaborating licensed physician and the acts
13 are within the scope of the physician assistant's training;

14 H. an act, task or function of laboratory
15 technicians or technologists, x-ray technicians, nurse
16 practitioners, medical or surgical assistants or other
17 technicians or qualified persons permitted by law or
18 established by custom as part of the duties delegated to them
19 by:

20 (1) a licensed physician or a hospital, clinic
21 or institution licensed or approved by the public health
22 division of the department of health or an agency of the
23 federal government; or

24 (2) a health care program operated or financed
25 by an agency of the state or federal government;

.206261.6

underscored material = new
[bracketed material] = delete

1 I. a properly trained medical or surgical assistant
2 or technician or professional licensee performing under the
3 physician's employment and direct supervision or a visiting
4 physician or surgeon operating under the physician's direct
5 supervision a medical act that a reasonable and prudent
6 physician would find within the scope of sound medical judgment
7 to delegate if, in the opinion of the delegating physician, the
8 act can be properly and safely performed in its customary
9 manner and if the person does not hold [~~himself~~] the person's
10 own self out to the public as being authorized to practice
11 medicine in New Mexico. The delegating physician shall remain
12 responsible for the medical acts of the person performing the
13 delegated medical acts;

14 J. the practice of the religious tenets of a church
15 in the ministration to the sick or suffering by mental or
16 spiritual means as provided by law; provided that the Medical
17 Practice Act shall not be construed to exempt a person from the
18 operation or enforcement of the sanitary and quarantine laws of
19 the state;

20 K. the acts of a physician licensed under the laws
21 of another state of the United States who is the treating
22 physician of a patient and orders home health or hospice
23 services for a resident of New Mexico to be delivered by a home
24 and community support services agency licensed in this state;
25 provided that a change in the condition of the patient shall be

.206261.6

underscoring material = new
[bracketed material] = delete

1 physically reevaluated by the treating physician in the
2 treating physician's jurisdiction or by a licensed New Mexico
3 physician;

4 L. a physician licensed to practice under the laws
5 of another state who acts as a consultant to a New Mexico-
6 licensed physician on an irregular or infrequent basis, as
7 defined by rule of the board; and

8 M. a physician who engages in the informal practice
9 of medicine across state lines without compensation or
10 expectation of compensation; provided that the practice of
11 medicine across state lines conducted within the parameters of
12 a contractual relationship shall not be considered informal and
13 is subject to licensure and rule by the board."

14 SECTION 6. A new section of the Physician Assistant Act
15 is enacted to read:

16 "[NEW MATERIAL] PHYSICIAN ASSISTANT COLLABORATION WITH
17 LICENSED PHYSICIANS--SCOPE OF PRACTICE--MEDICAL MALPRACTICE
18 INSURANCE.--

19 A. A physician assistant may perform the acts and
20 duties that are within the physician assistant's scope of
21 practice in collaboration with a licensed physician, if the
22 physician assistant has:

23 (1) completed three years of clinical practice
24 as a physician assistant [~~under~~] with the supervision [~~and~~
25 ~~direction~~] of a licensed physician; and

.206261.6

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

1 (2) complied with rules adopted by the board
2 establishing qualifications for when a physician assistant may
3 engage in the practice of medicine in collaboration with a
4 licensed physician.

5 B. A physician assistant practicing in
6 collaboration with a licensed physician shall maintain a policy
7 of malpractice liability insurance that will qualify the
8 physician assistant under the provisions of the Medical
9 Malpractice Act."

10 SECTION 7. Section 61-6-19 NMSA 1978 (being Laws 1989,
11 Chapter 269, Section 15, as amended) is amended to read:

12 "61-6-19. FEES.--

13 A. The board shall impose the following fees:

14 (1) an application fee not to exceed four
15 hundred dollars (\$400) for licensure by endorsement as provided
16 in Section 61-6-13 NMSA 1978;

17 (2) an application fee not to exceed four
18 hundred dollars (\$400) for licensure by examination as provided
19 in Section 61-6-11 NMSA 1978;

20 (3) a triennial renewal fee not to exceed four
21 hundred fifty dollars (\$450);

22 (4) a fee of twenty-five dollars (\$25.00) for
23 placing a physician's license or a physician assistant's
24 license on inactive status;

25 (5) a late fee not to exceed one hundred

.206261.6

underscored material = new
[bracketed material] = delete

1 dollars (\$100) for physicians who renew their license within
2 forty-five days after the required renewal date;

3 (6) a late fee not to exceed two hundred
4 dollars (\$200) for physicians who renew their licenses between
5 forty-six and ninety days after the required renewal date;

6 (7) a reinstatement fee not to exceed six
7 hundred dollars (\$600) for reinstatement of a revoked,
8 suspended or inactive license;

9 (8) a reasonable administrative fee for
10 verification and duplication of license or registration and
11 copying of records;

12 (9) a reasonable publication fee for the
13 purchase of a publication containing the names of all
14 practitioners licensed under the Medical Practice Act;

15 (10) an impaired physician fee not to exceed
16 one hundred fifty dollars (\$150) for a three-year period;

17 (11) an interim license fee not to exceed one
18 hundred dollars (\$100);

19 (12) a temporary license fee not to exceed one
20 hundred dollars (\$100);

21 (13) a postgraduate training license fee not
22 to exceed fifty dollars (\$50.00) annually;

23 (14) an application fee not to exceed one
24 hundred fifty dollars (\$150) for physician assistants applying
25 for initial licensure;

.206261.6

underscored material = new
[bracketed material] = delete

1 (15) a licensure fee not to exceed one hundred
2 fifty dollars (\$150) for physician assistants biennial
3 [~~licensing~~] license renewal and registration of supervising or
4 collaborating licensed physician;

5 (16) a late fee not to exceed fifty dollars
6 (\$50.00) for physician assistants who renew their licensure
7 within forty-five days after the required renewal date;

8 (17) a late fee not to exceed seventy-five
9 dollars (\$75.00) for physician assistants who renew their
10 licensure between forty-six and ninety days after the required
11 renewal date;

12 (18) a reinstatement fee not to exceed one
13 hundred dollars (\$100) for physician assistants who reinstate
14 an expired license;

15 [~~(19)~~] ~~a processing fee not to exceed fifty~~
16 ~~dollars (\$50.00) for each change of a supervising licensed~~
17 ~~physician for a physician assistant;~~

18 ~~(20)]~~ (19) a fee not to exceed three hundred
19 dollars (\$300) annually for a physician supervising a clinical
20 pharmacist;

21 [~~(21)]~~ (20) an application and renewal fee for
22 a telemedicine license not to exceed four hundred dollars
23 (\$400);

24 [~~(22)]~~ (21) a reasonable administrative fee,
25 not to exceed the current cost of application for a license,

.206261.6

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

1 that may be charged for reprocessing applications and renewals
2 that include minor but significant errors and that would
3 otherwise be subject to investigation and possible disciplinary
4 action; and

5 ~~[(23)]~~ (22) a reasonable fee as established by
6 the department of public safety for nationwide and statewide
7 criminal history screening of applicants and licensees.

8 B. All fees are nonrefundable and shall be used by
9 the board to carry out its duties efficiently."