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AN ACT

RELATING TO PROFESSIONAL LICENSURE; ENACTING THE LACTATION CARE PROVIDER ACT; PROVIDING FOR LICENSURE OF LACTATION CARE PROVIDERS; ESTABLISHING A SCOPE OF PRACTICE FOR LICENSED LACTATION CARE PROVIDERS; AMENDING A SECTION OF THE NURSING PRACTICE ACT TO PROVIDE FOR BOARD OF NURSING ADMINISTRATION OF FUNDS DEPOSITED IN THE BOARD OF NURSING FUND PURSUANT TO THE LACTATION CARE PROVIDER ACT.

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

SECTION 1. SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Lactation Care Provider Act".

SECTION 2. DEFINITIONS.--As used in the Lactation Care Provider Act:

A. "applicant" means an individual seeking a license to provide lactation care and services as a licensee pursuant to the Lactation Care Provider Act;

B. "approved certification" means certification as a lactation care provider conferred by a certification program accredited by any nationally or internationally recognized accrediting agency that is approved by the board and that establishes continuing education requirements;

C. "board" means the board of nursing;

D. "lactation care and services" means the clinical application of scientific principles and a

1 multidisciplinary body of evidence for the evaluation,
2 problem identification, treatment, education and consultation
3 for the provision of lactation care and services to families,
4 including:

5 (1) clinical lactation assessment through
6 the systematic collection of subjective and objective data;

7 (2) analysis of data and creation of a plan
8 of care;

9 (3) implementation of a lactation care plan
10 with demonstration and instruction to parents and
11 communication to primary health care providers;

12 (4) evaluation of outcomes;

13 (5) provision of lactation education to
14 parents and health care providers; and

15 (6) recommendation and use of assistive
16 devices;

17 E. "license" means a license to practice as a
18 lactation care provider that the board issues pursuant to the
19 Lactation Care Provider Act;

20 F. "licensee" means a lactation care provider
21 licensed as a licensed lactation care provider pursuant to
22 the Lactation Care Provider Act;

23 G. "member" means a member of the board; and

24 H. "practice" means a course of business in which
25 lactation care and services are rendered or offered to any

1 individual, family or group of two or more individuals.

2 SECTION 3. BOARD POWERS.--The board may:

3 A. enforce the provisions of the Lactation Care
4 Provider Act and adopt and promulgate rules to execute the
5 provisions of that act;

6 B. license qualified applicants;

7 C. discipline licensees;

8 D. enforce qualification for licensure;

9 E. establish standards for licensee competence for
10 continuing in or returning to practice based on approved
11 certification;

12 F. issue orders relating to the practice of
13 lactation care and services in accordance with the Uniform
14 Licensing Act;

15 G. regulate licensee advertising and prohibit
16 false, misleading or deceptive practices;

17 H. establish a code of conduct for licensees;

18 I. prepare information for the public that
19 describes the regulatory functions of the board and the
20 procedures by which complaints are filed with and resolved by
21 the board; and

22 J. appoint a lactation care provider advisory
23 committee consisting of at least one member who is a board
24 member and at least two members who are experts in lactation
25 to assist in the performance of the board's duties.

1 SECTION 4. LICENSURE REQUIREMENT--QUALIFICATIONS--
2 EXEMPTIONS FROM LICENSURE.--

3 A. An individual shall not use the title "licensed
4 lactation care provider" unless that individual is a
5 licensee.

6 B. An applicant for a license as a licensee shall:

7 (1) be at least eighteen years of age;

8 (2) submit an application completed upon a
9 form that the board prescribes and in accordance with board
10 rules, accompanied by fees required by board rules;

11 (3) possess current approved certification;

12 and

13 (4) assist the board in obtaining the
14 applicant's criminal history background check by:

15 (a) providing fingerprints on two
16 fingerprint cards or other biometric data for the purpose of
17 obtaining criminal history record information from the
18 federal bureau of investigation or the department of public
19 safety; and

20 (b) paying the cost of obtaining the
21 fingerprints and criminal history background checks. An
22 applicant shall have the right to inspect or challenge the
23 validity of the record development by the background check if
24 the applicant is denied licensure as established by board
25 rule.

1 C. Nothing in the Lactation Care Provider Act
2 shall be construed to affect or prevent the practice of
3 lactation care and services by licensed care providers or
4 other persons; provided that a person who is not a licensee
5 shall not hold that person out or represent that person's
6 self to be a licensed lactation care provider.

7 **SECTION 5. LICENSE FEES--TERM--RENEWAL.--**

8 A. The board shall require each applicant for
9 initial licensure or renewal of a license to pay a
10 nonrefundable licensure fee that shall not exceed one hundred
11 dollars (\$100).

12 B. A license shall expire biennially from the date
13 of initial licensure.

14 C. The board shall renew licenses only upon
15 receipt of renewal of licensure fees and evidence of
16 compliance with continuing education requirements.

17 **SECTION 6. DISCIPLINARY PROCEEDINGS.--**

18 A. In accordance with the procedures contained in
19 the Uniform Licensing Act, the board may deny, revoke or
20 suspend any license held or applied for pursuant to the
21 Lactation Care Provider Act, reprimand or place a licensee on
22 probation or deny, limit or revoke a privilege of a licensee
23 desiring to practice or practicing lactation care and
24 services upon grounds that the licensee or applicant:

25 (1) is guilty of fraud or deceit in

1 procuring or attempting to procure a license;

2 (2) is convicted of a felony;

3 (3) is unfit or incompetent;

4 (4) is intemperate or is addicted to the use
5 of habit-forming drugs;

6 (5) is guilty of unprofessional conduct as
7 defined by board rules;

8 (6) has willfully or repeatedly violated any
9 provisions of the Lactation Care Provider Act, including any
10 board rule adopted pursuant to that act; or

11 (7) was certified or licensed to provide
12 lactation care and services in any jurisdiction, territory or
13 possession of the United States or another country and was
14 the subject of disciplinary action for acts similar to acts
15 described in this subsection. A certified copy of the record
16 of the certification or licensure board disciplinary action
17 taken by another jurisdiction, territory or possession of the
18 United States or another country is conclusive evidence of
19 the action.

20 B. The board may summarily suspend or restrict a
21 license issued by the board without a hearing, simultaneously
22 with or at any time after the initiation of proceedings for a
23 hearing provided under the Uniform Licensing Act, if the
24 board finds that evidence in its possession indicates that
25 the licensee:

1 (1) poses a clear and immediate danger to
2 the public health and safety if the licensee continues to
3 practice;

4 (2) has been adjudged mentally incompetent
5 by a final order or adjudication by a court of competent
6 jurisdiction; or

7 (3) has pled guilty to or been found guilty
8 of any offense related to the practice of medicine or for any
9 violent criminal offense in this state or a substantially
10 equivalent criminal offense in another jurisdiction.

11 C. A licensee is not required to comply with a
12 summary action taken pursuant to Subsection B of this section
13 until service has been made or the licensee has actual
14 knowledge of the order, whichever occurs first.

15 D. A person whose license is suspended or
16 restricted under this section is entitled to a hearing by the
17 board pursuant to the Uniform Licensing Act within fifteen
18 days from the date that the licensee requests a hearing.

19 E. Disciplinary proceedings may be instituted by
20 any person, shall be by complaint and shall conform with the
21 provisions of the Uniform Licensing Act. Any party to a
22 hearing may obtain a copy of the hearing record upon payment
23 of costs for the copy.

24 F. Any person filing a complaint shall be immune
25 from liability arising out of civil action if the complaint

1 is filed in good faith and without actual malice.

2 G. All written and oral communication made by any
3 person to the board relating to actual or potential
4 disciplinary action, including complaints made to the board,
5 shall be confidential communications and are not public
6 records for the purposes of the Inspection of Public Records
7 Act. All data, communications and information acquired,
8 prepared or disseminated by the board relating to actual or
9 potential disciplinary action or its investigation of
10 complaints shall not be disclosed, except to the extent
11 necessary to carry out the purposes of the board or in a
12 judicial appeal from the actions of the board or in a
13 referral of cases made to law enforcement agencies, national
14 database clearinghouses or other licensing boards.

15 H. The board shall not initiate a disciplinary
16 action more than two years after the date that it receives a
17 complaint.

18 I. The time limitation contained in Subsection D
19 of this section shall not be tolled by any civil or criminal
20 litigation in which the licensee or applicant is a party,
21 arising substantially from the same facts, conduct,
22 transactions or occurrences that would be the basis for the
23 board's disciplinary action.

24 J. The board may recover the costs associated with
25 the investigation and disposition of a disciplinary

1 proceeding from the person who is the subject of the
2 proceeding.

3 SECTION 7. Section 61-3-27 NMSA 1978 (being Laws 1968,
4 Chapter 44, Section 23, as amended) is amended to read:

5 "61-3-27. FUND ESTABLISHED--DISPOSITION--METHOD OF
6 PAYMENT.--

7 A. There is created a "board of nursing fund".

8 B. Except as provided in Sections 61-3-10.5 and
9 61-3-10.6 NMSA 1978, all funds received by the board and
10 money collected under the Nursing Practice Act and the
11 Lactation Care Provider Act shall be deposited with the state
12 treasurer. The state treasurer shall place the money to the
13 credit of the board of nursing fund. Any income earned on
14 investment of the fund shall remain in the fund.

15 C. Payments out of the board of nursing fund shall
16 be on vouchers issued and signed by the person designated by
17 the board upon warrants drawn by the department of finance
18 and administration in accordance with the budget approved by
19 the department.

20 D. All amounts paid into the board of nursing fund
21 shall be subject to the order of the board and shall only be
22 used for the purpose of meeting necessary expenses incurred
23 in the enforcement of the purposes of the Nursing Practice
24 Act and the Lactation Care Provider Act, the duties imposed
25 by those acts and the promotion of nursing and lactation care

1 provider education and standards in this state. All money
2 unused at the end of the fiscal year shall remain in the
3 board of nursing fund for use in accordance with the
4 provisions of the Nursing Practice Act and the Lactation Care
5 Provider Act to further the purposes of those acts.

6 E. All funds that may have accumulated to the
7 credit of the board under any previous act shall be continued
8 for use by the board in administration of the Nursing
9 Practice Act and the Lactation Care Provider Act.

10 F. As used in this section, "lactation care
11 provider" means a person licensed by the board pursuant to the
12 Lactation Care Provider Act to provide lactation care and
13 services."

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