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AN ACT

RELATING TO HEALTH CARE; UPDATING PROVISIONS OF THE PROFESSIONAL PSYCHOLOGIST ACT RELATING TO PRESCRIBING PSYCHOLOGISTS AND PSYCHOLOGISTS WITH A CONDITIONAL PRESCRIPTION CERTIFICATE; REPEALING A SECTION OF THE PROFESSIONAL PSYCHOLOGIST ACT TO ELIMINATE THE PURPOSE SECTION; 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 the supervision of a supervising clinician pursuant to the Professional Psychologist Act;

C. "independently licensed prescribing clinician" means a licensed physician, osteopathic physician, nurse practitioner, psychiatric nurse practitioner or clinical nurse specialist;

D. "person" includes an individual, firm,

1 partnership, association or corporation;

2 E. "prescribing psychologist" means a licensed
3 psychologist who holds a valid prescription certificate;

4 F. "prescription certificate" means a document
5 issued by the board to a licensed psychologist that permits
6 the holder to prescribe psychotropic medication pursuant to
7 the Professional Psychologist Act;

8 G. "psychotropic medication" means a controlled
9 substance or dangerous drug that may not be dispensed or
10 administered without a prescription and whose primary
11 indication for use has been approved by the federal food and
12 drug administration for the treatment of mental disorders or
13 is listed as a psychotherapeutic agent in *Drug Facts and*
14 *Comparisons 2016*, or the most recent edition of that book, or
15 in the American hospital formulary service;

16 H. "psychologist" means a person who engages in
17 the practice of psychology or holds the person's self out to
18 the public by any title or description of services
19 representing the person as a psychologist, which incorporates
20 the words "psychological", "psychologist", "psychology", or
21 when a person describes the person's own self as above and,
22 under such title or description, offers to render or renders
23 services involving the application of principles, methods and
24 procedures of the science and profession of psychology to
25 persons for compensation or other personal gain;

1 I. "practice of psychology" means the observation,
2 description, evaluation, interpretation and modification of
3 human behavior by the application of psychological
4 principles, methods and procedures for the purpose of
5 preventing or eliminating symptomatic, maladaptive or
6 undesired behavior and of enhancing interpersonal
7 relationships, work and life adjustment, personal
8 effectiveness, behavioral health and mental health, and
9 further means the rendering of such psychological services to
10 individuals, families or groups regardless of whether payment
11 is received for services rendered. The practice of
12 psychology includes psychological testing or
13 neuropsychological testing and the evaluation or assessment
14 of personal characteristics such as intelligence,
15 personality, abilities, interests, aptitudes and
16 neuropsychological functioning; counseling, psychoanalysis,
17 psychotherapy, hypnosis, biofeedback, behavior analysis and
18 therapy; diagnosis and treatment of a mental and emotional
19 disorder or disability, alcoholism and substance abuse,
20 disorders of habit or conduct and the psychological aspects
21 of physical illness, accident, injury and disability; and
22 psychoeducational evaluation, therapy, remediation and
23 consultation;

24 J. "school" or "college" means a university or
25 other institution of higher education that is regionally

1 accredited and that offers a full-time graduate course of
2 study in psychology as defined by rule of the board or that
3 is approved by the American psychological association; and

4 K. "supervising clinician" means a licensed
5 physician, osteopathic physician, nurse practitioner,
6 psychiatric nurse practitioner or clinical nurse specialist
7 who is supervising a psychologist in the prescribing of
8 psychotropic medication."

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

11 "61-9-10. LICENSURE OF PSYCHOLOGISTS FROM OTHER AREAS--
12 RECIPROCITY.--Subject to the provisions of Section 61-9-10.1
13 NMSA 1978, upon application accompanied by a fee as required
14 by the Professional Psychologist Act, the board may, without
15 written or oral examination, issue a license to a person who
16 furnishes, upon a form and in such manner as the board
17 prescribes, evidence satisfactory to the board that the
18 person has been licensed or certified as a psychologist or
19 prescribing psychologist by another state, a territorial
20 possession of the United States, the District of Columbia or
21 another country for a minimum of five years. An applicant
22 seeking reciprocity shall demonstrate to the satisfaction of
23 the board that the training and education received by the
24 applicant is equivalent to the requirements for a doctoral
25 degree in psychology as provided in the Professional

1 Psychologist Act."

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

4 "61-9-13. DENIAL, REVOCATION OR SUSPENSION OF
5 LICENSE.--

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

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

17 (2) is using a drug, substance or alcoholic
18 beverage to an extent or in a manner dangerous to the
19 psychologist or psychologist associate, any other person or
20 the public or to an extent that the use impairs the
21 psychologist's or psychologist associate's ability to perform
22 the work of a professional psychologist or psychologist
23 associate with safety to the public;

24 (3) has impersonated another person holding
25 a psychologist or psychologist associate license or allowed

1 another person to use the psychologist's or psychologist
2 associate's license;

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

6 (5) has accepted commissions or rebates or
7 other forms of remuneration for referring clients to other
8 professional persons;

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

14 (7) is legally adjudicated insane or
15 mentally incompetent, the record of such adjudication being
16 conclusive evidence thereof;

17 (8) has willfully or negligently violated
18 the provisions of the Professional Psychologist Act;

19 (9) has violated any code of conduct adopted
20 by the board;

21 (10) has been disciplined by another state
22 for acts similar to acts described in this subsection, and a
23 certified copy of the record of discipline of the state
24 imposing the discipline is conclusive evidence;

25 (11) is incompetent to practice psychology;

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

3 (13) has abandoned patients or clients;

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

6 (a) another licensing jurisdiction;

7 (b) a professional psychologist
8 association of which the psychologist or psychologist
9 associate is or has been a member;

10 (c) a government agency; or

11 (d) a court for actions or conduct
12 similar to acts or conduct that would constitute grounds for
13 action as described in this subsection;

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

22 (16) has failed to adequately supervise a
23 psychologist associate or a licensed psychologist holding a
24 conditional prescription certificate;

25 (17) has employed abusive billing practices;

1 or

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

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

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

11 "61-9-17. DRUGS--MEDICINES.--

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

17 B. A licensed psychologist holding a conditional
18 prescription certificate may prescribe psychotropic
19 medication under the supervision of a supervising clinician
20 pursuant to the Professional Psychologist Act.

21 C. A prescribing psychologist may prescribe
22 psychotropic medication pursuant to the Professional
23 Psychologist Act."

24 SECTION 5. Section 61-9-17.1 NMSA 1978 (being Laws
25 2002, Chapter 100, Section 6) is amended to read:

1 "61-9-17.1. CONDITIONAL PRESCRIPTION CERTIFICATE--
2 PRESCRIPTION CERTIFICATE--APPLICATION--REQUIREMENTS--
3 RULEMAKING BY BOARD--ISSUANCE, DENIAL, RENEWAL AND REVOCATION
4 OF CERTIFICATION.--

5 A. A psychologist may apply to the board for a
6 conditional prescription certificate. The application shall
7 be made on a form approved by the board and be accompanied by
8 evidence satisfactory to the board that the applicant:

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

15 (2) holds a current license to practice
16 psychology in New Mexico;

17 (3) has successfully completed
18 pharmacological training from an institution of higher
19 education approved by the board and the New Mexico medical
20 board or from a provider of continuing education approved by
21 the board and the New Mexico medical board;

22 (4) has passed a national certification
23 examination approved by the board and the New Mexico medical
24 board that tests the applicant's knowledge of pharmacology in
25 the diagnosis, care and treatment of mental disorders;

1 (5) within the five years immediately
2 preceding the date of application, has successfully completed
3 an organized program of education approved by the board and
4 the New Mexico medical board and consisting of didactic
5 instruction of no fewer than four hundred fifty classroom
6 hours in at least the following core areas of instruction:

- 7 (a) neuroscience;
- 8 (b) pharmacology;
- 9 (c) psychopharmacology;
- 10 (d) physiology;
- 11 (e) pathophysiology;
- 12 (f) appropriate and relevant physical
13 and laboratory assessment; and
- 14 (g) clinical pharmacotherapeutics;

15 (6) within the five years immediately
16 preceding the date of application, has been certified by each
17 of the applicant's supervising independently licensed
18 prescribing clinicians as having successfully completed a
19 supervised and relevant clinical experience, approved by the
20 board and the New Mexico medical board, of:

- 21 (a) no less than an eighty-hour
22 practicum in clinical assessment and pathophysiology under
23 the supervision of a licensed physician, osteopathic
24 physician, nurse practitioner, psychiatric nurse practitioner
25 or clinical nurse specialist; and

1 (b) an additional supervised practicum
2 of at least four hundred hours treating no fewer than one
3 hundred patients with mental disorders, the practica to have
4 been supervised by any one or a combination of a psychiatrist
5 or other appropriately trained physician, osteopathic
6 physician, nurse practitioner, psychiatric nurse practitioner
7 or clinical nurse specialist and determined by the board and
8 the New Mexico medical board to be sufficient to competently
9 train the applicant in the treatment of a diverse patient
10 population. One-to-one supervision shall be provided either
11 face-to-face, telephonically or by video conference;

12 (7) has malpractice insurance in place,
13 sufficient to satisfy the rules adopted by the board and the
14 New Mexico medical board, that will cover the applicant
15 during the period the conditional prescription certificate is
16 in effect; and

17 (8) meets all other requirements, as
18 determined by rule of the board, for obtaining a conditional
19 prescription certificate.

20 B. The board shall issue a conditional
21 prescription certificate if it finds that the applicant has
22 met the requirements of Subsection A of this section. The
23 certificate shall be valid for a period of two years, at the
24 end of which the holder may again apply pursuant to the
25 provisions of Subsection A of this section. A psychologist

1 with a conditional prescription certificate may prescribe
2 psychotropic medication under the supervision of a
3 supervising clinician subject to the following conditions:

4 (1) the psychologist shall continue to hold
5 a current license to practice psychology in New Mexico and
6 continue to maintain malpractice insurance;

7 (2) the psychologist shall notify the board
8 of the name of the psychologist's supervising clinician; and

9 (3) a supervising clinician shall notify the
10 supervising clinician's own licensing board of the name of
11 each psychologist under the supervising clinician's
12 supervision.

13 C. A supervising clinician shall not be liable for
14 the acts of a psychologist under the supervising clinician's
15 supervision unless the injury or loss arises from those acts
16 under the direction and control of the supervising clinician.

17 D. A psychologist may apply to the board for a
18 prescription certificate. The application shall be made on a
19 form approved by the board and be accompanied by evidence
20 satisfactory to the board that the applicant:

21 (1) has been issued a conditional
22 prescription certificate and has successfully completed two
23 years of prescribing psychotropic medication as certified by
24 the supervising clinician;

25 (2) has successfully undergone a process of

1 independent peer review approved by the board and the New
2 Mexico medical board;

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

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

8 (5) meets all other requirements, as
9 determined by rule of the board, for obtaining a prescription
10 certificate.

11 E. The board shall issue a prescription
12 certificate if it finds that the applicant has met the
13 requirements of Subsection D of this section. A psychologist
14 with a prescription certificate may prescribe psychotropic
15 medication pursuant to the provisions of the Professional
16 Psychologist Act if the psychologist:

17 (1) continues to hold a current license to
18 practice psychology in New Mexico and continues to maintain
19 malpractice insurance; and

20 (2) annually satisfies the continuing
21 education requirements for prescribing psychologists, as set
22 by the board, which shall be no fewer than twenty hours each
23 year.

24 F. The board shall promulgate rules providing for
25 the procedures to be followed in obtaining a conditional

1 prescription certificate, a prescription certificate and
2 renewals of a prescription certificate. The board may set
3 reasonable application and renewal fees.

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

13 SECTION 6. Section 61-9-17.2 NMSA 1978 (being Laws
14 2002, Chapter 100, Section 7) is amended to read:

15 "61-9-17.2. PRESCRIBING PRACTICES.--

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

22 B. When prescribing psychotropic medication for a
23 patient, the prescribing psychologist or the psychologist
24 with a conditional prescription certificate shall maintain an
25 ongoing collaborative relationship with the health care

1 practitioner who oversees the patient's general medical care
2 to ensure that necessary medical examinations are conducted,
3 the psychotropic medication is appropriate for the patient's
4 medical condition and significant changes in the patient's
5 medical or psychological condition are discussed.

6 C. The ongoing collaborative relationship shall be
7 maintained pursuant to guidelines developed by the board and
8 the New Mexico medical board, which shall optimize patient
9 care.

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

24 E. A committee composed of members of the board
25 and the New Mexico medical board shall be established and,

1 pursuant to the guidelines, shall evaluate complaints. The
2 committee shall report its findings and recommendations to
3 each board for each board's appropriate actions.

4 F. A prescription written by a prescribing
5 psychologist or a psychologist with a conditional
6 prescription certificate shall:

7 (1) comply with applicable state and federal
8 laws;

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

11 (3) include the psychologist's board-
12 assigned identification number.

13 G. A prescribing psychologist or a psychologist
14 with a conditional prescription certificate shall not
15 delegate prescriptive authority to any other person. Records
16 of all prescriptions shall be maintained in patient records.

17 H. When authorized to prescribe controlled
18 substances, a prescribing psychologist or a psychologist with
19 a conditional prescription certificate shall file with the
20 board in a timely manner all individual federal drug
21 enforcement administration registrations and numbers. The
22 board and the New Mexico medical board shall maintain current
23 records on every psychologist, including federal
24 registrations and numbers.

25 I. The board shall provide to the board of

1 pharmacy and the New Mexico medical board an annual list of
2 prescribing psychologists and psychologists with conditional
3 prescription certificates that contains the information
4 agreed upon between the board, the New Mexico medical board
5 and the board of pharmacy. The board shall promptly notify
6 the board of pharmacy of psychologists who are added to or
7 deleted from the list.

8 J. For the purpose of this section:

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

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

19 SECTION 7. A new section of the Nursing Practice Act is
20 enacted to read:

21 "SUPERVISION OF PSYCHOLOGIST IN THE PRESCRIBING OF
22 PSYCHOTROPIC MEDICATION BY NURSE PRACTITIONER OR CLINICAL
23 NURSE SPECIALIST.--

24 A. Subject to rules promulgated by the board, a
25 nurse practitioner or clinical nurse specialist may supervise

1 a psychologist in the prescribing of psychotropic medication
2 pursuant to the Professional Psychologist Act.

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

8 SECTION 8. A new section of the Professional
9 Psychologist Act is enacted to read:

10 "PRESCRIPTION MONITORING PROGRAM--BOARD TO PROMULGATE
11 RULES.--By January 1, 2018, the board shall promulgate rules
12 to carry out the provisions of the prescription monitoring
13 program established by Section 26-1-16.1 NMSA 1978 insofar as
14 that program applies to prescribing psychologists."

15 SECTION 9. A new section of the Osteopathic Medicine
16 Act is enacted to read:

17 "SUPERVISION OF PSYCHOLOGIST IN THE PRESCRIBING OF
18 PSYCHOTROPIC MEDICATION BY OSTEOPATHIC PHYSICIAN.--

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

23 B. No later than January 1, 2018, the board shall
24 promulgate regulations for an osteopathic physician who
25 supervises a psychologist in the prescribing of psychotropic

1 medication pursuant to the Professional Psychologist Act."

2 SECTION 10. REPEAL.--Section 61-9-2 NMSA 1978 (being
3 Laws 1989, Chapter 41, Section 2) is repealed.

4 SECTION 11. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect
6 immediately. _____

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