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SENATE BILL 9

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Mary Kay Papen

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

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1 document issued by the board to a licensed psychologist that
2 permits the holder to prescribe psychotropic medication under
3 the supervision of a [~~licensed physician~~] supervising clinician
4 pursuant to the Professional Psychologist Act;

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

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

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

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

17 [~~F.~~] G. "psychotropic medication" means a
18 controlled substance or dangerous drug that may not be
19 dispensed or administered without a prescription and whose
20 primary indication for use has been approved by the federal
21 food and drug administration for the treatment of mental
22 disorders [~~and~~] or is listed as a psychotherapeutic agent in
23 Drug Facts and Comparisons 2017, or the most recent edition of
24 that book, or in [~~the~~] American Hospital Formulary Service Drug
25 Information;

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1 [~~G-~~] H. "psychologist" means a person who engages
2 in the practice of psychology or holds [~~himself~~] the person's
3 self out to the public by any title or description of services
4 representing [~~himself~~] the person as a psychologist, which
5 incorporates the words "psychological", "psychologist",
6 "psychology", or when a person describes [~~himself~~] the person's
7 self as above and, under such title or description, offers to
8 render or renders services involving the application of
9 principles, methods and procedures of the science and
10 profession of psychology to persons for compensation or other
11 personal gain;

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

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1 aptitudes and neuropsychological functioning; counseling,
2 psychoanalysis, psychotherapy, hypnosis, biofeedback, behavior
3 analysis and therapy; diagnosis and treatment of ~~[any]~~ a mental
4 and emotional disorder or disability, alcoholism and substance
5 abuse, disorders of habit or conduct and the psychological
6 aspects of physical illness, accident, injury and disability;
7 and psychoeducational evaluation, therapy, remediation and
8 consultation; ~~[and~~

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

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

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

21 "61-9-10. LICENSURE OF PSYCHOLOGISTS FROM OTHER AREAS--
22 RECIPROCITY.--Subject to the provisions of Section 61-9-10.1
23 NMSA 1978, upon application accompanied by a fee as required by
24 the Professional Psychologist Act, the board may, without
25 written or oral examination, issue a license to a person who

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1 furnishes, upon a form and in such manner as the board
2 prescribes, evidence satisfactory to the board that the person
3 has been licensed or certified as a psychologist or prescribing
4 psychologist by another state, a territorial possession of the
5 United States, the District of Columbia or another country for
6 a minimum of five years. An applicant seeking reciprocity
7 shall demonstrate to the satisfaction of the board that the
8 training and education received by the applicant is equivalent
9 to the requirements for a doctoral degree in psychology as
10 provided in the Professional Psychologist Act."

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

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

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

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

24 (2) is using a drug, substance or alcoholic
25 beverage to an extent or in a manner dangerous to the

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1 psychologist or psychologist associate, any other person or the
2 public or to an extent that the use impairs the psychologist's
3 or psychologist associate's ability to perform the work of a
4 professional psychologist or psychologist associate with safety
5 to the public;

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

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

13 (5) has accepted commissions or rebates or
14 other forms of remuneration for referring clients to other
15 professional persons;

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

21 (7) is legally adjudicated insane or mentally
22 incompetent, the record of such adjudication being conclusive
23 evidence thereof;

24 (8) has willfully or negligently violated the
25 provisions of the Professional Psychologist Act;

1 (9) has violated any code of conduct adopted
2 by the board;

3 (10) has been disciplined by another state for
4 acts similar to acts described in this subsection, and a
5 certified copy of the record of discipline of the state
6 imposing the discipline is conclusive evidence;

7 (11) is incompetent to practice psychology;

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

10 (13) has abandoned patients or clients;

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

13 (a) another licensing jurisdiction;

14 (b) a professional psychologist
15 association of which the psychologist or psychologist associate
16 is or has been a member;

17 (c) a government agency; or

18 (d) a court for actions or conduct
19 similar to acts or conduct that would constitute grounds for
20 action as described in this subsection;

21 (15) has failed to report to the board
22 surrender of a license or other authorization to practice
23 psychology in another jurisdiction or surrender of membership
24 on a health care staff or in a professional association
25 following a disciplinary investigation, or in lieu of or while

1 under a disciplinary investigation, by any of those authorities
2 for acts or conduct that would constitute grounds for action as
3 defined in this subsection;

4 (16) has failed to adequately supervise a
5 psychologist associate or a licensed psychologist holding a
6 conditional prescription certificate;

7 (17) has employed abusive billing practices;

8 (18) has aided or abetted the practice of
9 psychology by a person not licensed by the board; or

10 (19) uses conversion therapy on a minor.

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

16 C. As used in this section:

17 (1) "conversion therapy" means any practice or
18 treatment that seeks to change a person's sexual orientation or
19 gender identity, including any effort to change behaviors or
20 gender expressions or to eliminate or reduce sexual or romantic
21 attractions or feelings toward persons of the same sex.

22 "Conversion therapy" does not mean:

23 (a) counseling or mental health services
24 that provide acceptance, support and understanding of a person
25 without seeking to change gender identity or sexual

1 orientation; or

2 (b) mental health services that
3 facilitate a person's coping, social support, sexual
4 orientation or gender identity exploration and development,
5 including an intervention to prevent or address unlawful
6 conduct or unsafe sexual practices, without seeking to change
7 gender identity or sexual orientation;

8 (2) "gender identity" means a person's self-
9 perception, or perception of that person by another, of the
10 person's identity as a male or female based upon the person's
11 appearance, behavior or physical characteristics that are in
12 accord with or opposed to the person's physical anatomy,
13 chromosomal sex or sex at birth;

14 (3) "minor" means a person under eighteen
15 years of age; and

16 (4) "sexual orientation" means
17 heterosexuality, homosexuality or bisexuality, whether actual
18 or perceived."

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

21 "61-9-17. DRUGS--MEDICINES.--

22 A. Except as provided in Subsections B and C of
23 this section, psychologists or psychologist associates shall
24 not administer or prescribe drugs or medicine or in any manner
25 engage in the practice of medicine as defined by the laws of

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1 this state.

2 B. A licensed psychologist holding a conditional
3 prescription certificate may prescribe psychotropic medication
4 under the supervision of a [~~licensed physician~~] supervising
5 clinician pursuant to the Professional Psychologist Act.

6 C. A prescribing psychologist may prescribe
7 psychotropic medication pursuant to the Professional
8 Psychologist Act."

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

11 "61-9-17.1. CONDITIONAL PRESCRIPTION CERTIFICATE--
12 PRESCRIPTION CERTIFICATE--APPLICATION--REQUIREMENTS--RULEMAKING
13 BY BOARD--ISSUANCE, DENIAL, RENEWAL AND REVOCATION OF
14 CERTIFICATION.--

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

19 (1) has completed a doctoral program in
20 psychology from an accredited institution of higher education
21 or professional school, or, if the program was not accredited
22 at the time of the applicant's graduation, that the program
23 meets professional standards determined acceptable by the
24 board;

25 (2) holds a current license to practice

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1 psychology in New Mexico;

2 (3) has successfully completed pharmacological
3 training from an institution of higher education approved by
4 the board and the New Mexico medical board [~~of medical~~
5 ~~examiners~~] or from a provider of continuing education approved
6 by the board and the New Mexico medical board [~~of medical~~
7 ~~examiners~~];

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

13 (5) within the five years immediately
14 preceding the date of application, has successfully completed
15 an organized program of education approved by the board and the
16 New Mexico medical board [~~of medical examiners~~] and consisting
17 of didactic instruction of no fewer than four hundred fifty
18 classroom hours in at least the following core areas of
19 instruction:

- 20 (a) neuroscience;
- 21 (b) pharmacology;
- 22 (c) psychopharmacology;
- 23 (d) physiology;
- 24 (e) pathophysiology;
- 25 (f) appropriate and relevant physical

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1 and laboratory assessment; and

2 (g) clinical pharmacotherapeutics;

3 (6) within the five years immediately
4 preceding the date of application, has been certified by each
5 of the applicant's supervising [~~psychiatrist or physician~~]
6 independently licensed prescribing clinicians as having
7 successfully completed a supervised and relevant clinical
8 experience, approved by the board and the New Mexico medical
9 board [~~of medical examiners~~], of:

10 (a) no less than an eighty-hour
11 practicum in clinical assessment and pathophysiology under the
12 supervision of an independently licensed prescribing physician;
13 and

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

24 (7) has malpractice insurance in place,
25 sufficient to satisfy the rules adopted by the board and the

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1 New Mexico medical board [~~of medical examiners~~], that will
2 cover the applicant during the period the conditional
3 prescription certificate is in effect; and

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

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

16 (1) the psychologist shall continue to hold a
17 current license to practice psychology in New Mexico and
18 continue to maintain malpractice insurance;

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

25 (3) ~~a physician supervising a psychologist~~

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1 ~~prescribing psychotropic medication pursuant to a conditional~~
2 ~~prescription certificate shall inform the board and the New~~
3 ~~Mexico board of medical examiners that he is supervising the~~
4 ~~psychologist. The physician shall be individually responsible~~
5 ~~for the acts and omissions of the psychologist while under his~~
6 ~~supervision. This provision does not relieve the psychologist~~
7 ~~from liability for his acts and omissions.]~~

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

10 (3) a supervising clinician shall notify the
11 supervising clinician's own licensing board of the name of each
12 psychologist under the supervising clinician's 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 ~~[G.]~~ 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 prescription
22 certificate and has successfully completed two years of
23 prescribing psychotropic medication as certified by the
24 supervising ~~[licensed physician]~~ clinician;

25 (2) has successfully undergone a process of

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1 independent peer review approved by the board and the New
2 Mexico medical board [~~of medical examiners~~];

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 will
7 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 [~~D-~~] E. The board shall issue a prescription
12 certificate if it finds that the applicant has met the
13 requirements of Subsection [~~E~~] D of this section. A
14 psychologist with a prescription certificate may prescribe
15 psychotropic medication pursuant to the provisions of the
16 Professional 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 by
22 the board, which shall be no fewer than twenty hours each year.

23 [~~E-~~] F. The board shall promulgate rules providing
24 for the procedures to be followed in obtaining a conditional
25 prescription certificate, a prescription certificate and

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

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

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

14 "61-9-17.2. PRESCRIBING PRACTICES.--

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

21 B. When prescribing psychotropic medication for a
22 patient, the prescribing psychologist or the psychologist with
23 a conditional prescription certificate shall maintain an
24 ongoing collaborative relationship with the health care
25 practitioner who oversees the patient's general medical care to

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

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

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

23 E. A committee composed of members of [~~both boards~~]
24 the board and the New Mexico medical board shall be established
25 and, pursuant to the guidelines, shall evaluate complaints.

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1 The committee shall report its findings and recommendations to
2 each board for each board's appropriate actions.

3 ~~[G-]~~ F. A prescription written by a prescribing
4 psychologist or a psychologist with a conditional prescription
5 certificate shall:

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

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

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

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

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

25 ~~[F-]~~ I. The board shall provide to the board of

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

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

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

16 (2) "health care practitioner" means a
17 physician, osteopathic physician, [~~or~~] 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 "[NEW MATERIAL] SUPERVISION OF PSYCHOLOGIST IN THE
22 PRESCRIBING OF PSYCHOTROPIC MEDICATION BY NURSE PRACTITIONER OR
23 CLINICAL NURSE SPECIALIST.--

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

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

3 B. No later than January 1, 2020, 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 Psychologist
9 Act is enacted to read:

10 "[NEW MATERIAL] PRESCRIPTION MONITORING PROGRAM--BOARD TO
11 PROMULGATE RULES.--By January 1, 2020, the board shall
12 promulgate rules to carry out the provisions of the
13 prescription monitoring program established by Section
14 26-1-16.1 NMSA 1978 insofar as that program applies to
15 prescribing psychologists."

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

18 "[NEW MATERIAL] SUPERVISION OF PSYCHOLOGIST IN THE
19 PRESCRIBING OF PSYCHOTROPIC MEDICATION BY OSTEOPATHIC
20 PHYSICIAN.--

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

25 B. No later than January 1, 2020, the board shall

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1 promulgate regulations for an osteopathic physician who
2 supervises a psychologist in the prescribing of psychotropic
3 medication pursuant to the Professional Psychologist Act."

4 SECTION 10. REPEAL.--Section 61-9-2 NMSA 1978 (being Laws
5 1989, Chapter 41, Section 2) is repealed.

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