

AN ACT

RELATING TO THE PRACTICE OF MEDICINE; AMENDING AND ENACTING CERTAIN SECTIONS OF THE MEDICAL PRACTICE ACT; DECLARING AN EMERGENCY.

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

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

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

A. "acting in good faith" means acting without malice as the primary motive or without knowledge or belief that one is in error in taking a particular action;

B. "board" means the New Mexico board of medical examiners;

C. "licensed physician" means a medical doctor licensed under the Medical Practice Act to practice medicine in New Mexico;

D. "medical college or school in good standing" means a board-approved medical college or school that has as high a standard as that required by the association of American medical colleges and the council on medical education of the American medical association;

E. "medical student" means a student enrolled in a board-approved medical college or school in good standing;

F. "person" means an individual or any legal

entity of any kind whatever;

G. "physician assistant" means a skilled person licensed by the board as being qualified by academic and practical training to provide patient services under the supervision and direction of the licensed physician who is responsible for the performance of that assistant;

H. "postgraduate year one" or "intern" means a first year postgraduate student upon whom a degree of doctor of medicine and surgery or equivalent degree has been conferred by a medical college or school in good standing;

I. "postgraduate year two through eight" or "resident" means a graduate of a medical college or school in good standing who is in training in a board-approved and accredited residency training program in a hospital or facility affiliated with an approved hospital and who has been appointed to the position of "resident" or "assistant resident" for the purpose of postgraduate medical training;

J. "the practice of medicine" consists of:

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

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

(3) offering or undertaking to give or administer, dispense or prescribe any drug or medicine for the use of any other person, except as directed by a licensed physician;

(4) offering or undertaking to perform any operation or procedure upon any person;

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

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

(7) acting as the representative or agent of any person in doing any of the things listed in Paragraphs (1) through (6) of this subsection;

K. "the practice of medicine across state lines" means:

(1) the rendering of a written or otherwise documented medical opinion concerning diagnosis or treatment of a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic, telephonic or other means from

within this state to the physician or the physician's agent;  
or

(2) the rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic, telephonic or other means from within this state to the physician or the physician's agent;

L. "sexual contact" means touching the primary genital area, groin, anus, buttocks or breast of a patient or allowing a patient to touch another's primary genital area, groin, anus, buttocks or breast in a manner that is commonly recognized as outside the scope of acceptable medical practice;

M. "sexual penetration" means sexual intercourse, cunnilingus, fellatio or anal intercourse, whether or not there is any emission, or introducing any object into the genital or anal openings of another in a manner that is commonly recognized as outside the scope of acceptable medical practice; and

N. "United States" means the fifty states, its territories and possessions and the District of Columbia."

Section 2. Section 61-6-11 NMSA 1978 (being Laws 1923, Chapter 44, Section 3, as amended) is amended to read:

"61-6-11. LICENSURE. --

A. The board may admit to examination for license any person who is of good moral character and is a graduate

of a medical college or school in good standing as defined in Subsection D of Section 61-6-6 NMSA 1978 and who has completed two years of postgraduate training.

B. One year of postgraduate medical training may be accepted by the board if the applicant was an intern in a board-approved program from July 1, 1993 through June 30, 1994 and if the applicant applies to the board for licensure before July 1, 1995. All postgraduate training shall be approved by the board.

C. An applicant who has not completed two years of postgraduate medical training, but who otherwise meets all other licensing requirements, may present evidence to the board of the applicant's other professional experience for consideration by the board in lieu of postgraduate medical training. The board shall, in its sole discretion, determine if the professional experience is substantially equivalent to the required postgraduate medical training.

D. The board may administer a board-approved licensing examination. The board shall determine a grade constituting successful completion of the exam.

E. Alternatively, the board may issue a license to any applicant of good moral character and after successfully completing an examination accepted by the board as administered in this or another state.

F. A graduate of a medical college located outside the United States may be granted a license to

practice medicine in New Mexico, provided the applicant presents evidence to the board that the applicant is a person of good moral character and is in compliance with the United States immigration laws and provided that the applicant presents satisfactory evidence to the board that the applicant has successfully passed an examination as required by the board and has successfully completed two years of postgraduate medical training in a board-approved program.

G. All applicants for licensure by examination shall personally appear before the board or a designated member of the board for an interview.

H. No applicant for licensure by examination shall be granted a license if the applicant has taken the examination in two or more steps and has failed to successfully pass the final step within seven years of the date that the first step was passed.

I. Every applicant for licensure under this section shall pay the fees required by Section 61-6-19 NMSA 1978. "

Section 3. Section 61-6-13 NMSA 1978 (being Laws 1989, Chapter 269, Section 9, as amended) is amended to read:

"61-6-13. LICENSURE BY ENDORSEMENT. --

A. The board may grant a license without examination and by endorsement to an applicant who has been a licensed physician outside of New Mexico, but in the

United States, and who otherwise meets the requirements set forth in the Medical Practice Act, provided that the applicant is properly endorsed by the officers of the examining board with jurisdiction.

B. The board may grant a license without examination and by endorsement to any applicant who has been a licensed physician in Canada and who otherwise meets the requirements set forth in the Medical Practice Act, provided that the applicant is properly endorsed by the officers of either the Canadian medical council or an examining board with jurisdiction within the United States.

C. The board may grant a license without examination and by endorsement to any applicant who has graduated from a medical college located outside the United States or Canada and who is of good moral character, who is in compliance with the United States immigration laws and who has been a licensed physician in the United States or Canada and has practiced medicine in the United States or Canada immediately preceding the application and who otherwise meets the requirements set forth in the Medical Practice Act, provided that the applicant is properly endorsed by the officers of the examining board within the United States or Canada that has jurisdiction.

D. An endorsement provided pursuant to this section shall certify that the applicant has passed an examination that meets with board approval and that the

applicant is in good standing in that jurisdiction. In cases when the applicant is board certified, has not been the subject of disciplinary action that would be reportable to the national practitioner data bank or the healthcare integrity and protection data bank and has unusual skills and experience not generally available in this state, and patients residing in this state have a significant need for such skills and experience, the board may waive any requirement imposing time limits for examination completion that are different from those of the state where the applicant is licensed.

E. All applicants for licensure under this section shall personally appear before the board or a designated board member for an interview.

F. All applicants for licensure under this section shall pay an application fee as provided in Section 61-6-19 NMSA 1978."

Section 4. Section 61-6-15 NMSA 1978 (being Laws 1969, Chapter 46, Section 6, as amended) is amended to read:

"61-6-15. LICENSE MAY BE REFUSED, REVOKED OR SUSPENDED--LICENSEE MAY BE FINED, CENSURED OR REPRIMANDED--PROCEDURE--PRACTICE AFTER SUSPENSION OR REVOCATION--PENALTY--UNPROFESSIONAL AND DISHONORABLE CONDUCT DEFINED--FEES AND EXPENSES--NOTICE OF CLAIM --

A. The board may refuse to license and may revoke or suspend any license that has been issued by the board or



any previous board and may fine, censure or reprimand any licensee upon satisfactory proof being made to the board that the applicant for or holder of the license has been guilty of unprofessional or dishonorable conduct. The board may also refuse to license an applicant who is unable to practice medicine, pursuant to Section 61-7-3 NMSA 1978. All proceedings shall be as required by the Uniform Licensing Act or the Impaired Health Care Provider Act.

B. The board may, in its discretion and for good cause shown, place the licensee on probation on such terms and conditions as it deems proper for protection of the public or for the purpose of the rehabilitation of the probationer, or both. Upon expiration of the term of probation, if a term is set, further proceedings may be abated by the board if the holder of the license furnishes the board with evidence that the physician is competent to practice medicine, is of good moral character and has complied with the terms of probation.

C. If evidence fails to establish to the satisfaction of the board that the licensee is competent and is of good moral character or if evidence shows that he has not complied with the terms of probation, the board may revoke or suspend the license forthwith. If a license to practice medicine in this state is suspended, the holder of the license may not practice during the term of suspension. Any person whose license has been revoked or suspended by

the board and who thereafter practices or attempts or offers to practice medicine in New Mexico, unless the period of suspension has expired or been modified by the board or the physician's license reinstated, is guilty of a felony and shall be punished as provided in Section 61-6-20 NMSA 1978.

D. "Unprofessional or dishonorable conduct", as used in this section, means among other things, but not limited to because of enumeration:

(1) procuring, aiding or abetting a criminal abortion;

(2) employing any person to solicit patients for the physician;

(3) representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;

(4) obtaining any fee by fraud or misrepresentation;

(5) willfully or negligently divulging a professional confidence;

(6) conviction of any offense punishable by incarceration in a state penitentiary or federal prison or conviction of a misdemeanor associated with the practice of medicine. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;

(7) habitual or excessive use of

intoxicants or drugs;

(8) fraud or misrepresentation in applying for or procuring a license to practice in this state or in connection with applying for or procuring renewal, including cheating on or attempting to subvert the licensing examinations;

(9) making false or misleading statements regarding the physician's skill or the efficacy or value of the medicine, treatment or remedy prescribed or administered by the physician or at the physician's direction in the treatment of any disease or other condition of the human body or mind;

(10) impersonating another person licensed to practice medicine, permitting or allowing any person to use the physician's license or certificate of registration or practicing medicine under a false or assumed name;

(11) aiding or abetting the practice of medicine by a person not licensed by the board;

(12) gross negligence in the practice of medicine;

(13) manifest incapacity or incompetence to practice medicine;

(14) discipline imposed on a licensee to practice medicine by another state, including probation, suspension or revocation, based upon acts by the licensee similar to acts described in this section. A certified copy

of the record of suspension or revocation of the state making the suspension or revocation is conclusive evidence;

(15) the use of any false, fraudulent or deceptive statement in any document connected with the practice of medicine;

(16) fee splitting;

(17) the prescribing, administering or dispensing of narcotic, stimulant or hypnotic drugs for other than accepted therapeutic purposes;

(18) conduct likely to deceive, defraud or harm the public;

(19) repeated similar negligent acts;

(20) employing abusive billing practices;

(21) failure to report to the board any adverse action taken against the physician by:

(a) another licensing jurisdiction;

(b) any peer review body;

(c) any health care entity;

(d) any professional or medical society or association;

(e) any governmental agency;

(f) any law enforcement agency; or

(g) any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(22) failure to report to the board

surrender of a license or other authorization to practice medicine in another state or jurisdiction or surrender of membership on any medical staff or in any medical or professional association or society following, in lieu of and while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(23) failure to furnish the board, its investigators or representatives with information requested by the board;

(24) abandonment of patients;

(25) being found mentally incompetent or insane by a court of competent jurisdiction;

(26) injudicious prescribing, administering or dispensing of any drug or medicine;

(27) failure to adequately supervise, as provided by board regulation, a medical or surgical assistant or technician or professional licensee who renders health care;

(28) intentionally engaging in sexual contact or sexual penetration with a patient other than one's spouse after representing or inferring that such activity is a legitimate part of the patient's treatment;

(29) conduct unbecoming in a person licensed to practice medicine or detrimental to the best

interests of the public; and

(30) the surrender of a license to practice medicine or withdrawal of an application for a license to practice medicine before another state licensing board while disciplinary action is pending before that board for acts or conduct similar to acts or conduct that would constitute grounds for action as provided for in this section.

E. As used in this section, "fee splitting" includes offering, delivering, receiving or accepting any unearned rebate, refunds, commission preference, patronage dividend, discount or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients or customers to any person, irrespective of any membership, proprietary interest or co-ownership in or with any person to whom the patients, clients or customers are referred.

F. Licensees shall bear all costs of disciplinary proceedings unless exonerated.

G. Licensees whose licenses are in a probationary status shall pay reasonable expenses for maintaining probationary status, including laboratory costs when laboratory testing of biological fluids are included as a condition of probation.

H. For the purpose of investigating the competence of medical practitioners covered by the Medical Practice Act who practice medicine in the state of New

Mexico, any entity issuing professional liability insurance to physicians or indemnifying physicians for professional liability in New Mexico shall report to the board all settlements or judgments against licensed physicians, whether they are tried in court or settled out of court. "

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

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

- A. gratuitous services rendered in cases of emergency;
- B. the domestic administration of family remedies;
- C. the practice of midwifery as regulated in this state;
- D. commissioned medical officers of the armed forces of the United States and medical officers of the United States public health service or the veterans administration of the United States in the discharge of their official duties or within federally controlled facilities; provided that such persons who hold medical licenses in New Mexico shall be subject to the provisions of the Medical Practice Act and provided that all such persons shall be fully licensed to practice medicine in one or more jurisdictions of the United States;
- E. the practice of medicine by a physician,

unlicensed in New Mexico, who performs emergency medical procedures in air or ground transportation on a patient from inside of New Mexico to another state or back, provided the physician is duly licensed in that state;

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

- (1) osteopathy;
- (2) dentistry;
- (3) podiatry;
- (4) nursing;
- (5) optometry;
- (6) psychology;
- (7) chiropractic;
- (8) pharmacy;
- (9) acupuncture and oriental medicine; or
- (10) physical therapy;

G. any act, task or function performed by a physician assistant at the direction of and under the supervision of a licensed physician, when:

(1) the assistant is registered and has biennially renewed his registration with the board as one qualified by training or experience to function as an assistant to a physician;

(2) the act, task or function is performed at the direction of and under the supervision of a licensed physician in accordance with rules promulgated by the board;



and

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

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

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

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

I. a properly trained medical or surgical assistant or technician or professional licensee performing under the physician's employment and direct supervision or a visiting physician or surgeon operating under the physician's direct supervision any medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician, the act can be properly and safely performed in its customary manner and if the person does not

hold himself out to the public as being authorized to practice medicine in New Mexico. The delegating physician shall remain responsible for the medical acts of the person performing the delegated medical acts;

J. the practice of the religious tenets of any church in the ministrations to the sick or suffering by mental or spiritual means as provided by law; provided that the Medical Practice Act shall not be construed to exempt any person from the operation or enforcement of the sanitary and quarantine laws of the state;

K. the acts of a physician licensed under the laws of another state of the United States who is the treating physician of a patient and orders home health or hospice services for a resident of New Mexico to be delivered by a home and community support services agency licensed in this state; provided that any change in the condition of the patient shall be physically reevaluated by the treating physician in the treating physician's jurisdiction or by a licensed New Mexico physician;

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

M. a physician who engages in the informal practice of medicine across state lines without compensation or expectation of compensation; provided that the practice

of medicine across state lines conducted within the parameters of a contractual relationship shall not be considered informal and is subject to licensure and regulation by the board. "

Section 6. Section 61-6-19 NMSA 1978 (being Laws 1989, Chapter 269, Section 15, as amended by Laws 1997, Chapter 187, Section 9 and also by Laws 1997, Chapter 221, Section 4) is amended to read:

"61-6-19. FEES. --

A. The board shall impose the following fees:

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

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

(3) an examination fee equal to the cost of purchasing the examination plus an administration fee not to exceed fifty percent of that cost;

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

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

(6) a late fee not to exceed one hundred dollars (\$100) for physicians who renew their license within

forty-five days after the required renewal date;

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

(8) a reinstatement fee not to exceed the current application fee for reinstatement of a revoked, suspended or inactive license;

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

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

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

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

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

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

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

(16) a licensure fee not to exceed one hundred fifty dollars (\$150) for physician assistants biennial licensing and registration of supervising physician;

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

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

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

(20) an application and renewal fee for a telemedicine license not to exceed four hundred dollars (\$400).

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

Section 7. Section 61-6-20 NMSA 1978 (being Laws 1923, Chapter 44, Section 9, as amended) is amended to read:

"61-6-20. PRACTICING WITHOUT LICENSE--PENALTY.--

A. Any person who practices medicine or who attempts to practice medicine without first complying with the provisions of the Medical Practice Act and without being the holder of a license entitling him to practice medicine

in New Mexico is guilty of a fourth degree felony.

B. Any person who practices medicine across state lines or who attempts to practice medicine across state lines without first complying with the provisions of the Medical Practice Act and without being the holder of a telemedicine license entitling him to practice medicine across state lines is guilty of a fourth degree felony.

C. Any person convicted pursuant to Subsection A or B of this section shall be sentenced under the provisions of the Criminal Sentencing Act to imprisonment for a definite period not to exceed eighteen months and, in the discretion of the sentencing court, to a fine not to exceed five thousand dollars (\$5,000), or both. Each occurrence of practicing medicine or attempting to practice medicine without complying with the Medical Practice Act shall be a separate violation."

Section 8. Section 61-6-26 NMSA 1978 (being Laws 1989, Chapter 269, Section 22) is amended to read:

"61-6-26. TRIENNIAL RENEWAL FEES--PENALTY FOR FAILURE TO RENEW LICENSE. --

A. Before July 1 of every third year, every licensed practitioner of medicine in this state shall have applied for a certificate of triennial renewal of license for the ensuing three years. The board may establish a method to provide for staggered triennial renewal terms and may prorate triennial renewal fees and impaired physicians

fees until staggered triennial renewal is established. The fact that a practitioner has not received a renewal form from the board shall not relieve him of the duty to renew his license nor shall such omission on the part of the board operate to exempt him from the penalties provided by Chapter 61, Article 6 NMSA 1978 for failure to renew his license.

B. All licensed practitioners shall pay a triennial renewal fee and impaired physicians fee as provided in Section 61-6-19 NMSA 1978 and all practitioners shall return the completed renewal form together with the renewal fee and proof of continuing medical education.

C. Each application for triennial renewal of license shall state the practitioner's full name, business address, the date and number of his license and all other information requested by the board.

D. A practitioner who fails to submit his application for triennial renewal on or before July 1 but who submits his application for triennial renewal within forty-five days thereafter shall be assessed a late fee as provided in Section 61-6-19 NMSA 1978.

E. A practitioner who submits the application for triennial renewal between forty-five and ninety days of the July 1 deadline shall be assessed a cumulative late fee as provided in Paragraph (7) of Subsection A of Section 61-6-19 NMSA 1978.

F. The board may, in its discretion, summarily

suspend for nonpayment of fees the license of a practitioner who has failed to renew his license within ninety days of July 1. "

Section 9. Section 61-6-33 NMSA 1978 (being Laws 1989, Chapter 269, Section 29) is amended to read:

"61-6-33. LICENSURE STATUS. -- Upon a verified written request, any practitioner licensed under the Medical Practice Act may request his license be put in retirement or voluntary lapsed status. Upon request for reinstatement of active status, the board may impose conditions as provided in Section 61-6-30 NMSA 1978. "

Section 10. A new section of the Medical Practice Act is enacted to read:

"TELEMEDICINE LICENSE. --

A. The board shall issue a telemedicine license to allow the practice of medicine across state lines to an applicant who holds a full and unrestricted license to practice medicine in another state or territory of the United States. The board shall establish by rule the requirements for licensure; provided the requirements shall not be more restrictive than those required for licensure by endorsement.

B. A telemedicine license shall be issued for a period not to exceed three years and may be renewed upon application, payment of fees as provided in Section 61-6-19 NMSA 1978 and compliance with other requirements established



by rule of the board. "

Section 11. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. \_\_\_\_\_