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AN ACT

RELATING TO THE PRACTICE OF MEDICINE; AMENDING AND ENACTING
CERTAIN SECTIONS OF THE MEDICAL PRACTICE ACT; PROVIDING AN
EXCEPTION TO THE PROHIBITION OF DISCLOSURE IN THE REVIEW
ORGANIZATION IMMUNITY ACT.

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

Section 1. Section 61-6-7.2 NMSA 1978 (being Laws 1997,
Chapter 187, Section 3, as amended) is amended to read:

"61-6-7.2. INACTIVE LICENSE.--

A. A physician assistant license shall expire
every two years on a date established by the board.

B. A physician assistant who notifies the board in
writing on forms prescribed by the board may elect to place
the physician assistant's license on an inactive status. A
physician assistant with an inactive license shall be excused
from payment of renewal fees and shall not practice as a
physician assistant.

C. A physician assistant who engages in practice
while the physician assistant's license is lapsed or on
inactive status is practicing without a license, and is
subject to disciplinary action and penalties.

D. A physician assistant requesting restoration
from inactive status shall pay the current renewal fee and
fulfill the requirement for renewal pursuant to the Physician

1 Assistant Act.

2 E. The board may, in its discretion, summarily
3 suspend for nonpayment of fees the license of a physician
4 assistant who has not renewed the physician assistant's
5 license within ninety days of expiration.

6 F. A physician assistant who has not submitted an
7 application for renewal on or before the license expiration
8 date, but who has submitted an application for renewal within
9 forty-five days after the license expiration date, shall be
10 assessed a late fee.

11 G. A physician assistant who has not submitted an
12 application for renewal between forty-six and ninety days
13 after the expiration date shall be assessed a late fee."

14 Section 2. Section 61-6-10 NMSA 1978 (being Laws 1973,
15 Chapter 361, Section 6, as amended) is amended to read:

16 "61-6-10. SUPERVISING LICENSED PHYSICIAN--
17 RESPONSIBILITY.--

18 A. As a condition of licensure, all physician
19 assistants practicing in New Mexico shall inform the board of
20 the name of the licensed physician under whose supervision
21 they will practice. All supervising physicians shall be
22 licensed under the Medical Practice Act and shall be approved
23 by the board.

24 B. Every licensed physician supervising a licensed
25 physician assistant shall be individually responsible and

1 liable for the performance of the acts and omissions
2 delegated to the physician assistant, provided that the
3 physician assistant is also responsible and liable for the
4 physician assistant's own acts and omissions. A physician
5 assistant shall be supervised by a physician as approved by
6 the board."

7 Section 3. Section 61-6-10.6 NMSA 1978 (being Laws
8 2001, Chapter 311, Section 6) is amended to read:

9 "61-6-10.6. INACTIVE LICENSE.--

10 A. An anesthesiologist assistant who notifies the
11 board in writing on forms prescribed by the board may elect
12 to place the anesthesiologist assistant's license on inactive
13 status. An anesthesiologist assistant with an inactive
14 license shall be excused from payment of renewal fees and
15 shall not practice as an anesthesiologist assistant.

16 B. An anesthesiologist assistant who engages in
17 practice while the anesthesiologist assistant's license is
18 lapsed or on inactive status is practicing without a license
19 and is subject to disciplinary action and penalties.

20 C. An anesthesiologist assistant requesting
21 restoration from inactive status shall pay the current
22 renewal fee and fulfill the requirement for renewal pursuant
23 to the Anesthesiologist Assistants Act."

24 Section 4. Section 61-6-10.10 NMSA 1978 (being Laws
25 2001, Chapter 311, Section 10) is amended to read:

1 "61-6-10.10. SUPERVISING ANESTHESIOLOGIST--
2 RESPONSIBILITIES.--

3 A. Supervising anesthesiologists shall be licensed
4 to practice pursuant to the Medical Practice Act and shall be
5 approved by the board.

6 B. The anesthesiologist actually supervising the
7 licensed anesthesiologist assistant at the time is
8 individually responsible and liable for the acts and
9 omissions that the anesthesiologist assistant performs in the
10 scope of the anesthesiologist assistant's duties; provided
11 that the anesthesiologist assistant is also responsible and
12 liable for the anesthesiologist assistant's own acts and
13 omissions.

14 C. An anesthesiologist may supervise that number
15 of anesthesiologist assistants as permitted by the board."

16 Section 5. Section 61-6-15 NMSA 1978 (being Laws 1969,
17 Chapter 46, Section 6, as amended) is amended to read:

18 "61-6-15. LICENSE MAY BE REFUSED, REVOKED OR
19 SUSPENDED--LICENSEE MAY BE FINED, CENSURED OR REPRIMANDED--
20 PROCEDURE--PRACTICE AFTER SUSPENSION OR REVOCATION--PENALTY--
21 UNPROFESSIONAL AND DISHONORABLE CONDUCT DEFINED--FEES AND
22 EXPENSES.--

23 A. The board may refuse to license and may revoke
24 or suspend a license that has been issued by the board or a
25 previous board and may fine, censure or reprimand a licensee

1 upon satisfactory proof being made to the board that the
2 applicant for or holder of the license has been guilty of
3 unprofessional or dishonorable conduct. The board may also
4 refuse to license an applicant who is unable to practice
5 medicine, or practice as a physician assistant or an
6 anesthesiologist assistant, pursuant to Section 61-7-3 NMSA
7 1978. All proceedings shall be as required by the Uniform
8 Licensing Act or the Impaired Health Care Provider Act.

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

18 C. If evidence fails to establish to the
19 satisfaction of the board that the licensee is competent and
20 is of good moral character or if evidence shows that the
21 licensee has not complied with the terms of probation, the
22 board may revoke or suspend the license. If a license to
23 practice in this state is suspended, the holder of the
24 license may not practice during the term of suspension. A
25 person whose license has been revoked or suspended by the

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

6 D. "Unprofessional or dishonorable conduct", as
7 used in this section, means, but is not limited to because of
8 enumeration, conduct of a licensee that includes the
9 following:

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

12 (2) employing a person to solicit patients
13 for the licensee;

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

17 (4) obtaining a fee by fraud or
18 misrepresentation;

19 (5) willfully or negligently divulging a
20 professional confidence;

21 (6) conviction of an offense punishable by
22 incarceration in a state penitentiary or federal prison or
23 conviction of a misdemeanor associated with the practice of
24 the licensee. A copy of the record of conviction, certified
25 by the clerk of the court entering the conviction, is

1 conclusive evidence;

2 (7) habitual or excessive use of intoxicants
3 or drugs;

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

9 (9) making false or misleading statements
10 regarding the skill of the licensee or the efficacy or value
11 of the medicine, treatment or remedy prescribed or
12 administered by the licensee or at the direction of the
13 licensee in the treatment of a disease or other condition of
14 the human body or mind;

15 (10) impersonating another licensee,
16 permitting or allowing a person to use the license of the
17 licensee or practicing as a licensee under a false or assumed
18 name;

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

21 (12) gross negligence in the practice of a
22 licensee;

23 (13) manifest incapacity or incompetence to
24 practice as a licensee;

25 (14) discipline imposed on a licensee by

1 this state or another state, including denial, probation,
2 suspension or revocation, based upon acts by the licensee
3 similar to acts described in this section. A certified copy
4 of the record of suspension or revocation of the state making
5 the suspension or revocation is conclusive evidence;

6 (15) the use of a false, fraudulent or
7 deceptive statement in a document connected with the practice
8 of a licensee;

9 (16) fee splitting;

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

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

15 (19) repeated similar negligent acts;

16 (20) employing abusive billing practices;

17 (21) failure to report to the board any
18 adverse action taken against the licensee by:

19 (a) another licensing jurisdiction;

20 (b) a peer review body;

21 (c) a health care entity;

22 (d) a professional or medical society
23 or association;

24 (e) a governmental agency;

25 (f) a law enforcement agency; or

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

4 (22) failure to report to the board
5 surrender of a license or other authorization to practice in
6 another state or jurisdiction or surrender of membership on
7 any medical staff or in any medical or professional
8 association or society following, in lieu of and while under
9 disciplinary investigation by any of those authorities or
10 bodies for acts or conduct similar to acts or conduct that
11 would constitute grounds for action as defined in this
12 section;

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

16 (24) abandonment of patients;

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

19 (26) injudicious prescribing, administering
20 or dispensing of a drug or medicine;

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

24 (28) sexual contact with a patient or person
25 who has authority to make medical decisions for a patient,

1 other than the spouse of the licensee;

2 (29) conduct unbecoming in a person licensed
3 to practice or detrimental to the best interests of the
4 public;

5 (30) the surrender of a license or
6 withdrawal of an application for a license before another
7 state licensing board while an investigation or disciplinary
8 action is pending before that board for acts or conduct
9 similar to acts or conduct that would constitute grounds for
10 action pursuant to this section;

11 (31) sexual contact with a former mental
12 health patient of the licensee, other than the spouse of the
13 licensee, within one year from the end of treatment;

14 (32) sexual contact with a patient when the
15 licensee uses or exploits treatment, knowledge, emotions or
16 influence derived from the previous professional
17 relationship;

18 (33) improper management of medical records,
19 including failure to maintain timely, accurate, legible and
20 complete medical records;

21 (34) failure to provide pertinent and
22 necessary medical records to a physician or patient of the
23 physician in a timely manner when legally requested to do so
24 by the patient or by a legally designated representative of
25 the patient;

1 (35) undertreatment of pain as provided by
2 board rule;

3 (36) interaction with physicians, hospital
4 personnel, patients, family members or others that interferes
5 with patient care or could reasonably be expected to
6 adversely impact the quality of care rendered to a patient;

7 (37) soliciting or receiving compensation by
8 a physician assistant or anesthesiologist assistant from a
9 person who is not an employer of the assistant; or

10 (38) willfully or negligently divulging
11 privileged information or a professional secret.

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

21 F. Licensees whose licenses are in a probationary
22 status shall pay reasonable expenses for maintaining
23 probationary status, including laboratory costs when
24 laboratory testing of biological fluids are included as a
25 condition of probation."

1 Section 6. A new section of the Medical Practice Act,
2 Section 61-6-15.1 NMSA 1978, is enacted to read:

3 "61-6-15.1. SUMMARY SUSPENSION.--

4 A. The board may summarily suspend or restrict a
5 license without a hearing, simultaneously with or at any time
6 after the initiation of proceedings for a hearing provided
7 under the Uniform Licensing Act, if the board finds that
8 evidence in its possession indicates that:

9 (1) the licensee poses a clear and immediate
10 danger to the public health and safety if the licensee
11 continues to practice;

12 (2) the licensee has been adjudged mentally
13 incompetent or insane by a final order or adjudication by a
14 court of competent jurisdiction; or

15 (3) the licensee has plead guilty to or been
16 found guilty of a felony drug abuse offense or for any
17 violent criminal offense in this state or a substantially
18 equivalent criminal offense in another jurisdiction.

19 B. No licensee is required to comply with a
20 summary action until service has been made or the licensee
21 has actual knowledge of the order, whichever occurs first.

22 C. A person whose license is suspended or
23 restricted under this section is entitled to a hearing by the
24 board pursuant to the Uniform Licensing Act within fifteen
25 days from the date the licensee requests a hearing."

1 Section 7. Section 61-6-16 NMSA 1978 (being Laws 1989,
2 Chapter 269, Section 12, as amended) is amended to read:

3 "61-6-16. REPORTING OF SETTLEMENTS AND JUDGMENTS,
4 PROFESSIONAL REVIEW ACTIONS AND ACCEPTANCE OF SURRENDERED
5 LICENSE--IMMUNITY FROM CIVIL DAMAGES--PENALTY.--

6 A. All entities that make payments under a policy
7 of insurance, self-insurance or otherwise in settlement or
8 satisfaction of a judgment in a medical malpractice action or
9 claim, hospitals, health care entities and professional
10 review bodies shall report to the board all payments relating
11 to malpractice actions or claims arising in New Mexico that
12 involve a licensee, all appropriate professional review
13 actions of licensees and the acceptance or surrender of
14 clinical privileges by a licensee while under investigation
15 or in lieu of an investigation. For the purposes of this
16 section, the meaning of these terms shall be as contained in
17 Section 431 of the federal Health Care Quality Improvement
18 Act of 1986, 42 USCA Section 11151.

19 B. The hospitals required to report under this
20 section, health care entities or professional review bodies
21 that provide such information in good faith shall not be
22 subject to suit for civil damages as a result of providing
23 the information.

24 C. A hospital, health care entity or professional
25 review body failing to comply with the reporting requirements

1 provided in this section shall be subject to civil penalty
2 not to exceed ten thousand dollars (\$10,000)."

3 Section 8. Section 61-6-19 NMSA 1978 (being Laws 1989,
4 Chapter 269, Section 15, as amended) is amended to read:

5 "61-6-19. FEES.--

6 A. The board shall impose the following fees:

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

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

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

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

18 (5) a late fee not to exceed one hundred
19 dollars (\$100) for physicians who renew their license within
20 forty-five days after the required renewal date;

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

25 (7) a reinstatement fee not to exceed six

1 hundred dollars (\$600) for reinstatement of a revoked,
2 suspended or inactive license;

3 (8) a reasonable administrative fee for
4 verification and duplication of license or registration and
5 copying of records;

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

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

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

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

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

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

20 (15) a licensure fee not to exceed one
21 hundred fifty dollars (\$150) for physician assistants
22 biennial licensing and registration of supervising licensed
23 physician;

24 (16) a late fee not to exceed fifty dollars
25 (\$50.00) for physician assistants who renew their licensure

1 within forty-five days after the required renewal date;

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

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

9 (19) a processing fee not to exceed fifty
10 dollars (\$50.00) for each change of a supervising licensed
11 physician for a physician assistant;

12 (20) a fee not to exceed three hundred
13 dollars (\$300) annually for a physician supervising a
14 clinical pharmacist;

15 (21) an application and renewal fee for a
16 telemedicine license not to exceed four hundred dollars
17 (\$400);

18 (22) a reasonable administrative fee, not to
19 exceed the current cost of application for a license, may be
20 charged for reprocessing applications and renewals that
21 include minor but significant errors, and would otherwise be
22 subject to investigation and possible disciplinary action;
23 and

24 (23) a reasonable fee as established by the
25 department of public safety for nationwide and statewide

1 criminal history screening of applicants and licensees.

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

4 Section 9. Section 61-6-23 NMSA 1978 (being Laws 1989,
5 Chapter 269, Section 19, as amended) is amended to read:

6 "61-6-23. INVESTIGATION--SUBPOENA.--

7 A. To investigate a complaint against a licensee,
8 the board may issue investigative subpoenas prior to the
9 issuance of a notice of contemplated action.

10 B. A review organization, acting pursuant to the
11 Review Organization Immunity Act, shall comply with an
12 investigative subpoena issued pursuant to this section, but
13 only after the review organization has taken action against a
14 health care provider that is reportable to the board. All
15 records received by the board from a review organization:

16 (1) are confidential and not public records
17 for the purposes of the Inspection of Public Records Act; and

18 (2) the review organization's compliance
19 with the investigative subpoena shall not be deemed a waiver
20 of any provision of the Review Organization Immunity Act by
21 the review organization.

22 C. The board shall give timely notice to the
23 review organization producing peer review records if the peer
24 review records are subpoenaed by a third party, and the
25 review organization shall have standing as an intervener to

1 oppose such production in any action brought by other parties
2 requesting the production of documents produced by the review
3 organization.

4 D. The board shall not compel any person in the
5 person's capacity as a peer review member or any expert who
6 participates in a peer review process to participate in any
7 board investigation or action resulting from its receipt of
8 the peer review documents.

9 E. Only documents that are related to the review
10 organization's action that was reportable to the board shall
11 be required to be disclosed in response to the investigative
12 subpoena."

13 Section 10. Section 61-6-24 NMSA 1978 (being Laws 1989,
14 Chapter 269, Section 20) is amended to read:

15 "61-6-24. LIMITATIONS ON ACTIONS.--

16 A. No action that would have any of the effects
17 specified in Sections 61-6-15 and 61-6-15.1 NMSA 1978 may be
18 initiated by the board later than two years after it is
19 brought to the board's attention.

20 B. The time limitation contained in Subsection A
21 of this section shall be tolled by any civil or criminal
22 litigation in which the licensee or applicant is a party
23 arising substantially from the same facts, conduct,
24 transaction or transactions that would be the basis of the
25 board's decision."

1 Section 11. Section 61-6-35 NMSA 1978 (being Laws 1979,
2 Chapter 40, Section 2, as amended) is amended to read:

3 "61-6-35. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--
4 The New Mexico medical board is terminated on July 1, 2009
5 pursuant to the Sunset Act. The board shall continue to
6 operate according to the provisions of the Medical Practice
7 Act until July 1, 2010. Effective July 1, 2010, the Medical
8 Practice Act is repealed."

9 Section 12. Section 41-9-5 NMSA 1978 (being Laws 1979,
10 Chapter 169, Section 5) is amended to read:

11 "41-9-5. CONFIDENTIALITY OF RECORDS OF REVIEW
12 ORGANIZATION.--All data and information acquired by a review
13 organization in the exercise of its duties and functions shall
14 be held in confidence and, unless subpoenaed pursuant to
15 Subsection B of Section 61-6-23 NMSA 1978, shall not be
16 disclosed to anyone except to the extent necessary to carry
17 out one or more of the purposes of the review organization or
18 in a judicial appeal from the action of the review
19 organization. No person described in Section 41-9-4 NMSA 1978
20 shall disclose what transpired at a meeting of a review
21 organization except to the extent necessary to carry out one
22 or more of the purposes of the review organization or in a
23 judicial appeal from the action of the review organization.
24 Information, documents or records otherwise available from
25 original sources shall not be immune from discovery or use in

1 any civil action merely because they were presented during
2 proceedings of a review organization, nor shall any person who
3 testified before a review organization or who is a member of a
4 review organization be prevented from testifying as to matters
5 within the person's knowledge, but a witness cannot be asked
6 about opinions formed by the witness as a result of the review
7 organization's hearings."

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