HOUSE BILL 275

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO CHIROPRACTIC LICENSURE; ESTABLISHING THE ADVANCED PRACTICE CHIROPRACTIC CERTIFICATION REGISTRY FOR CHIROPRACTIC PHYSICIANS; AUTHORIZING A CERTIFIED ADVANCED PRACTICE CHIROPRACTIC PHYSICIAN TO ISSUE PRESCRIPTIONS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Chiropractic Physician Practice Act is enacted to read:

"[NEW MATERIAL] ADVANCED PRACTICE CHIROPRACTIC CERTIFICATION REGISTRY ESTABLISHED.--The board shall establish by rule the advanced practice chiropractic certification registry. A chiropractic physician authorized by the board to use the title "certified advanced practice chiropractic physician" shall have prescriptive authority for therapeutic

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and diagnostic purposes as authorized by statute. Only a chiropractic physician included in the advanced practice chiropractic certification registry may use the title certified advanced practice chiropractic physician, and it is unlawful for a person to use the certified advanced practice chiropractic physician title unless the person is included in the advanced practice chiropractic certification registry. The advanced practice chiropractic certification registry shall include a chiropractic physician who applies for the designation and:

A. holds a chiropractic license in good standing;

B. has completed three years of post-graduate clinical chiropractic practice or equivalent clinical experience as established by the board;

C. has an advanced practice chiropractic certification by a nationally recognized credentialing agency providing credentialing and demonstrated competency by examination and additionally, after December 31, 2012, successful completion of a graduate degree in a chiropractic clinical practice specialty;

D. has completed a minimum of ninety clinical and didactic contact course hours in pharmacology, pharmacognosy, medication administration and toxicology certified by an examination from an institution of higher education approved by the board and in collaboration with the New Mexico medical

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board; and

E. has completed annual continuing education for advanced practice chiropractic physicians as set by the board."

Section 2. A new section of the Chiropractic Physician Practice Act is enacted to read:

"[NEW MATERIAL] CERTIFIED ADVANCED PRACTICE CHIROPRACTIC PHYSICIAN AUTHORITY DEFINED.--A certified advanced practice chiropractic physician may prescribe, administer and dispense herbal medicines, homeopathic medicines, vitamins, minerals, enzymes, glandular products, naturally derived substances, protomorphogens, live cell products, gerovital, amino acids, dietary supplements, foods for special dietary use, bioidentical hormones, sterile water, sterile saline, sarapin or its generic, caffeine, procaine, oxygen, epinephrine and vapocoolants. A formulary shall be developed by the board in conjunction with the New Mexico medical board and the board of pharmacy."

Section 3. A new section of the Chiropractic Physician Practice Act is enacted to read:

"[NEW MATERIAL] USE OF CHIROPRACTIC NAME LIMITED.--The terms "chiropractor", "chiropractic physician" or "chiropractic" may be used only by persons licensed pursuant to the Chiropractic Physician Practice Act."

Section 4. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended) is amended to read:

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"26-1-2. DEFINITIONS.--As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

B. "person" includes an individual, partnership, corporation, association, institution or establishment;

C. "biological product" means a virus, therapeutic serum, toxin, antitoxin or analogous product applicable to the prevention, treatment or cure of diseases or injuries of [~~man~~] humans and domestic animals and, as used within the meaning of this definition:

(1) a "virus" is interpreted to be a product containing the minute living cause of an infectious disease and includes filterable viruses, bacteria, rickettsia, fungi and protozoa;

(2) a "therapeutic serum" is a product obtained from blood by removing the clot or clot components and the blood cells;

(3) a "toxin" is a product containing a soluble substance poisonous to laboratory animals or [~~man~~] humans in doses of one milliliter or less of the product and having the property, following the injection of nonfatal doses into an animal, or causing to be produced therein another soluble substance that specifically neutralizes the poisonous substance and that is demonstrable in the serum of the animal

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thus immunized; and

(4) an "antitoxin" is a product containing the soluble substance in serum or other body fluid of an immunized animal that specifically neutralizes the toxin against which the animal is immune;

D. "controlled substance" means a drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act;

E. "drug" means articles:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in [~~man~~] humans or other animals and includes the domestic animal biological products regulated under the federal Virus-Serum-Toxin Act, 37 Stat 832-833, 21 U.S.C. 151-158, and the biological products applicable to [~~man~~] humans regulated under Federal 58 Stat 690, as amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended, and 42 U.S.C. 262;

(3) other than food that affect the structure or any function of the human body [~~of man~~] or the bodies of other animals; and

(4) intended for use as a component of Paragraph (1), (2) or (3) of this subsection, but does not include devices or their component parts or accessories;

F. "dangerous drug" means a drug, other than a

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controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the [~~layman~~] layperson can use a drug or device safely and for the purposes for which it is intended. A drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe the drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance or a chemical derivative of such substance that has been found under the federal act and the board to be habit forming;

(2) because of its toxicity or other potential for harmful effect or the method of its use or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe the drug;

(3) is limited by an approved application by Section 505 of the federal act to the use under the professional supervision of a practitioner licensed by law to administer or prescribe the drug;

(4) bears the legend: "Caution: federal law

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prohibits dispensing without prescription.";

(5) bears the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(6) bears the legend "RX only";

G. "counterfeit drug" means a drug that is deliberately and fraudulently mislabeled with respect to its identity, ingredients or sources. Types of such pharmaceutical counterfeits may include:

(1) "identical copies", which are counterfeits made with the same ingredients, formulas and packaging as the originals but not made by the original manufacturer;

(2) "look-alikes", which are products that feature high-quality packaging and convincing appearances but contain little or no active ingredients and may contain harmful substances;

(3) "rejects", which are drugs that have been rejected by the manufacturer for not meeting quality standards; and

(4) "relabels", which are drugs that have passed their expiration dates or have been distributed by unauthorized foreign sources and may include placebos created for late-phase clinical trials;

H. "device", except when used in Subsection P of this section and in Subsection G of Section 26-1-3, Subsection

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L and Paragraph (4) of Subsection A of Section 26-1-11 and Subsection C of Section 26-1-24 NMSA 1978, means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, that is:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease in [~~man~~] humans or other animals; or

(3) intended to affect the structure or a function of the human body [~~of man~~] or the bodies of other animals and that does not achieve any of its principal intended purposes through chemical action within or on the human body [~~of man~~] or the bodies of other animals and that is not dependent on being metabolized for achievement of any of its principal intended purposes;

I. "prescription" means an order given individually for the person for whom prescribed, either directly from a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission, or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, [~~his~~] the prescriber's license classification, the name and address of the patient, the name and quantity of the drug

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prescribed, directions for use and the date of issue;

J. "practitioner" means a certified advanced practice chiropractic physician, physician, doctor of oriental medicine, dentist, veterinarian, certified nurse practitioner, clinical nurse specialist, pharmacist, pharmacist clinician, certified nurse-midwife, physician assistant, prescribing psychologist or other person licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act;

K. "cosmetic" means:

(1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and

(2) articles intended for use as a component of any articles enumerated in Paragraph (1) of this subsection, except that the term shall not include soap;

L. "official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them;

M. "label" means a display of written, printed or graphic matter upon the immediate container of an article. A requirement made by or under the authority of the New Mexico

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Drug, Device and Cosmetic Act that any word, statement or other information appear on the label shall not be considered to be complied with unless the word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of the article or is easily legible through the outside container or wrapper;

N. "immediate container" does not include package liners;

O. "labeling" means all labels and other written, printed or graphic matter:

(1) on an article or its containers or wrappers; or

(2) accompanying an article;

P. "misbranded" means a label to an article that is misleading. In determining whether the label is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the foregoing, but also the extent to which the label fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual;

Q. "advertisement" means all representations

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disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices or cosmetics;

R. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder or such other use as involves prolonged contact with the body;

S. "new drug" means a drug:

(1) the composition of which is such that the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and efficacy of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) the composition of which is such that the drug, as a result of investigation to determine its safety and efficacy for use under such conditions, has become so recognized, but that has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

T. "contaminated with filth" applies to a drug, device or cosmetic not securely protected from dirt, dust and,

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as far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or a drug, device or cosmetic found to contain dirt, dust, foreign or injurious contamination or infestation;

U. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the supplying or applying of any such article in the conduct of a drug or cosmetic establishment;

V. "color additive" means a material that:

(1) is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, mineral, animal or other source; or

(2) when added or applied to a drug or cosmetic or to the human body or a part thereof, is capable, alone or through reaction with other substances, of imparting color thereto; except that such term does not include any material that has been or hereafter is exempted under the federal act;

W. "federal act" means the Federal Food, Drug and Cosmetic Act;

X. "restricted device" means a device for which the

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sale, distribution or use is lawful only upon the written or oral authorization of a practitioner licensed by law to administer, prescribe or use the device and for which the federal food and drug administration requires special training or skills of the practitioner to use or prescribe. This definition does not include custom devices defined in the federal act and exempt from performance standards or premarket approval requirements under Section 520(b) of the federal act;

Y. "prescription device" means a device that, because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but that bears the label: "Caution: federal law restricts this device to sale by or on the order of a _____", the blank to be filled with the word "physician", "certified advanced practice chiropractic physician", "doctor of oriental medicine", "dentist", "veterinarian", "certified nurse practitioner", "clinical nurse specialist", "pharmacist", "pharmacist clinician" or "certified nurse-midwife" or with the descriptive designation of any other practitioner licensed in this state to use or order the use of the device;

Z. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's

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licensing board, between the practitioner and the patient; and

AA. "pedigree" means the recorded history of a drug."

Section 5. Section 30-31-2 NMSA 1978 (being Laws 1972, Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled Substances Act:

A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or the practitioner's agent;

B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public [~~warehouseman~~] warehouseperson or employee of the carrier or [~~warehouseman~~] warehouseperson;

C. "board" means the board of pharmacy;

D. "bureau" means the narcotic and dangerous drug section of the criminal division of the United States department of justice, or its successor agency;

E. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or rules adopted thereto;

F. "counterfeit substance" means a controlled substance that bears the unauthorized trademark, trade name, imprint, number, device or other identifying mark or likeness

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of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the controlled substance;

G. "deliver" means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;

H. "dispense" means to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery;

I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

J. "distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog;

K. "drug" or "substance" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories;

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L. "hashish" means the resin extracted from any part of marijuana, whether growing or not, and every compound, manufacture, salt, derivative, mixture or preparation of such resins;

M. "manufacture" means the production, preparation, compounding, conversion or processing of a controlled substance or controlled substance analog by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

(1) by a practitioner as an incident to administering or dispensing a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's agent under the practitioner's supervision, for the purpose of or as an incident to research, teaching or chemical analysis and not for sale;

N. "marijuana" means all parts of the plant cannabis, including any and all varieties, species and subspecies of the genus Cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds.

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It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination;

O. "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of the substances referred to in Paragraph (1) of this subsection, except the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw, including all parts of the plant of the species Papaver somniferum L. except its seeds; or

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of these substances except decocainized coca leaves or

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extractions of coca leaves that do not contain cocaine or ecgonine;

P. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts, dextromethorphan. "Opiate" does include its racemic and levorotatory forms;

Q. "person" means an individual, partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

R. "practitioner" means a physician, certified advanced practice chiropractic physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, prescribing psychologist, veterinarian, pharmacist, pharmacist clinician or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act;

S. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from a licensed practitioner or the practitioner's agent to the pharmacist, including by means of

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electronic transmission, or indirectly by means of a written order signed by the prescriber, bearing the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue and in accordance with the Controlled Substances Act or rules adopted thereto;

T. "scientific investigator" means a person registered to conduct research with controlled substances in the course of the person's professional practice or research and includes analytical laboratories;

U. "ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal under the care, custody and control of the person or by a member of the person's household;

V. "drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of the Controlled Substances Act. It

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includes:

(1) kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled substance or controlled substance analog or from which a controlled substance can be derived;

(2) kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs;

(3) isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance;

(4) testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs;

(5) scales or balances used, intended for use or designed for use in weighing or measuring controlled substances or controlled substance analogs;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannite dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or controlled substance analogs;

(7) separation gins and sifters used, intended

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for use or designed for use in removing twigs and seeds from, or in otherwise cleaning and refining, marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs;

(9) capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances or controlled substance analogs;

(10) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs;

(11) hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or controlled substance analogs into the human body;

(12) objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(a) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(b) water pipes;

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(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

(e) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small to hold in the hand;

(f) miniature cocaine spoons and cocaine vials;

(g) chamber pipes;

(h) carburetor pipes;

(i) electric pipes;

(j) air-driven pipes;

(k) chilams;

(l) bongs; or

(m) ice pipes or chillers; and

(13) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) statements by the owner or by anyone in control of the object concerning its use;

(b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;

(c) the proximity of the object to

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controlled substances or controlled substance analogs;

(d) the existence of any residue of a controlled substance or controlled substance analog on the object;

(e) instructions, written or oral, provided with the object concerning its use;

(f) descriptive materials accompanying the object that explain or depict its use;

(g) the manner in which the object is displayed for sale; and

(h) expert testimony concerning its use;

W. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include the following:

(1) phenethylamines;

(2) N-substituted piperidines;

(3) morphinans;

(4) ecgonines;

(5) quinazolinones;

(6) substituted indoles; and

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(7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled substance analog" are those substances that are generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act;

X. "human consumption" includes application, injection, inhalation, ingestion or any other manner of introduction;

Y. "drug-free school zone" means a public school, parochial school or private school or property that is used for a public, parochial or private school purpose and the area within one thousand feet of the school property line, but it does not mean any post-secondary school; and

Z. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's licensing board, between the practitioner and the patient."

Section 6. Section 30-31B-2 NMSA 1978 (being Laws 1989, Chapter 177, Section 2, as amended by Laws 2004, Chapter 9, Section 2 and by Laws 2004, Chapter 12, Section 2) is amended to read:

"30-31B-2. DEFINITIONS.--As used in the Drug Precursor

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Act:

A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or [~~his~~] the practitioner's agent;

B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. "Agent" does not include a common or contract carrier, public [~~warehouseman~~] warehouseperson or employee of the carrier or [~~warehouseman~~] warehouseperson;

C. "board" means the board of pharmacy;

D. "bureau" means the bureau of narcotics and dangerous drugs of the United States department of justice or its successor agency;

E. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or regulations adopted thereto;

F. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or [~~which~~] that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include, but are not limited to, the

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following:

(1) phenethylamines;

(2) N-substituted piperidines;

(3) morphinans;

(4) [~~ecogonines~~] ecgonines;

(5) quinazolinones;

(6) substituted indoles; and

(7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled substance analog" are those substances [~~which~~] that are generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act;

G. "deliver" means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;

H. "dispense" means to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that

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delivery;

I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

J. "distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog;

K. "drug" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary or any respective supplement to these publications. "Drug" does not include devices or their components, parts or accessories;

L. "drug precursor" means [~~any~~] a substance, material, compound, mixture or preparation listed in Section 30-31B-3 NMSA 1978 or regulations adopted thereto or any of their salts or isomers. "Drug precursor" specifically excludes those substances, materials, compounds, mixtures or preparations [~~which~~] that are prepared for dispensing pursuant to a prescription or over-the-counter distribution as a substance [~~which~~] that is generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within

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the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act, unless the board makes the findings required pursuant to Subsection B of Section 30-31B-4 NMSA 1978;

M. "immediate precursor" means a substance [~~which~~] that is a compound commonly used or produced primarily as an immediate chemical intermediary used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit the manufacture of controlled substances;

N. "license" means a license issued by the board to manufacture, possess, transfer or transport a drug precursor;

O. "manufacture" means the production, preparation, compounding, conversion or processing of a drug precursor by extraction from substances of natural origin, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by a practitioner:

(1) as an incident to [~~his~~] the practitioner's administering or dispensing of a controlled substance in the course of [~~his~~] professional practice; or

(2) by [~~his~~] the practitioner's agent under [~~his~~] the practitioner's supervision for the purpose of or as

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an incident to research, teaching or chemical analysis and not for sale;

P. "person" includes an individual, sole proprietorship, partnership, corporation, association, the state or [~~any~~] a political subdivision of the state or other legal entity;

Q. "possession" means to actively or constructively exercise dominion over;

R. "practitioner" means a physician, certified advanced practice chiropractic physician, dentist, veterinarian or other person licensed to prescribe and administer drugs [~~which~~] that are subject to the Controlled Substances Act;

S. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber and in accordance with the Controlled Substances Act or regulations adopted thereto; and

T. "transfer" means the sale, possession with intent to sell, barter or giving away of a drug precursor."

Section 7. Section 61-4-2 NMSA 1978 (being Laws 1968, Chapter 3, Section 2, as amended) is amended to read:

"61-4-2. DEFINITIONS.--As used in the Chiropractic Physician Practice Act:

A. "advanced practice chiropractic certification

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registry" means a compendium kept by the board that meets and maintains the board's established credentials for certified advanced practice chiropractic physicians;

B. "certified advanced practice chiropractic physician" means a chiropractic physician who has been included in the advanced practice chiropractic certification registry;

[~~A.~~] C. "chiropractic" means the science, art and philosophy of things natural, the science of locating and removing interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the articulations and adjacent structures, more especially those of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, adjustment and manipulation of the human structure. It shall include, but not be limited to, the use of all natural agencies to assist in the healing act, such as food, water, heat, cold, electricity, mechanical appliances, herbs, nutritional supplements, homeopathic remedies and any necessary diagnostic procedure, excluding invasive procedures, except as provided by the board by rule and regulation. It shall exclude operative surgery and prescription or use of controlled or dangerous drugs except by a chiropractic physician certified as a certified advanced practice chiropractic physician;

[~~B.~~] D. "board" means the [~~New Mexico board of~~]

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chiropractic board;

[~~C.~~] E. "chiropractic physician" includes doctor of chiropractic, chiropractor and chiropractic physician and means a person who practices chiropractic as defined in the Chiropractic Physician Practice Act; and

[~~D.~~] F. "chiropractic assistant" means a person who practices under the on-premises supervision of a licensed chiropractic physician."

Section 8. Section 61-4-3 NMSA 1978 (being Laws 1968, Chapter 3, Section 3, as amended) is amended to read:

"61-4-3. BOARD CREATED--APPOINTMENT--OFFICERS--DUTIES--COMPENSATION.--

A. There is created the "chiropractic board". The board shall be administratively attached to the regulation and licensing department. The board shall consist of six persons. Four shall have been continuously engaged in the practice of chiropractic in New Mexico for five years immediately prior to their appointment. Two persons shall represent the public and shall not have practiced chiropractic in this state or any other jurisdiction. A person shall not be appointed to the board who is an officer or employee of or who is financially interested in any school or college of chiropractic, medicine, surgery or osteopathy.

B. Members of the board shall be appointed by the governor for staggered terms of five years or less and in a

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manner that the term of one board member expires on July 1 of each year. A list of five names for each professional member vacancy shall be submitted by the New Mexico chiropractic association to the governor for consideration in the appointment of board members. A vacancy shall be filled by appointment for the unexpired term. Board members shall serve until their successors have been appointed and qualified.

C. The board shall annually elect a chair and a secretary-treasurer. A majority of the board constitutes a quorum. The board shall meet quarterly. Special meetings may be called by the chair and shall be called upon the written request of two members of the board. Notification of special meetings shall be made by certified mail unless such notice is waived by the entire board and the action noted in the minutes. Notice of all regular meetings shall be made by regular mail at least ten days prior to the meeting, and copies of the minutes of all meetings shall be mailed to each board member within thirty days after a meeting.

D. A board member failing to attend three consecutive meetings, either regular or special, shall automatically be removed as a member of the board.

E. The board shall adopt a seal.

F. The board shall promulgate and file, in accordance with the State Rules Act, all rules and regulations necessary for the implementation and enforcement of the

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provisions of the Chiropractic Physician Practice Act, including educational requirements for a chiropractic assistant.

G. The board, for the purpose of protecting the health and well-being of the citizens of this state and maintaining and continuing informed professional knowledge and awareness, shall establish by regulations adopted in accordance with the provisions of the Uniform Licensing Act mandatory continuing education requirements for chiropractic physicians and certified advanced practice chiropractic physicians licensed in this state.

H. Failure to comply with the rules and regulations adopted by the board shall be grounds for investigation, which may lead to revocation of license.

I. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance for each day necessarily spent in the discharge of their duties."

Section 9. Section 61-4-4 NMSA 1978 (being Laws 1968, Chapter 3, Section 4, as amended) is amended to read:

"61-4-4. APPLICATION REQUIREMENTS--EVALUATION.--

A. Each applicant for a license to practice chiropractic shall:

(1) make application on forms furnished by the board;

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(2) submit evidence on oath satisfactory to the board that the applicant has reached the age of majority, has completed a preliminary education equal to the requirements for graduation from high school, is of good moral character and, after January 1, 1976, except for any student currently enrolled in a college of chiropractic, has completed two years of college-level study in an accredited institution of higher learning and is a graduate of a college of chiropractic that meets the standards of professional education prescribed in Section 61-4-5 NMSA 1978; and

(3) pay in advance to the board fees:

(a) for examination; and

(b) for issuance of a license.

B. In evaluating an application, the board may use the services of a professional background information service that compiles background information regarding applicants from multiple sources.

C. Each applicant for inclusion in the advanced practice chiropractic certification registry shall furnish materials and proof of education and training as established by rule of the board."

Section 10. Section 61-4-6 NMSA 1978 (being Laws 1968, Chapter 3, Section 6, as amended) is amended to read:

"61-4-6. EXAMINATION--SUBJECTS--METHOD OF TREATMENT--RECORDING LICENSE.--

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A. The board shall recognize successful completion of all parts of the examination conducted by the national board of chiropractic examiners.

B. The board shall examine each applicant in the act of chiropractic adjusting, procedures and methods as shall reveal the applicant's qualifications; provided that the board may waive the requirement for the board-administered examination upon proof of satisfactory completion of the examination conducted by the national board of chiropractic examiners.

C. The board shall issue a license to all applicants whose applications have been filed with and approved by the board and who have paid the required fees and passed either the board-administered examination with a general average of not less than seventy-five percent with no subject below sixty-five percent or the examination conducted by the national board of chiropractic examiners with a general average of not less than seventy-five percent with no subject below sixty-five percent. A license shall be refused to an applicant who fails to make application as provided in this section, fails the examination or fails to pay the required fees.

D. The license, when granted by the board, carries with it the title of doctor of chiropractic and entitles the holder to diagnose using any necessary diagnostic procedures, excluding invasive procedures, except as provided by the board

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by rule, and treat injuries, deformities or other physical or mental conditions relating to the basic concepts of chiropractic by the use of any methods as provided in this section, including but not limited to palpating, diagnosing, adjusting and treating injuries and defects of human beings by the application of manipulative, manual and mechanical means, including all natural agencies imbued with the healing act, such as food, water, heat, cold, electricity and mechanical appliances, herbs, nutritional supplements and homeopathic remedies, but excluding operative surgery and prescription or use of controlled or dangerous drugs. The holder may also supervise the use of any natural agencies imbued with the healing act, such as food, water, heat, cold, electricity, mechanical appliances, herbs, nutritional supplements and homeopathic remedies administered by a chiropractic assistant.

E. Failure to display the license shall be grounds for the suspension of the license to practice chiropractic until so displayed and shall subject the licensee to the penalties for practicing without a license.

F. The board shall certify a chiropractic physician as a "certified advanced practice chiropractic physician" when the chiropractic physician has demonstrated completion of advanced coursework and met other requirements established in the Chiropractic Physician Practice Act and by rule of the board."

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