

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 269

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

AN ACT

RELATING TO PROFESSIONAL LICENSING; CREATING THE
POLYSOMNOGRAPHY PRACTICE ACT; PROVIDING LICENSING REQUIREMENTS
FOR POLYSOMNOGRAPHIC TECHNOLOGISTS; GIVING DUTIES TO THE NEW
MEXICO MEDICAL BOARD; CREATING CRIMINAL AND CIVIL PENALTIES;
PROVIDING FOR A DELAYED EFFECTIVE DATE; MAKING AN
APPROPRIATION.

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

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

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 11 of
this act may be cited as the "Polysomnography Practice Act"."

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

"[NEW MATERIAL] DEFINITIONS.--As used in the

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underscoring material = new
[bracketed material] = delete

1 Polysomnography Practice Act:

2 A. "board" means the New Mexico medical board;

3 B. "committee" means the polysomnography practice
4 advisory committee;

5 C. "direct supervision" means that the
6 polysomnographic technologist providing supervision shall be
7 present in the area where the polysomnographic procedure is
8 being performed and immediately available to furnish assistance
9 and direction throughout the performance of the procedure;

10 D. "general supervision" means that the
11 polysomnographic procedure is provided under a physician's
12 overall direction and control, but the physician's presence is
13 not required during the performance of the procedure;

14 E. "license" means an authorization issued by the
15 board that permits a person to engage in the practice of
16 polysomnography in the state;

17 F. "licensed provider" means a licensed physician,
18 licensed physician assistant, licensed certified nurse
19 practitioner or licensed psychologist;

20 G. "licensee" means a person licensed by the board
21 to engage in the practice of polysomnography;

22 H. "polysomnographic student" means a person who is
23 enrolled in an educational program that is accredited by the
24 commission on accreditation of allied health education
25 programs, as provided in Section 5 of the Polysomnography

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1 Practice Act, and who may provide sleep-related services under
2 the direct supervision of a polysomnographic technologist as a
3 part of the person's educational program;

4 I. "polysomnographic technician" means a person who
5 has graduated from an accredited educational program described
6 in Section 5 of the Polysomnography Practice Act but has not
7 yet passed the national certifying examination given by the
8 board of registered polysomnographic technologists, who has
9 obtained a temporary permit from the board and who may provide
10 sleep-related services under the general supervision of a
11 licensed physician;

12 J. "polysomnographic technologist" means a person
13 who is credentialed by the board of registered polysomnographic
14 technologists and is licensed by the board to engage in the
15 practice of polysomnography under the general supervision of a
16 licensed physician;

17 K. "polysomnographic trainee" means a person who is
18 enrolled in an accredited sleep technologist educational
19 program that is accredited by the American academy of sleep
20 medicine and who may provide sleep-related services under the
21 direct supervision of a polysomnographic technologist as a part
22 of the person's educational program;

23 L. "practice of polysomnography" means the
24 performance of diagnostic and therapeutic tasks, under the
25 general supervision of a licensed physician, including:

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1 (1) monitoring and recording physiologic
2 activity and data during the evaluation or treatment of
3 sleep-related disorders, including sleep-related respiratory
4 disturbances, by applying appropriate techniques, equipment and
5 procedures, including:

6 (a) continuous or bi-level positive
7 airway pressure titration on patients using a nasal or oral or
8 a nasal and oral mask or appliance that does not extend into
9 the trachea or attach to an artificial airway, including the
10 fitting and selection of a mask or appliance and the selection
11 and implementation of treatment settings;

12 (b) supplemental low-flow oxygen therapy
13 that is less than ten liters per minute using nasal cannula or
14 continuous or bi-level positive airway pressure during a
15 polysomnogram;

16 (c) capnography during a polysomnogram;

17 (d) cardiopulmonary resuscitation;

18 (e) pulse oximetry;

19 (f) gastroesophageal pH monitoring;

20 (g) esophageal pressure monitoring;

21 (h) sleep staging, including surface
22 electroencephalography, surface electrooculography and surface
23 submental electromyography;

24 (i) surface electromyography;

25 (j) electrocardiography;

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1 (k) respiratory effort monitoring,
2 including thoracic and abdominal movement;
3 (l) respiratory plethysmography;
4 (m) arterial tonometry and additional
5 measures of autonomic nervous system tone;
6 (n) snore monitoring;
7 (o) audio or video monitoring;
8 (p) body movement monitoring;
9 (q) nocturnal penile tumescence
10 monitoring;
11 (r) nasal and oral airflow monitoring;
12 (s) body temperature monitoring; and
13 (t) use of additional sleep-related
14 diagnostic technologies as determined by a rule adopted by the
15 board;

16 (2) observing and monitoring physical signs
17 and symptoms, general behavior and general physical response to
18 polysomnographic evaluation or treatment and determining
19 whether initiation, modification or discontinuation of a
20 treatment regimen is warranted;

21 (3) analyzing and scoring data collected
22 during the monitoring described in Paragraphs (1) and (2) of
23 this subsection for the purpose of assisting a licensed
24 provider in the diagnosis and treatment of sleep and wake
25 disorders that result from developmental defects, the aging

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1 process, physical injury, disease or actual or anticipated
2 somatic dysfunction;

3 (4) implementing a written or verbal order
4 from a licensed provider that requires the practice of
5 polysomnography;

6 (5) educating a patient regarding the
7 treatment regimen that assists that patient in improving the
8 patient's sleep; and

9 (6) initiating and monitoring treatment, under
10 the orders of a licensed provider, for sleep-related breathing
11 disorders by providing continuous positive airway pressure and
12 bi-level positive airway pressure devices and accessories,
13 including masks that do not extend into the trachea or attach
14 to an artificial airway, to a patient for home use, together
15 with educating the patient about the treatment and managing the
16 treatment; and

17 M. "sleep-related services" means acts performed by
18 polysomnographic technicians, polysomnographic trainees,
19 polysomnographic students and other persons permitted to
20 perform these services under the Polysomnography Practice Act,
21 in a setting described in Subsection D of Section 4 of the
22 Polysomnography Practice Act, that would be considered the
23 practice of polysomnography if performed by a polysomnographic
24 technologist."

25 Section 3. A new section of the Medical Practice Act is

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1 enacted to read:

2 "[NEW MATERIAL] LICENSE REQUIRED--EXCEPTIONS--PRACTICE
3 LIMITATIONS--APPLICABILITY.--

4 A. On and after July 1, 2011, a person who is
5 engaged in the practice of polysomnography must have a valid
6 polysomnographic technologist license issued by the board. It
7 shall be unlawful for a person to engage in the practice of
8 polysomnography after that date unless the person has a valid
9 polysomnographic technologist license issued by the board.

10 B. Prior to July 1, 2011, any person who is engaged
11 in the practice of polysomnography without being licensed under
12 the Polysomnography Practice Act shall not be deemed to be in
13 violation of that act."

14 Section 4. A new section of the Medical Practice Act is
15 enacted to read:

16 "[NEW MATERIAL] EXEMPTIONS.--

17 A. The following classes of persons may provide
18 sleep-related services without being licensed as a
19 polysomnographic technologist:

20 (1) a polysomnographic technician under the
21 general supervision of a licensed physician for a period of up
22 to two years from the date of the person's graduation from one
23 of the accredited programs described in Section 5 of the
24 Polysomnography Practice Act; provided that the board may grant
25 a one-time extension of up to one year beyond the original two-

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1 year period;

2 (2) a polysomnographic trainee who may provide
3 sleep-related services under the direct supervision of a
4 polysomnographic technologist as a part of the trainee's
5 educational program while actively enrolled in an accredited
6 sleep technologist educational program that is accredited by
7 the American academy of sleep medicine;

8 (3) a polysomnographic student who may provide
9 uncompensated sleep-related services under the direct
10 supervision of a polysomnographic technologist as a part of the
11 student's educational program while actively enrolled in a
12 polysomnographic educational program that is accredited by the
13 commission on accreditation of allied health education
14 programs;

15 (4) a person credentialed in one of the
16 health-related fields accepted by the board of registered
17 polysomnographic technologists who may provide sleep-related
18 services under the direct supervision of a polysomnographic
19 technologist for a period of up to one year while obtaining the
20 clinical experience necessary to be eligible to take the
21 examination given by the board of registered polysomnographic
22 technologists; and

23 (5) a respiratory care practitioner licensed
24 under the Respiratory Care Act who may provide sleep-related
25 services under the general supervision of a licensed physician

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1 if the licensed respiratory care practitioner is credentialed
2 by the board of registered polysomnographic technologists.
3 Respiratory care practitioners in this class are subject to
4 disciplinary action pursuant to the Respiratory Care Act if
5 they fail to adhere to the standards established in the
6 Polysomnography Practice Act and rules adopted pursuant to that
7 act.

8 B. Before providing any sleep-related services:

9 (1) a polysomnographic technician shall obtain
10 a temporary permit from the board and when providing services
11 shall wear a badge that appropriately identifies the person as
12 a polysomnographic technician;

13 (2) a polysomnographic trainee shall give
14 notice to the board that the trainee is enrolled in an
15 accredited sleep technologist educational program accredited by
16 the American academy of sleep medicine. When providing
17 services, the trainee shall wear a badge that appropriately
18 identifies the person as a polysomnographic trainee;

19 (3) a person who is obtaining clinical
20 experience pursuant to Paragraph (4) of Subsection A of this
21 section shall give notice to the board that the person is
22 working under the direct supervision of a polysomnographic
23 technologist in order to gain the experience to be eligible to
24 take the examination given by the board of registered
25 polysomnographic technologists. When providing services, the

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1 person shall wear a badge that appropriately identifies that
2 the person is obtaining clinical experience; and

3 (4) a polysomnographic student shall wear a
4 badge that appropriately identifies the person as a
5 polysomnographic student.

6 C. A licensed dentist shall make or direct the
7 making and use of any oral appliance used in the practice of
8 polysomnography and shall evaluate the structures of a
9 patient's oral and maxillofacial region for purposes of fitting
10 the appliance.

11 D. The practice of polysomnography shall take place
12 only in a hospital, a stand-alone sleep laboratory or sleep
13 center or in a patient's home in accordance with a licensed
14 provider's order; provided that the scoring of data and the
15 education of patients may take place in settings other than in
16 a hospital, sleep laboratory, sleep center or patient's home.

17 E. The Polysomnography Practice Act shall not apply
18 to:

19 (1) a physician licensed under the Medical
20 Practice Act;

21 (2) diagnostic electroencephalograms conducted
22 in accordance with the guidelines of the American clinical
23 neurophysiology society;

24 (3) a person who is employed in the practice
25 of polysomnography by a federal government facility or agency

1 in New Mexico; or

2 (4) a person qualified as a member of a
3 recognized profession, the practice of which requires a license
4 or is regulated pursuant to the laws of New Mexico, who renders
5 services within the scope of the person's license or other
6 regulatory authority; provided that the person does not
7 represent that the person is a polysomnographic technologist."

8 Section 5. A new section of the Medical Practice Act is
9 enacted to read:

10 "[NEW MATERIAL] REQUIREMENTS FOR LICENSING.--

11 A. The board shall grant a license to engage in the
12 practice of polysomnography to a person who has submitted to
13 the board:

14 (1) a completed application for licensing on
15 the form provided by the board;

16 (2) required documentation as determined by
17 the board;

18 (3) the required fees;

19 (4) an affidavit stating that the applicant
20 has not been found guilty of unprofessional conduct or
21 incompetence;

22 (5) satisfactory documentation of either:

23 (a) graduation from a polysomnographic
24 educational program that is accredited by the commission on
25 accreditation of allied health education programs;

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1 (b) graduation from a respiratory care
2 educational program that is accredited by the commission on
3 accreditation of allied health education programs and
4 completion of the curriculum for a polysomnography certificate
5 established and accredited by the committee on accreditation
6 for respiratory care of the commission on accreditation of
7 allied health education programs;

8 (c) graduation from an
9 electroneurodiagnostic technologist educational program with a
10 polysomnographic technology track that is accredited by the
11 commission on accreditation of allied health education
12 programs; or

13 (d) successful completion of an
14 accredited sleep technologist educational program that is
15 accredited by the American academy of sleep medicine; provided,
16 however, this optional requirement shall not be available after
17 the date on which there are at least three polysomnographic
18 technologist educational programs in New Mexico that have been
19 accredited by the commission on accreditation of allied health
20 education programs for at least the two years immediately
21 preceding that date; and

22 (6) satisfactory documentation of having:

23 (a) passed the national certifying
24 examination given by the board of registered polysomnographic
25 technologists or having passed a national certifying

1 examination equivalent to the board of registered
 2 polysomnographic technologists' examination as determined by a
 3 rule adopted by the New Mexico medical board;

4 (b) been credentialed by the board of
 5 registered polysomnographic technologists or by another
 6 national entity equivalent to the board of polysomnographic
 7 technologists as determined by rule adopted by the New Mexico
 8 medical board;

9 (c) met any additional educational or
 10 clinical requirements established by the board pursuant to
 11 rule; and

12 (d) met all other requirements of the
 13 Polysomnography Practice Act.

14 B. A person who is engaged in the practice of
 15 polysomnography on July 1, 2009 shall be eligible for a license
 16 under the Polysomnography Practice Act without meeting the
 17 educational requirement of Paragraph (5) of Subsection A of
 18 this section, provided that the person meets the requirements
 19 of Paragraph (6) of Subsection A of this section.

20 C. The board may require a personal interview with
 21 an applicant to evaluate that person's qualifications for a
 22 license."

23 Section 6. A new section of the Medical Practice Act is
 24 enacted to read:

25 "[NEW MATERIAL] LICENSE RENEWAL.--

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1 A. A licensee shall renew the licensee's
2 polysomnographic technologist's license biennially by
3 submitting prior to the date established by the board:

4 (1) the completed application for license
5 renewal on the form provided by the board; and

6 (2) the required fee for annual license
7 renewal.

8 B. The board may require proof of continuing
9 education or other proof of competence as a requirement for
10 renewal.

11 C. A sixty-day grace period shall be allowed a
12 licensee after the end of the licensing period, during which
13 time the license may be renewed by submitting:

14 (1) the completed application for license
15 renewal on the form provided by the board;

16 (2) the required fee for annual license
17 renewal; and

18 (3) the required late fee.

19 D. A polysomnographic technologist's license not
20 renewed at the end of the grace period shall be considered
21 expired, and the licensee shall not be eligible to practice
22 within the state. For reinstatement of an expired license
23 within one year of the date of renewal, the board shall
24 establish requirements or fees that are in addition to the fee
25 for biennial license renewal and may require the former

1 licensee to reapply as a new applicant."

2 Section 7. A new section of the Medical Practice Act is
3 enacted to read:

4 "[NEW MATERIAL] LICENSE--CONTENTS--DISPLAY--FEES.--

5 A. A license issued by the board shall contain the
6 name of the person to whom it is issued, the address of the
7 person, the date and number of the license and other
8 information the board may require. The address contained on
9 the license shall be the address where all correspondence and
10 renewal forms from the board will be sent. Any person whose
11 address changes shall, within thirty days of the change, notify
12 the board of the address change. The most recent address
13 contained in the board's records for each licensee is the
14 address deemed sufficient for purposes of service of process.

15 B. A licensee who wishes to retire from the
16 practice of polysomnography shall file with the board an
17 affidavit, in a form to be furnished by the board, stating the
18 date on which the person retired from practice and other
19 information the board may require. If that person wishes to
20 reenter the practice of polysomnography, the person shall meet
21 requirements established by the board for license renewal.

22 C. A licensee shall display the license in the
23 office or place in which the licensee practices in a location
24 clearly visible to patients.

25 D. The board shall establish license and

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1 administrative fees, but no individual fee shall exceed five
2 hundred dollars (\$500)."

3 Section 8. A new section of the Medical Practice Act is
4 enacted to read:

5 "[NEW MATERIAL] COMMITTEE--CREATION--ORGANIZATION--PER
6 DIEM AND MILEAGE--REMOVAL.--

7 A. The "polysomnography practice advisory
8 committee" is created to advise the board on all matters
9 related to the Polysomnography Practice Act. The board shall
10 provide administrative and financial support to the committee.

11 B. The committee shall have the following seven
12 members, who are residents of New Mexico, appointed by the
13 board:

14 (1) three members who are credentialed by the
15 board of registered polysomnographic technologists; provided
16 that when the New Mexico medical board begins issuing licenses,
17 this category of committee members shall be three licensed
18 polysomnographic technologists, with the then-sitting members
19 in this category being given a reasonable amount of time to
20 become licensed;

21 (2) one licensed physician who is certified in
22 sleep medicine by a national certifying body recognized by the
23 American academy of sleep medicine;

24 (3) one person who is the director of an
25 American-academy-of-sleep-medicine-accredited sleep center;

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1 (4) one licensed respiratory care practitioner
2 who is also credentialed by the board of registered
3 polysomnographic technologists who shall be required to become
4 a licensed polysomnographic technologist within a reasonable
5 amount of time; and

6 (5) one member of the public who is not
7 economically or professionally associated with the health care
8 field.

9 C. Term-length conditions for appointments to the
10 committee are:

11 (1) for initial appointments, two members each
12 for four-year, three-year and two-year terms and one member for
13 a one-year term;

14 (2) for regular appointments after the initial
15 appointments, four-year terms;

16 (3) for a vacancy appointment, the balance of
17 the term; and

18 (4) for any one member, no more than two
19 terms, including an initial appointment term; provided that a
20 member shall continue to serve on the committee until a
21 replacement is appointed.

22 D. The committee shall elect annually a chairperson
23 and other officers as the committee determines to be necessary.

24 E. The committee shall meet at least twice per
25 calendar year and otherwise as often as necessary to conduct

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1 business, with four members constituting a quorum and meetings
2 subject to the Open Meetings Act.

3 F. Members of the committee shall be reimbursed as
4 nonsalaried public officers pursuant to the Per Diem and
5 Mileage Act, and members shall receive no other compensation,
6 perquisite or allowance for their service on the committee.

7 G. The board may remove from office a member of the
8 committee for neglect of duties required by the Polysomnography
9 Practice Act, malfeasance in office, incompetence or
10 unprofessional conduct."

11 Section 9. A new section of the Medical Practice Act is
12 enacted to read:

13 "[NEW MATERIAL] BOARD--COMMITTEE--POWERS AND DUTIES.--

14 A. The board, with the advice of the committee,
15 shall have powers regarding licensing of polysomnographic
16 technologists, temporary permitting of polysomnographic
17 technicians, approval of polysomnography curricula, approval of
18 degree programs in polysomnography and any other matters that
19 are necessary to ensure the training and licensing of competent
20 polysomnographic technologists.

21 B. The board, with the advice of the committee,
22 shall hold hearings and adopt rules regarding:

23 (1) the licensing of polysomnographic
24 technologists, the practice of polysomnography and the minimum
25 qualifications and hours of clinical experience and standards

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1 of care required for being licensed as a polysomnographic
2 technologist;

3 (2) criteria for continuing education
4 requirements;

5 (3) the manner in which records of
6 examinations and treatments shall be kept and maintained;

7 (4) professional conduct, ethics and
8 responsibility;

9 (5) disciplinary actions, including the
10 denial, suspension or revocation of or the imposition of
11 restrictions or conditions on a license, and the circumstances
12 that require disciplinary action;

13 (6) a means to provide information to all
14 polysomnographic technologists licensed in the state;

15 (7) the inspection of the business premises of
16 a licensee when the board determines that an inspection is
17 necessary;

18 (8) the investigation of complaints against
19 licensees or persons holding themselves out as engaging in the
20 practice of polysomnography in the state;

21 (9) the publication of information for the
22 public about licensees and the practice of polysomnography in
23 the state;

24 (10) an orderly process for reinstatement of a
25 license;

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1 (11) criteria for acceptance of
2 polysomnography credentials or licenses issued in other
3 jurisdictions;

4 (12) criteria for advertising or promotional
5 materials; and

6 (13) any matter necessary to implement the
7 Polysomnography Practice Act."

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

10 "[NEW MATERIAL] OFFENSES--CRIMINAL PENALTIES.--A person
11 who engages in the practice of polysomnography without a
12 license is guilty of a misdemeanor and shall be sentenced in
13 accordance with the provisions of Section 31-19-1 NMSA 1978."

14 Section 11. A new section of the Medical Practice Act is
15 enacted to read:

16 "[NEW MATERIAL] CRIMINAL OFFENDER EMPLOYMENT ACT.--The
17 provisions of the Criminal Offender Employment Act shall govern
18 any consideration of criminal records required or permitted by
19 the Polysomnography Practice Act."

20 Section 12. Section 61-6-5 NMSA 1978 (being Laws 1973,
21 Chapter 361, Section 2, as amended) is amended to read:

22 "61-6-5. DUTIES AND POWERS.--The board shall:

23 A. enforce and administer the provisions of the
24 Medical Practice Act, the Physician Assistant Act, the
25 Anesthesiologist Assistants Act, [~~and~~] the Impaired Health Care

1 Provider Act and the Polysomnography Practice Act;

2 B. adopt, publish and file, in accordance with the
3 Uniform Licensing Act and the State Rules Act, all rules for
4 the implementation and enforcement of the provisions of the
5 Medical Practice Act, the Physician Assistant Act, the
6 Anesthesiologist Assistants Act, [~~and~~] the Impaired Health Care
7 Provider Act and the Polysomnography Practice Act;

8 C. adopt and use a seal;

9 D. administer oaths to all applicants, witnesses
10 and others appearing before the board, as appropriate;

11 E. take testimony on matters within the board's
12 jurisdiction;

13 F. keep an accurate record of all its meetings,
14 receipts and disbursements;

15 G. maintain records in which the name, address and
16 license number of all licensees shall be recorded, together
17 with a record of all license renewals, suspensions,
18 revocations, probations, stipulations, censures, reprimands and
19 fines;

20 H. grant, deny, review, suspend and revoke licenses
21 to practice medicine and censure, reprimand, fine and place on
22 probation and stipulation licensees and applicants in
23 accordance with the Uniform Licensing Act for any cause stated
24 in the Medical Practice Act and the Impaired Health Care
25 Provider Act;

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1 I. hire staff and administrators as necessary to
2 carry out the provisions of the Medical Practice Act;

3 J. have the authority to hire or contract with
4 investigators to investigate possible violations of the Medical
5 Practice Act;

6 K. have the authority to hire a competent attorney
7 to give advice and counsel in regard to any matter connected
8 with the duties of the board, to represent the board in any
9 legal proceedings and to aid in the enforcement of the laws in
10 relation to the medical profession and to fix the compensation
11 to be paid to such attorney; provided, however, that such
12 attorney shall be compensated from the funds of the board;

13 L. establish continuing medical education
14 requirements for licensed physicians and continuing education
15 requirements for physician assistants;

16 M. establish committees as it deems necessary for
17 carrying on its business;

18 N. hire or contract with a licensed physician to
19 serve as medical director and fulfill specified duties of the
20 secretary-treasurer; and

21 O. establish and maintain rules related to the
22 management of pain based on review of national standards for
23 pain management."

24 Section 13. Section 61-6-6 NMSA 1978 (being Laws 1973,
25 Chapter 361, Section 1, as amended) is amended to read:

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1 "61-6-6. DEFINITIONS.--As used in Chapter 61, Article 6
2 NMSA 1978:

3 A. "approved postgraduate training program" means a
4 program approved by the accrediting council on graduate medical
5 education of the American medical association or by the board;

6 B. "board" means the New Mexico medical board;

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

10 D. "licensee" means a medical doctor, physician
11 assistant, polysomnographic technologist or anesthesiologist
12 assistant licensed by the board to practice in New Mexico;

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

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

20 G. "physician assistant" means a health
21 professional who is licensed by the board to practice as a
22 physician assistant and who provides services to patients under
23 the supervision and direction of a licensed physician;

24 H. "intern" means a first-year postgraduate student
25 upon whom a degree of doctor of medicine and surgery or

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1 equivalent degree has been conferred by a medical college or
2 school in good standing;

3 I. "resident" means a graduate of a medical college
4 or school in good standing who is in training in a board-
5 approved and accredited residency training program in a
6 hospital or facility affiliated with an approved hospital and
7 who has been appointed to the position of "resident" or
8 "fellow" for the purpose of postgraduate medical training;

9 J. "the practice of medicine" consists of:

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

13 (2) offering or undertaking to administer,
14 dispense or prescribe a drug or medicine for the use of another
15 person, except as authorized pursuant to a professional or
16 occupational licensing statute set forth in Chapter 61 NMSA
17 1978;

18 (3) offering or undertaking to give or
19 administer, dispense or prescribe a drug or medicine for the
20 use of another person, except as directed by a licensed
21 physician;

22 (4) offering or undertaking to perform an
23 operation or procedure upon a person;

24 (5) offering or undertaking to diagnose,
25 correct or treat in any manner or by any means, methods,

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1 devices or instrumentalities any disease, illness, pain, wound,
2 fracture, infirmity, deformity, defect or abnormal physical or
3 mental condition of a person;

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

9 (7) acting as the representative or agent of a
10 person in doing any of the things listed in this subsection;

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

13 (1) the rendering of a written or otherwise
14 documented medical opinion concerning diagnosis or treatment of
15 a patient within this state by a physician located outside this
16 state as a result of transmission of individual patient data by
17 electronic, telephonic or other means from within this state to
18 the physician or the physician's agent; or

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

24 L. "sexual contact" means touching the primary
25 genital area, groin, anus, buttocks or breast of a patient or

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1 allowing a patient to touch another's primary genital area,
2 groin, anus, buttocks or breast in a manner that is commonly
3 recognized as outside the scope of acceptable medical practice;

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

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

12 Section 14. Section 61-6-15 NMSA 1978 (being Laws 1969,
13 Chapter 46, Section 6, as amended) is amended to read:

14 "61-6-15. LICENSE MAY BE REFUSED, REVOKED OR
15 SUSPENDED--LICENSEE MAY BE FINED, CENSURED OR REPRIMANDED--
16 PROCEDURE--PRACTICE AFTER SUSPENSION OR REVOCATION--PENALTY--
17 UNPROFESSIONAL AND DISHONORABLE CONDUCT DEFINED--FEES AND
18 EXPENSES.--

19 A. The board may refuse to license and may revoke
20 or suspend a license that has been issued by the board or a
21 previous board and may fine, censure or reprimand a licensee
22 upon satisfactory proof being made to the board that the
23 applicant for or holder of the license has been guilty of
24 unprofessional or dishonorable conduct. The board may also
25 refuse to license an applicant who is unable to practice

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1 medicine, [~~or~~] practice as a physician assistant or an
2 anesthesiologist assistant or engage in the practice of
3 polysomnography, pursuant to Section 61-7-3 NMSA 1978. All
4 proceedings shall be as required by the Uniform Licensing Act
5 or the Impaired Health Care Provider Act.

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

15 C. If evidence fails to establish to the
16 satisfaction of the board that the licensee is competent and is
17 of good moral character or if evidence shows that the licensee
18 has not complied with the terms of probation, the board may
19 revoke or suspend the license. If a license to practice in
20 this state is suspended, the holder of the license may not
21 practice during the term of suspension. A person whose license
22 has been revoked or suspended by the board and who thereafter
23 practices or attempts or offers to practice in New Mexico,
24 unless the period of suspension has expired or been modified by
25 the board or the license reinstated, is guilty of a felony and

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1 shall be punished as provided in Section 61-6-20 NMSA 1978.

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

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

7 (2) employing a person to solicit patients for
8 the licensee;

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

12 (4) obtaining a fee by fraud or
13 misrepresentation;

14 (5) willfully or negligently divulging a
15 professional confidence;

16 (6) conviction of an offense punishable by
17 incarceration in a state penitentiary or federal prison or
18 conviction of a misdemeanor associated with the practice of the
19 licensee. A copy of the record of conviction, certified by the
20 clerk of the court entering the conviction, is conclusive
21 evidence;

22 (7) habitual or excessive use of intoxicants
23 or drugs;

24 (8) fraud or misrepresentation in applying for
25 or procuring a license to practice in this state or in

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1 connection with applying for or procuring renewal, including
2 cheating on or attempting to subvert the licensing
3 examinations;

4 (9) making false or misleading statements
5 regarding the skill of the licensee or the efficacy or value of
6 the medicine, treatment or remedy prescribed or administered by
7 the licensee or at the direction of the licensee in the
8 treatment of a disease or other condition of the human body or
9 mind;

10 (10) impersonating another licensee,
11 permitting or allowing a person to use the license of the
12 licensee or practicing as a licensee under a false or assumed
13 name;

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

16 (12) gross negligence in the practice of a
17 licensee;

18 (13) manifest incapacity or incompetence to
19 practice as a licensee;

20 (14) discipline imposed on a licensee by
21 another state, including denial, probation, suspension or
22 revocation, based upon acts by the licensee similar to acts
23 described in this section. A certified copy of the record of
24 suspension or revocation of the state making the suspension or
25 revocation is conclusive evidence;

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1 (15) the use of a false, fraudulent or
2 deceptive statement in a document connected with the practice
3 of a licensee;

4 (16) fee splitting;

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

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

10 (19) repeated similar negligent acts;

11 (20) employing abusive billing practices;

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

14 (a) another licensing jurisdiction;

15 (b) a peer review body;

16 (c) a health care entity;

17 (d) a professional or medical society or
18 association;

19 (e) a governmental agency;

20 (f) a law enforcement agency; or

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

24 (22) failure to report to the board surrender
25 of a license or other authorization to practice in another

1 state or jurisdiction or surrender of membership on any medical
2 staff or in any medical or professional association or society
3 following, in lieu of and while under disciplinary
4 investigation by any of those authorities or bodies for acts or
5 conduct similar to acts or conduct that would constitute
6 grounds for action as defined in this section;

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

10 (24) abandonment of patients;

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

13 (26) injudicious prescribing, administering or
14 dispensing of a drug or medicine;

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

18 (28) sexual contact with a patient or person
19 who has authority to make medical decisions for a patient,
20 other than the spouse of the licensee;

21 (29) conduct unbecoming in a person licensed
22 to practice or detrimental to the best interests of the public;

23 (30) the surrender of a license or withdrawal
24 of an application for a license before another state licensing
25 board while an investigation or disciplinary action is pending

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1 before that board for acts or conduct similar to acts or
2 conduct that would constitute grounds for action pursuant to
3 this section;

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

7 (32) sexual contact with a patient when the
8 licensee uses or exploits treatment, knowledge, emotions or
9 influence derived from the previous professional relationship;

10 (33) improper management of medical records,
11 including failure to maintain timely, accurate, legible and
12 complete medical records;

13 (34) failure to provide pertinent and
14 necessary medical records to a physician or patient of the
15 physician in a timely manner when legally requested to do so by
16 the patient or by a legally designated representative of the
17 patient;

18 (35) undertreatment of pain as provided by
19 board rule;

20 (36) interaction with physicians, hospital
21 personnel, patients, family members or others that interferes
22 with patient care or could reasonably be expected to adversely
23 impact the quality of care rendered to a patient;

24 (37) soliciting or receiving compensation by a
25 physician assistant or anesthesiologist assistant from a person

1 who is not an employer of the assistant; or

2 (38) willfully or negligently divulging
3 privileged information or a professional secret.

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

13 F. Licensees whose licenses are in a probationary
14 status shall pay reasonable expenses for maintaining
15 probationary status, including laboratory costs when laboratory
16 testing of biological fluids are included as a condition of
17 probation."

18 Section 15. Section 61-6-31 NMSA 1978 (being Laws 1989,
19 Chapter 269, Section 27, as amended) is amended to read:

20 "61-6-31. DISPOSITION OF FUNDS--NEW MEXICO MEDICAL BOARD
21 FUND CREATED--METHOD OF PAYMENTS.--

22 A. There is created the "New Mexico medical board
23 fund".

24 B. All funds received by the board and money
25 collected under the Medical Practice Act, the Physician

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1 Assistant Act, the Anesthesiologist Assistants Act, the
2 Polysomnography Practice Act and the Impaired Health Care
3 Provider Act shall be deposited with the state treasurer who
4 shall place the same to the credit of the New Mexico medical
5 board fund.

6 C. All payments out of the fund shall be made on
7 vouchers issued and signed by the secretary-treasurer of the
8 board or the designee of the secretary-treasurer upon warrants
9 drawn by the department of finance and administration in
10 accordance with the budget approved by that department.

11 D. All amounts in the New Mexico medical board fund
12 shall be subject to the order of the board and shall be used
13 only for the purpose of meeting necessary expenses incurred in:

14 (1) the performance of the provisions of the
15 Medical Practice Act, the Physician Assistant Act, the
16 Anesthesiologist Assistants Act, the Polysomnography Practice
17 Act and the Impaired Health Care Provider Act and the duties
18 and powers imposed by those acts; and

19 (2) the promotion of medical education and
20 standards in this state within the budgetary limits.

21 E. All funds that may have accumulated to the
22 credit of the board under any previous law shall be transferred
23 to the New Mexico medical board fund and shall continue to be
24 available for use by the board in accordance with the
25 provisions of the Medical Practice Act, the Physician Assistant

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1 Act, the Anesthesiologist Assistants Act, the Polysomnography
2 Practice Act and the Impaired Health Care Provider Act. All
3 money unused at the end of the fiscal year shall not revert,
4 but shall remain in the fund for use in accordance with the
5 provisions of the Medical Practice Act, the Physician Assistant
6 Act, the Anesthesiologist Assistants Act, the Polysomnography
7 Practice Act and the Impaired Health Care Provider Act."

8 Section 16. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2009.