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HOUSE BILL 664

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO HEALTH CARE; ENACTING THE UNLICENSED HEALTH CARE PRACTICE ACT; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Unlicensed Health Care Practice Act".

Section 2. DEFINITIONS.--As used in the Unlicensed Health Care Practice Act:

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

B. "conventional medical diagnosis" means a medical term that is commonly used and understood in conventional western medicine;

C. "department" means the regulation and licensing

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1 department;

2 D. "health care practitioner" means an individual  
3 who provides health care services;

4 E. "health care service" means any service relating  
5 to the physical and mental health and wellness of an  
6 individual; and

7 F. "prescription drugs" means drugs that require a  
8 written prescription from a licensed health care practitioner  
9 before they can be dispensed.

10 Section 3. LICENSING EXEMPTION.--A health care  
11 practitioner who is not licensed, certified or registered in  
12 New Mexico as a health care practitioner shall not be in  
13 violation of any licensing law relating to health care services  
14 pursuant to Chapter 61 NMSA 1978 unless that individual:

15 A. engages in any activity prohibited in Section 4  
16 of the Unlicensed Health Care Practice Act; or

17 B. fails to fulfill the duties set forth in Section  
18 5 of the Unlicensed Health Care Practice Act.

19 Section 4. PROHIBITED ACTS.--An unlicensed health care  
20 practitioner shall not:

21 A. perform surgery on an individual;

22 B. set fractures on an individual;

23 C. administer x-ray radiation to an individual;

24 D. illegally prescribe or dispense prescription  
25 drugs or controlled substances to an individual;

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1 E. directly manipulate the joints or spine of an  
2 individual;

3 F. physically invade the body except for the use of  
4 non-prescription topical creams, oils, salves, ointments,  
5 tinctures or any other preparations that may penetrate the skin  
6 without causing harm;

7 G. make a recommendation to discontinue current  
8 medical treatment prescribed by a licensed health care  
9 practitioner;

10 H. make a specific conventional medical diagnosis;

11 I. have sexual contact with a current patient or  
12 former patient within one year of rendering service;

13 J. falsely advertise or provide false information  
14 in documents described in Subsection B of Section 5 of the  
15 Unlicensed Health Care Practice Act;

16 K. illegally use prescription drugs or controlled  
17 substances;

18 L. reveal confidential information of a patient  
19 without the patient's written consent;

20 M. engage in fee splitting or kickbacks for  
21 referrals; or

22 N. refer to the practitioner's self as a licensed  
23 doctor or physician or other occupational title pursuant to  
24 Chapter 61 NMSA 1978.

25 Section 5. DUTIES OF AN UNLICENSED HEALTH CARE

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1 PRACTITIONER.--An unlicensed health care practitioner shall:

2 A. provide to a patient prior to rendering services  
3 a patient information document, either in writing in plain  
4 language that the patient understands or, if the patient cannot  
5 read, orally in a language the patient understands, containing  
6 the following:

7 (1) the health care practitioner's name, title  
8 and business address and telephone number;

9 (2) a statement that the health care  
10 practitioner is not a health care practitioner licensed by the  
11 state of New Mexico;

12 (3) a statement that the treatment to be  
13 provided by the health care practitioner is alternative or  
14 complementary to health care services provided by health care  
15 practitioners licensed by the state of New Mexico;

16 (4) the nature of the health care services to  
17 be provided;

18 (5) the health care practitioner's degrees,  
19 education, training, experience or other qualifications  
20 regarding the health care services to be provided;

21 (6) the health care practitioner's fees per  
22 unit of service and method of billing for such fees and a  
23 statement that the patient has a right to reasonable notice of  
24 changes in health care services or charges for health care  
25 services;

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1 (7) a notice that the patient has a right to  
2 complete and current information concerning the health care  
3 practitioner's assessment and recommended health care services  
4 that are to be provided, including the expected duration of the  
5 health care services to be provided and the patient's right to  
6 be allowed access to the patient's records and written  
7 information from the patient's records;

8 (8) a statement that patient records and  
9 transactions with the health care practitioner are confidential  
10 unless the release of these records is authorized in writing by  
11 the patient or otherwise provided by law;

12 (9) a statement that the patient has a right  
13 to coordinated transfer when there will be a change in the  
14 provider of health care services; and

15 (10) the name, address and telephone number of  
16 the department and notice that a patient may file complaints  
17 with the department; and

18 B. obtain a written acknowledgment from a patient,  
19 or if the patient cannot write an oral acknowledgment witnessed  
20 by a third party, stating that the patient has been provided  
21 with a copy of the information document. The patient shall be  
22 provided with a copy of the written acknowledgment, which shall  
23 be maintained for three years by the health care practitioner  
24 providing the health care service.

25 Section 6. APPLICABILITY.--The following individuals

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1 shall not provide health care services pursuant to the  
2 Unlicensed Health Care Practice Act:

3 A. former health care practitioners whose license,  
4 certification or registration has been revoked or suspended by  
5 any health care board and not reinstated;

6 B. individuals convicted of a felony for a crime  
7 against a person who have not satisfied the terms of the  
8 person's sentence as provided by law;

9 C. individuals convicted of a felony related to  
10 health care who have not satisfied the terms of the person's  
11 sentence as provided by law; and

12 D. individuals who have been deemed mentally  
13 incompetent by a court of law.

14 Section 7. DISCIPLINARY ACTIONS.--If the department  
15 determines a health care practitioner practicing pursuant to  
16 the Unlicensed Health Care Practice Act may have violated a  
17 provision of that act, it may take one or more of the following  
18 actions pursuant to the Uniform Licensing Act against the  
19 health care practitioner if the health care practitioner is  
20 found to have violated a provision of the Unlicensed Health  
21 Care Practice Act:

22 A. provide written notice to the health care  
23 practitioner requesting the practitioner to correct the  
24 activity that is a violation of the Unlicensed Health Care  
25 Practice Act; this action shall be the first option if the

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1 offense is a violation of the disclosure requirements of the  
2 Unlicensed Health Care Practice Act;

3 B. issue a cease and desist order against the  
4 health care practitioner pertaining to the provision of  
5 unlicensed health care services; or

6 C. impose a civil penalty in an amount not to  
7 exceed ten thousand dollars (\$10,000) for each violation.

8 Section 8. DUTIES OF THE SUPERINTENDENT.--The  
9 superintendent of regulation and licensing is expressly  
10 authorized to promulgate rules as necessary to implement the  
11 provisions of the Unlicensed Health Care Practice Act.

12 Section 9. SEVERABILITY.--If any part or application of  
13 this act is held invalid, the remainder or its application to  
14 other situations or persons shall not be affected.

15 Section 10. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2009.