

1 HOUSE BILL 398

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Rod Montoya

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9  
10 AN ACT

11 RELATING TO LICENSING; RENAMING CHAPTER 61, ARTICLE 10 NMSA  
12 1978 THE "OSTEOPATHIC MEDICINE ACT"; REPEALING THE OSTEOPATHIC  
13 PHYSICIANS' ASSISTANTS ACT AND ADDING PROVISIONS RELATED TO  
14 OSTEOPATHIC PHYSICIAN ASSISTANTS TO THE OSTEOPATHIC MEDICINE  
15 ACT; AMENDING AND ENACTING SECTIONS OF THE OSTEOPATHIC MEDICINE  
16 ACT TO CREATE A BOARD OF OSTEOPATHIC MEDICINE AND MAKE CHANGES  
17 TO PROVISIONS RELATING TO BOARD DUTIES AND LICENSURE FOR  
18 OSTEOPATHIC PHYSICIANS, OSTEOPATHIC PHYSICIAN ASSISTANTS AND  
19 PHARMACIST CLINICIANS.

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

22 SECTION 1. A new section of Chapter 61, Article 10 NMSA  
23 1978 is enacted to read:

24 "[NEW MATERIAL] SHORT TITLE.--Chapter 61, Article 10 NMSA  
25 1978 may be cited as the "Osteopathic Medicine Act".

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1           SECTION 2. A new section of Chapter 61, Article 10 NMSA  
2 1978 is enacted to read:

3           "[NEW MATERIAL] DEFINITIONS.--As used in the Osteopathic  
4 Medicine Act:

5           A. "administer" means to apply a prepackaged drug  
6 to the body of a patient by any means;

7           B. "board" means the board of osteopathic medicine;

8           C. "dispense" means to deliver a drug directly to a  
9 patient and includes the compounding, labeling and repackaging  
10 of a drug from a bulk or original container;

11           D. "distribute" means to administer or supply  
12 directly to a patient under the direct care of the distributing  
13 osteopathic physician's assistant one or more doses of drugs  
14 prepackaged by a licensed pharmacist and excludes the  
15 compounding or repackaging from a bulk or original container;

16           E. "osteopathic physician" means a physician  
17 licensed to practice osteopathic medicine in New Mexico;

18           F. "osteopathic physician assistant" means a  
19 skilled person licensed by the board as being qualified by  
20 academic and practical training to provide patient services  
21 under the supervision and direction of the osteopathic  
22 physician who is responsible for the performance of that  
23 assistant;

24           G. "pharmacist clinician" means a pharmacist who  
25 exercises prescriptive authority pursuant to the Pharmacist

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1 Prescriptive Authority Act; and

2 H. "prescribe" means to issue an order individually  
3 for the person for whom prescribed, either directly from the  
4 prescriber to the pharmacist or indirectly by means of a  
5 written order signed by the prescriber, bearing the name and  
6 address of the prescriber, the prescriber's license  
7 classification, the name and address of the patient and the  
8 name of the drug prescribed, directions for its use and the  
9 date of its issue."

10 SECTION 3. Section 61-10-3 NMSA 1978 (being Laws 1933,  
11 Chapter 117, Section 2, as amended) is amended to read:

12 "61-10-3. LICENSE.--It [~~shall be~~] is unlawful for any  
13 person to practice as an osteopathic physician in this state  
14 without a license [~~so to do~~] issued by the board [~~of~~  
15 ~~osteopathic medical examiners~~]; provided that any license or  
16 certificate [~~heretofore~~] previously issued under the laws of  
17 this state authorizing its holder to practice osteopathic  
18 medicine shall in no [~~wise~~] way be affected by the provisions  
19 of [~~this~~] the Osteopathic Medicine Act."

20 SECTION 4. Section 61-10-5 NMSA 1978 (being Laws 1933,  
21 Chapter 117, Section 4, as amended) is amended to read:

22 "61-10-5. BOARD OF [~~EXAMINERS~~] OSTEOPATHIC MEDICINE--  
23 APPOINTMENT--TERMS--MEETINGS--MEMBERSHIP--EXAMINATIONS--  
24 DUTIES--POWERS.--

25 A. There is created the "board of osteopathic

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1 ~~[medical examiners]~~ medicine". The board shall be  
2 administratively attached to the regulation and licensing  
3 department. The board ~~[consists of five]~~ shall consist of  
4 seven members appointed by the governor as follows:

5 (1) five members with at least two years of  
6 experience in their respective fields immediately preceding  
7 their appointment who are licensed as follows:

8 (a) ~~[three]~~ four members ~~[shall be~~  
9 ~~regularly licensed]~~ who are osteopathic physicians licensed in  
10 good standing pursuant to Section 61-10-8 NMSA 1978; and

11 (b) one member who is an osteopathic  
12 physician assistant licensed in good standing ~~[in New Mexico,~~  
13 ~~who have been so engaged for a period of at least two years~~  
14 ~~immediately prior to their appointment and who are possessed of~~  
15 ~~all the qualifications for applicants for licensure specified~~  
16 ~~in Section 61-10-8 NMSA 1978]~~ pursuant to the Osteopathic  
17 Medicine Act; and

18 (2) two ~~[members shall represent the]~~ public  
19 members. The public members of the board shall not:

20 (a) have been licensed as osteopathic  
21 physicians ~~[nor shall the public members]~~ or as osteopathic  
22 physician assistants; or

23 (b) have any significant financial  
24 interest, direct or indirect, in the occupation regulated.

25 B. ~~[Board members' terms shall be for five years.]~~

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1 The governor shall appoint board members who are osteopathic  
2 physicians and osteopathic physician assistants respectively  
3 from a list of five qualified osteopathic physicians and five  
4 osteopathic physician assistants that the New Mexico  
5 osteopathic medical association or its authorized governing  
6 body or council provides.

7 C. The board shall:

8 (1) issue licenses to individuals who meet the  
9 qualifications for licensure as osteopathic physicians or  
10 osteopathic physician assistants;

11 (2) discipline osteopathic physicians and  
12 osteopathic physician assistants for incompetence or  
13 unprofessional or dishonorable conduct;

14 (3) protect the public from the unauthorized  
15 practice of osteopathy;

16 (4) enforce and administer the provisions of  
17 the Osteopathic Medicine Act;

18 (5) adopt and promulgate in accordance with  
19 the Uniform Licensing Act and the State Rules Act all rules for  
20 the implementation and enforcement of the Osteopathic Medicine  
21 Act. Rulemaking shall include adoption and promulgation of  
22 rules related to the management of pain based on a review of  
23 national standards for pain management;

24 (6) adopt and use a seal;

25 (7) administer oaths to applicants, witnesses

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1 and others appearing before the board, as the board deems  
2 appropriate;

3 (8) take testimony on matters within the  
4 board's jurisdiction;

5 (9) adopt and promulgate rules relating to the  
6 regulation and oversight of pharmacist clinicians;

7 (10) keep an accurate record of all of its  
8 meetings, receipts and disbursements;

9 (11) maintain records in which the name,  
10 address and license number of all licensees shall be recorded,  
11 together with a record of all license renewals, suspensions,  
12 revocations, probations, stipulations, censures, reprimands and  
13 finer;

14 (12) grant, deny, review, suspend and revoke  
15 licenses to practice medicine and censure, reprimand, fine and  
16 place on probation and stipulation licensees and applicants in  
17 accordance with the Uniform Licensing Act for any cause stated  
18 in the Osteopathic Medicine Act;

19 (13) hire or contract with investigators as it  
20 deems necessary to investigate possible violations of the  
21 Osteopathic Medicine Act;

22 (14) establish continuing medical education  
23 requirements for licensed osteopathic physicians and  
24 osteopathic physician assistants; and

25 (15) establish committees as it deems

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1 necessary for executing board duties.

2 D. The board may adopt and enforce rules for  
3 osteopathic physician assistants for:

4 (1) establishing qualifications of education,  
5 skill and experience for licensure of a person as an  
6 osteopathic physician assistant and providing forms and  
7 procedures for licensure and for biennial registration of  
8 supervision;

9 (2) examining and evaluating applicants for  
10 licensure as an osteopathic physician assistant as to their  
11 skill, knowledge and experience in the field of medical care;

12 (3) establishing when and for how long an  
13 osteopathic physician assistant is permitted to prescribe,  
14 administer and distribute dangerous drugs other than controlled  
15 substances in Schedule I of the Controlled Substances Act after  
16 consultation with the board of pharmacy;

17 (4) allowing a supervising osteopathic  
18 physician to temporarily delegate supervisory responsibilities  
19 for an osteopathic physician assistant to another osteopathic  
20 physician;

21 (5) allowing an osteopathic physician  
22 assistant to temporarily serve under the supervision of an  
23 osteopathic physician other than the supervising osteopathic  
24 physician of record; and

25 (6) the purpose of carrying out all other

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1 provisions of the Osteopathic Medicine Act.

2 E. The board shall not adopt any rule allowing an  
3 osteopathic physician assistant to measure the powers, range or  
4 accommodative status of human vision; diagnose vision problems;  
5 prescribe lenses, prisms, vision training or contact lenses; or  
6 fit contact lenses. This section shall not preclude vision  
7 screening.

8 F. Board members shall be appointed for staggered  
9 terms of four years so that not more than three terms expire in  
10 any one year. A board member shall not serve more than two  
11 consecutive terms. The vacancy of the term of a member shall  
12 be filled by appointment by the governor to the unexpired  
13 portion of the five-year term. A board member whose term has  
14 expired shall serve until ~~[his]~~ the member's successor is  
15 appointed.

16 ~~[G.]~~ G. The board shall meet ~~[during the first~~  
17 ~~quarter of the fiscal year and shall elect officers for the~~  
18 ~~ensuing fiscal year. The board]~~ at the call of the chair at  
19 least four times a year and may hold other meetings as [it] the  
20 chair deems necessary. A majority of the board constitutes a  
21 quorum.

22 ~~[D. The board shall have and use a common seal and~~  
23 ~~is authorized to make and adopt all necessary rules and~~  
24 ~~regulations relating to the enforcement of the provisions of~~  
25 ~~Chapter 61, Article 10 NMSA 1978.~~

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1           ~~E. Examinations shall be made at least twice a year~~  
2 ~~at the time and place fixed by the board. All applicants shall~~  
3 ~~be given written notice of examinations at a reasonable prior~~  
4 ~~date.]~~

5           H. The board shall have an annual election of a  
6 chair and a vice chair and other officers as it deems  
7 necessary.

8           I. The chair shall preside over the meetings and  
9 affairs of the board. The vice chair shall perform those  
10 duties that the chair assigns and shall serve as chair when the  
11 chair is absent.

12           ~~[F.]~~ J. Members of the board shall be reimbursed as  
13 provided in the Per Diem and Mileage Act, but shall receive no  
14 other compensation, perquisite or allowance, for each day  
15 necessarily spent in the discharge of their duties.

16           ~~[G.]~~ K. A board member failing to attend three  
17 consecutive meetings, either regular or special, shall  
18 automatically be removed as a member of the board unless  
19 excused for reasons established in board rules."

20           SECTION 5. Section 61-10-6 NMSA 1978 (being Laws 1933,  
21 Chapter 117, Section 5, as amended) is repealed and a new  
22 Section 61-10-6 NMSA 1978 is enacted to read:

23           "61-10-6. [NEW MATERIAL] LICENSURE--REQUIREMENTS.--

24           A. The board may consider for licensure an  
25 individual who:

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1 (1) is a graduate of a school of osteopathic  
2 medicine and surgery accredited by the American osteopathic  
3 association;

4 (2) has successfully passed all three levels  
5 of the comprehensive osteopathic medical licensing examination,  
6 its predecessor examination or the United States medical  
7 licensing examination; provided that the board shall not grant  
8 a license to an applicant who has not passed the final level of  
9 the respective examination within seven years of having  
10 successfully passed the first level of that examination;

11 (3) provides evidence to the board of having  
12 completed at least two years of a board-approved nationally  
13 accredited post-graduate training program; and

14 (4) makes an application in accordance with  
15 board rules and pays the fees required pursuant to Section  
16 61-10-6.1 NMSA 1978.

17 B. An applicant who has not completed two years of  
18 a board-approved nationally accredited post-graduate training  
19 program, but who otherwise meets all other licensing  
20 requirements, may present evidence to the board of the  
21 applicant's other professional experience for consideration by  
22 the board in lieu of the approved post-graduate program  
23 required pursuant to Paragraph (3) of Subsection A of this  
24 section.

25 C. As a condition of licensure, the board may

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1 require an applicant for licensure to:

2 (1) appear personally before the board or its  
3 designated agent for an interview; or

4 (2) be fingerprinted and supply any other  
5 information necessary to obtain a state or national criminal  
6 background check; provided that an applicant shall pay any fees  
7 for a criminal background check directly to the screening  
8 entity that performs the check."

9 SECTION 6. Section 61-10-6.1 NMSA 1978 (being Laws 1989,  
10 Chapter 371, Section 3) is amended to read:

11 "61-10-6.1. FEES.--The board of osteopathic medicine may  
12 charge the following fees,

13 ~~A. an examination fee equal to the cost of~~  
14 ~~purchasing the examination plus an administration fee not to~~  
15 ~~exceed fifty percent of the examination fee;~~

16 ~~B. an application fee not to exceed five hundred~~  
17 ~~dollars (\$500) for licensure by examination;~~

18 G.] provided that all fees are nonrefundable and  
19 shall be used by the board to carry out its duties:

20 A. pertaining to osteopathic physicians:

21 (1) an application fee not to exceed [~~five~~  
22 ~~hundred dollars (\$500)] one thousand dollars (\$1,000) for  
23 triennial licensure of an osteopathic physician pursuant to  
24 Section 61-10-12 NMSA 1978;~~

25 ~~[D. an annual renewal fee not to exceed two hundred~~

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1 ~~dollars (\$200);~~

2 ~~E. an interim license fee not to exceed two hundred~~  
3 ~~dollars (\$200);~~

4 ~~F.] (2) a triennial osteopathic physician~~  
5 ~~licensure renewal fee not to exceed one thousand dollars~~  
6 ~~(\$1,000);~~

7 ~~(3) a fee not to exceed seventy-five dollars~~  
8 ~~(\$75.00) for placing an osteopathic physician license on~~  
9 ~~inactive status;~~

10 ~~(4) a late fee not to exceed:~~

11 ~~(a) two hundred dollars (\$200) for~~  
12 ~~[applicants] osteopathic physicians who fail to [register]~~  
13 ~~renew their licenses on or before July 1 of each year but who~~  
14 ~~renew on or before September 29; and~~

15 ~~(b) four hundred dollars (\$400) for~~  
16 ~~osteopathic physicians who renew their licenses after September~~  
17 ~~29;~~

18 ~~[G.] (5) a reinstatement fee not to exceed~~  
19 ~~five hundred dollars (\$500) for reinstatement of a revoked,~~  
20 ~~suspended or inactive osteopathic physician license;~~

21 ~~[H. a reasonable administrative fee for~~  
22 ~~verification of license, publications and copying charges; and~~

23 ~~I. an impaired physician fee not to exceed one~~  
24 ~~hundred dollars (\$100).~~

25 ~~All fees are nonrefundable and shall be used by the board~~

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1 ~~to carry out its duties]~~

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

4 (7) a post-graduate osteopathic physician  
5 training license fee not to exceed fifty dollars (\$50.00);

6 (8) an osteopathic physician telemedicine  
7 triennial license fee not to exceed four hundred dollars  
8 (\$400); and

9 (9) an impaired physician fee not to exceed  
10 one hundred dollars (\$100);

11 B. pertaining to osteopathic physician assistants  
12 and to pharmacist clinicians:

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

15 (2) a registration of new supervision fee that  
16 is equal to one-half of the triennial license fee for  
17 osteopathic physician assistants and pharmacist clinicians;

18 (3) a late fee not to exceed twenty-five  
19 dollars (\$25.00) for osteopathic physician assistants and  
20 pharmacist clinicians who fail to renew their licenses on or  
21 before July 1 of each year;

22 (4) an impaired osteopathic physician  
23 assistant and pharmacist clinician fee not to exceed one  
24 hundred dollars (\$100); and

25 (5) a fee for an osteopathic physician

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1 assistant or pharmacist clinician license on inactive status  
2 not to exceed seventy-five dollars (\$75.00); and

3 C. applicable to licensed and applicants for  
4 licensure as osteopathic physicians, osteopathic physician  
5 assistants and pharmacist clinicians:

6 (1) a fee not to exceed five hundred dollars  
7 (\$500) for reprocessing an application or renewal that includes  
8 errors that would otherwise be subject to investigation and  
9 possible disciplinary action; and

10 (2) a reasonable administrative fee that the  
11 board establishes by rule for verification of license,  
12 publications and copying charges."

13 SECTION 7. Section 61-10-7 NMSA 1978 (being Laws 1977,  
14 Chapter 155, Section 1) is repealed and a new Section 61-10-7  
15 NMSA 1978 is enacted to read:

16 "61-10-7. [NEW MATERIAL] TEMPORARY LICENSE--  
17 QUALIFICATIONS.--

18 A. In the interim between regular board meetings,  
19 the board's chair or an authorized representative of the board  
20 shall issue a temporary license to practice as an osteopathic  
21 physician or osteopathic physician assistant to a qualified  
22 applicant who has filed a complete application for licensure in  
23 accordance with the Osteopathic Medicine Act and board rules.  
24 The temporary license shall expire on the date of the next  
25 regular meeting of the board, at which time the board shall

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1 grant final approval.

2 B. Upon written application, accompanied by proof  
3 of qualifications as specified by board rules, the board may  
4 issue a temporary license to an applicant who seeks temporary  
5 licensure to:

6 (1) provide services at an organized youth  
7 camp or school; provided that the practice of osteopathy shall  
8 be confined to enrollees, leaders and employees of the camp or  
9 school;

10 (2) assist in teaching;

11 (3) conduct research;

12 (4) perform a specialized diagnostic and  
13 treatment procedure;

14 (5) implement new technology; or

15 (6) pursue an educational purpose.

16 C. The board shall grant a temporary license only  
17 to an applicant who:

18 (1) submits a written application and  
19 accompanies the application with proof of qualifications as  
20 specified in board rules;

21 (2) pays a temporary license fee pursuant to  
22 Section 61-10-6.1 NMSA 1978; and

23 (3) is supervised by an osteopathic physician  
24 who is licensed in New Mexico and who submits an affidavit  
25 attesting to the qualifications of the applicant and the

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1 activities that the applicant will perform.

2 D. The board shall issue a temporary license that  
3 is valid for a period not to exceed three months from the date  
4 of issuance. A temporary license may be renewed up to six  
5 times for a period not to exceed eighteen months.

6 E. A temporary license shall:

7 (1) describe the activities to which the  
8 licensee shall be limited; and

9 (2) identify the osteopathic physician who  
10 will supervise the applicant during the time the applicant  
11 practices osteopathic medicine in the state."

12 SECTION 8. Section 61-10-8 NMSA 1978 (being Laws 1933,  
13 Chapter 117, Section 6, as amended) is amended to read:

14 "61-10-8. PROFESSIONAL EDUCATION.--To be considered for  
15 licensure to practice as an osteopathic physician and surgeon,  
16 the applicant shall:

17 A. be a graduate of a college of osteopathic  
18 medicine and surgery accredited by the American osteopathic  
19 association; and

20 B. have completed ~~[an]~~ at least two years of a  
21 post-graduate residency program or rotating internship program  
22 that the American osteopathic association or [American medical  
23 association] accreditation council for graduate medical  
24 education has approved [post-graduate one-year residency  
25 program or rotating internship program]."

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1           SECTION 9. Section 61-10-11 NMSA 1978 (being Laws 1933,  
2 Chapter 117, Section 9, as amended) is amended to read:

3           "61-10-11. LICENSE ISSUED.--The board shall issue to each  
4 applicant for a license to practice as provided in the  
5 Osteopathic Medicine Act who [~~successfully passes the~~  
6 ~~examination shall be entitled to~~] has the required education  
7 qualifications and meets the requirements of that act a license  
8 [~~which~~] that carries with it the title doctor of osteopathic  
9 medicine and osteopathic physician with right to practice as  
10 taught and practiced in the standard colleges of osteopathic  
11 medicine and surgery."

12           SECTION 10. Section 61-10-12 NMSA 1978 (being Laws 1933,  
13 Chapter 117, Section 10, as amended) is repealed and a new  
14 Section 61-10-12 NMSA 1978 is enacted to read:

15           "61-10-12. [NEW MATERIAL] LICENSE BY ENDORSEMENT.--

16           A. The board may, in its discretion, issue a  
17 license by endorsement to an osteopathic physician who:

18                       (1) has graduated from a college of  
19 osteopathic medicine accredited by the American osteopathic  
20 association;

21                       (2) is board-certified, in accordance with  
22 board rules, in a specialty recognized by a board-approved  
23 national credentialing program;

24                       (3) has been a licensed osteopathic physician  
25 in the United States and has been actively engaged in the

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1 practice of osteopathy in another state for at least three  
2 consecutive years immediately prior to the year in which the  
3 application is made;

4 (4) holds an unrestricted license in another  
5 state;

6 (5) was not the subject of disciplinary action  
7 in another state; and

8 (6) pays any fee that the board has  
9 established by rule for the license.

10 B. The board may issue a license without  
11 examination to an osteopathic physician who:

12 (1) is a graduate of a college of osteopathic  
13 medicine accredited by the American osteopathic association;  
14 and

15 (2) has passed an examination for admission  
16 for the medical corps of the United States army, United States  
17 navy or United States public health service.

18 C. The board may require as a condition of  
19 licensure that an applicant for licensure by endorsement  
20 pursuant to this section undergo a criminal background check;  
21 provided that the applicant for licensure by endorsement shall  
22 pay any fees for a criminal background check directly to the  
23 screening entity that performs the check."

24 SECTION 11. Section 61-10-13 NMSA 1978 (being Laws 1933,  
25 Chapter 117, Section 11, as amended) is amended to read:

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1           "61-10-13. DISPLAY OF LICENSES AND RENEWAL THEREOF.--  
2 Every person holding a license authorizing ~~[him]~~ that person to  
3 practice osteopathic medicine and surgery in this state shall  
4 display the license and certificate of ~~[annual]~~ triennial  
5 renewal in ~~[his]~~ the person's principal office practice  
6 location."

7           **SECTION 12.** Section 61-10-15 NMSA 1978 (being Laws 1933,  
8 Chapter 117, Section 13, as amended) is repealed and a new  
9 Section 61-10-15 NMSA 1978 is enacted to read:

10           "61-10-15. [NEW MATERIAL] REFUSAL AND REVOCATION OF  
11 LICENSE.--

12           A. Upon satisfactory proof being made to the board  
13 that an applicant for or holder of a license to practice  
14 osteopathic medicine has been guilty of unprofessional or  
15 dishonorable conduct, the board may:

- 16                           (1) refuse to issue a license to an applicant;  
17                           (2) revoke or suspend a license; or  
18                           (3) fine, censure or reprimand a licensee.

19           B. The board may, in its discretion and for good  
20 cause shown, place a licensee on probation on the terms and  
21 conditions it deems proper for protection of the public, for  
22 the purpose of rehabilitation of the probationer, or both.  
23 Upon expiration of the term of probation, if a term is set, the  
24 board may abate further proceedings if the licensee furnishes  
25 the board with evidence that the licensee is competent to

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1 practice and has complied with the terms of probation.

2 C. If evidence fails to establish to the  
3 satisfaction of the board that the licensee is competent or if  
4 evidence shows that the licensee has not complied with the  
5 terms of probation, the board may revoke or suspend the  
6 licensee's license. If the board suspends a license, the  
7 licensee shall not practice during the term of suspension. A  
8 licensee whose license has been revoked or is in suspension and  
9 who thereafter practices or attempts or offers to practice in  
10 the state is guilty of a felony and shall be punished as  
11 provided in Section 61-10-16 NMSA 1978 unless:

12 (1) the period of suspension has expired;

13 (2) the board has modified the suspension to  
14 permit the practice of osteopathic medicine; or

15 (3) the board has reinstated the license.

16 D. The board shall not refuse to issue nor to renew  
17 nor suspend nor revoke any license for unprofessional or  
18 dishonorable conduct unless the person accused has been  
19 provided:

20 (1) at least twenty days' notice in writing of  
21 the charge against that person; and

22 (2) a public hearing by the board, with right  
23 of review of the board's decision by the district court of the  
24 first judicial district by certiorari, on petition of the party  
25 against whom the board's decision is rendered.

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1           E. The board may compel the attendance of witnesses  
2 and the production of relevant books and papers for the  
3 investigation of matters that may come before it, and the  
4 presiding officer of the board may administer the requisite  
5 oaths. The board has the same authority to compel the giving  
6 of testimony that is conferred on courts of justice.

7           F. As used in this section:

8                   (1) "fee splitting" means offering,  
9 delivering, receiving or accepting any unearned rebate, refund,  
10 commission preference, patronage dividend, discount or other  
11 unearned consideration, whether in the form of money or  
12 otherwise, as compensation or inducement for referring  
13 patients, clients or customers to a person or organization,  
14 irrespective of any membership, proprietary interest or  
15 co-ownership in or with a person to whom the patients, clients  
16 or customers are referred; and

17                   (2) "unprofessional or dishonorable conduct"  
18 means conduct that the board has proscribed by rule and  
19 includes the following conduct of a licensee:

20                           (a) procuring, aiding or abetting a  
21 criminal abortion;

22                           (b) employing a person to solicit  
23 patients for the licensee;

24                           (c) representing to a patient that a  
25 manifestly incurable condition of sickness, disease or injury

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1 can be cured;

2 (d) obtaining a fee by fraud or  
3 misrepresentation;

4 (e) willfully or negligently divulging a  
5 professional confidence;

6 (f) conviction of an offense punishable  
7 by incarceration in a state penitentiary or federal prison or  
8 conviction of a misdemeanor associated with the practice of the  
9 licensee. A copy of the record of conviction, certified by the  
10 clerk of the court entering the conviction, is conclusive  
11 evidence of conviction;

12 (g) habitual or excessive use of  
13 intoxicants or drugs;

14 (h) fraud or misrepresentation in  
15 applying for or procuring a license to practice in this state  
16 or in connection with applying for or procuring renewal,  
17 including cheating on or attempting to subvert a licensing  
18 examination;

19 (i) making false or misleading  
20 statements regarding the skill of the licensee or the efficacy  
21 or value of the medicine, treatment or remedy prescribed or  
22 administered by the licensee or at the direction of the  
23 licensee in the treatment of a disease or other condition of  
24 the human body or mind;

25 (j) impersonating another licensee,

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1 permitting or allowing a person to use the license of the  
2 licensee or practicing as a licensee under a false or assumed  
3 name;

4 (k) aiding or abetting the practice of a  
5 person not licensed by the board;

6 (l) gross negligence in the practice of  
7 a licensee;

8 (m) manifest incapacity or incompetence  
9 to practice as a licensee;

10 (n) discipline imposed on a licensee by  
11 another state, including denial, probation, suspension or  
12 revocation, based upon acts by the licensee similar to acts  
13 described in this section. A certified copy of the record of  
14 suspension or revocation of the state making the suspension or  
15 revocation is conclusive evidence;

16 (o) the use of a false, fraudulent or  
17 deceptive statement in a document connected with the practice  
18 of a licensee;

19 (p) fee splitting;

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

23 (r) conduct likely to deceive, defraud  
24 or harm the public;

25 (s) repeated similar negligent acts;

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1 (t) employing abusive billing practices;

2 (u) failure to report to the board any  
3 adverse action taken against the licensee by: 1) another  
4 licensing jurisdiction; 2) a peer review body; 3) a health care  
5 entity; 4) a professional or medical society or association; 5)  
6 a governmental agency; 6) a law enforcement agency; or 7) a  
7 court for acts or conduct similar to acts or conduct that would  
8 constitute grounds for disciplinary action;

9 (v) failure to report to the board  
10 surrender of a license or other authorization to practice in  
11 another state or jurisdiction or surrender of membership on any  
12 medical staff or in any medical or professional association or  
13 society following, in lieu of and while under disciplinary  
14 investigation by any of those authorities or bodies for acts or  
15 conduct similar to acts or conduct that would constitute  
16 grounds for disciplinary action;

17 (w) failure to furnish the board, its  
18 investigators or representatives with information requested by  
19 the board;

20 (x) abandonment of a patient;

21 (y) being found mentally incompetent or  
22 insane by a court of competent jurisdiction;

23 (z) injudicious prescribing,  
24 administering or dispensing of a drug or medicine;

25 (aa) failure to adequately supervise, as

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1 provided by board rule, an osteopathic physician or osteopathic  
2 physician assistant;

3 (bb) sexual contact with a patient or  
4 person who has authority to make medical decisions for a  
5 patient, other than the spouse of the licensee;

6 (cc) conduct unbecoming in a person  
7 licensed to practice or detrimental to the best interests of  
8 the public;

9 (dd) the surrender of a license or  
10 withdrawal of an application for a license before another state  
11 licensing board while an investigation or disciplinary action  
12 is pending before that board for acts or conduct similar to  
13 acts or conduct that would constitute grounds for action  
14 pursuant to this section;

15 (ee) sexual contact with a former  
16 patient of the licensee, other than the spouse of the licensee,  
17 within one year from the end of treatment;

18 (ff) sexual contact with a patient when  
19 the licensee uses or exploits treatment, knowledge, emotions or  
20 influence derived from the previous professional relationship;

21 (gg) improper management of medical  
22 records, including failure to maintain timely, accurate,  
23 legible and complete medical records;

24 (hh) failure to provide pertinent and  
25 necessary medical records to an osteopathic physician or

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1 patient of the osteopathic physician in a timely manner when  
2 legally requested to do so by the patient or by a legally  
3 designated representative of the patient;

4 (ii) undertreatment of pain as provided  
5 by board rule;

6 (jj) interaction with osteopathic  
7 physicians, hospital personnel, patients, family members or  
8 others that interferes with patient care or could reasonably be  
9 expected to adversely impact the quality of care rendered to a  
10 patient; or

11 (kk) willfully or negligently divulging  
12 privileged information or a professional secret."

13 SECTION 13. Section 61-10-17 NMSA 1978 (being Laws 1933,  
14 Chapter 117, Section 15, as amended) is amended to read:

15 "61-10-17. RECORDS.--The board [~~of osteopathic medical~~  
16 ~~examiners~~] shall keep a record, which shall be open to all  
17 proper parties for inspection at all reasonable times, of its  
18 proceedings relating to the issuance, refusal, renewal,  
19 suspension or revocation of licenses to practice in accordance  
20 with [~~this~~] the Osteopathic Medicine Act. This record shall  
21 also contain the name, place of business and residence, the  
22 date and the number of the license of every osteopathic  
23 physician and osteopathic physician assistant licensed under  
24 [~~this~~] the Osteopathic Medicine Act."

25 SECTION 14. Section 61-10-18 NMSA 1978 (being Laws 1933,  
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1 Chapter 117, Section 16) is amended to read:

2 "61-10-18. NO ADDITIONAL POWER CONFERRED ON PRIOR  
3 LICENSEES.--Nothing [~~herein~~] contained in the Osteopathic  
4 Medicine Act shall be construed as conferring any powers or  
5 authority not [~~heretofore~~] previously vested in osteopathic  
6 physicians or osteopathic physician assistants who hold  
7 licenses to practice osteopathy under any pre-existing law or  
8 regulation unless such licensees [~~be~~] are likewise licensed  
9 under the provisions of [~~this~~] the Osteopathic Medicine Act."

10 SECTION 15. Section 61-10-19 NMSA 1978 (being Laws 1971,  
11 Chapter 140, Section 1, as amended) is amended to read:

12 "61-10-19. ANNUAL RENEWAL OF LICENSE--CERTIFICATE--FEE.--

13 A. All [~~persons~~] osteopathic physicians and  
14 osteopathic physician assistants legally licensed to practice  
15 osteopathic medicine [~~and surgery~~] in this state shall, on or  
16 before July 1 of each year, submit proof of completion of  
17 continuing education requirements as required by the board and  
18 pay to the secretary of the board an annual renewal fee as  
19 provided in Section 61-10-6.1 NMSA 1978 for the renewal of  
20 [~~his~~] a license to practice osteopathic medicine [~~and surgery~~].  
21 Upon payment of fees and proof of completion of continuing  
22 education requirements, the board shall issue a certificate of  
23 annual renewal of license.

24 B. The secretary of the board shall send a written  
25 notice to every [~~person~~] osteopathic physician and osteopathic

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1 physician assistant holding a legal certificate to practice  
2 osteopathic medicine in this state at least thirty days prior  
3 to July 1 of each year, directed to the last known address of  
4 licensee, and notify ~~[him]~~ the licensee that it will be  
5 necessary ~~[for him]~~ to pay the ~~[annual]~~ license renewal fee.  
6 Proper forms shall accompany the notice, and the licensee shall  
7 make application for the renewal of ~~[his]~~ the licensee's  
8 certificate on these forms. The fact that a ~~[practitioner]~~  
9 licensee has not received ~~[his]~~ the licensee's blank form from  
10 the board shall not, however, relieve ~~[him]~~ the licensee of the  
11 duty to register on or before July 1 nor shall the board's  
12 failure to mail the forms operate to exempt ~~[him]~~ the  
13 osteopathic physician or osteopathic physician assistant from  
14 the penalties provided in ~~[Chapter 61, Article 10 NMSA 1978]~~  
15 the Osteopathic Medicine Act."

16 SECTION 16. Section 61-10-20 NMSA 1978 (being Laws 1971,  
17 Chapter 140, Section 2, as amended) is amended to read:

18 "61-10-20. POST-GRADUATE EDUCATIONAL REQUIREMENTS.--For  
19 the purpose of protecting the health and well-being of the  
20 citizens of this state and for maintaining and continuing  
21 informed professional knowledge and awareness, the board shall  
22 establish mandatory continuing educational requirements for  
23 osteopathic physicians and osteopathic physician assistants  
24 licensed in this state. In establishing ~~[such]~~ these  
25 requirements, the board shall recognize and give weight to

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1 existing educational methods, procedures, devices and programs  
2 in use among the various medical specialties and other  
3 recognized medical groups and the consensus of the members of  
4 the medical community. This section does not abrogate or  
5 affect the status, force or operation of the Uniform Licensing  
6 Act. The board shall not establish and enforce [~~such~~] these  
7 requirements if they will reduce the availability of  
8 osteopathic physicians or osteopathic physician assistants in a  
9 community to an extent that adequate medical care is  
10 jeopardized."

11 SECTION 17. Section 61-10-21 NMSA 1978 (being Laws 1945,  
12 Chapter 79, Section 7, as amended) is amended to read:

13 "61-10-21. FAILURE TO COMPLY--CANCELLATION OF LICENSE--  
14 REINSTATEMENT--TEMPORARY CANCELLATION AT LICENSEE'S REQUEST.--

15 A. In the event any [~~licensee~~] osteopathic  
16 physician or osteopathic physician assistant licensed to  
17 practice osteopathic medicine in New Mexico fails to comply  
18 with the requirements of Section 61-10-19 NMSA 1978, [~~he~~] the  
19 licensee shall, upon order of the board [~~of osteopathic medical~~  
20 ~~examiners~~], forfeit [~~his~~] the licensee's right to practice  
21 osteopathic medicine in this state and [~~his~~] the licensee's  
22 license and certificate shall be canceled; provided, however,  
23 that the secretary of the board may reinstate [~~him~~] the  
24 licensee upon the payment of all fees due and upon the  
25 presentation of satisfactory evidence of the attendance at an

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1 educational program as provided for in [~~Chapter 61, Article 10~~  
2 ~~NMSA 1978~~] the Osteopathic Medicine Act.

3 B. It is further provided that any [~~person~~  
4 osteopathic physician or osteopathic physician assistant  
5 licensed to practice osteopathic medicine in New Mexico  
6 desiring to withdraw from the active practice of [~~his~~  
7 ~~profession~~] osteopathic medicine in this state shall have the  
8 right to apply to the [~~secretary~~] chair of the board [~~of~~  
9 ~~osteopathic medical examiners~~] for a temporary suspension of  
10 [~~his~~] the licensee's certificate to practice osteopathic  
11 medicine in this state, with the right to renew and reinstate  
12 [~~his~~] the certificate if [~~he~~] the licensee so desires, upon a  
13 showing that [~~he~~] the licensee has paid the appropriate fees on  
14 or before July 1 of each year."

15 SECTION 18. A new section of Chapter 61, Article 10 NMSA  
16 1978 is enacted to read:

17 "[NEW MATERIAL] INJUNCTION TO STOP UNLICENSED PRACTICE OF  
18 OSTEOPATHIC MEDICINE.--

19 A. The attorney general, district attorney, board  
20 or any resident of any county where any person practices  
21 osteopathic medicine without possessing a valid license to do  
22 so may, in accordance with the laws of New Mexico governing  
23 injunctions, maintain an action in the name of the state. To  
24 enjoin a person from practicing osteopathic medicine until a  
25 valid license to practice osteopathic medicine is secured, any

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1 person who has been enjoined who violates the injunction shall  
2 be punished for contempt of court; provided that the injunction  
3 does not relieve any person practicing osteopathic medicine  
4 without a valid license from a criminal prosecution therefore  
5 as provided by law.

6 B. In charging any person in a complaint for  
7 injunction, or in an affidavit, information or indictment with  
8 practicing osteopathic medicine without a valid license, it is  
9 sufficient to charge that the person did, upon a certain day  
10 and in a certain county, engage in the practice of osteopathic  
11 medicine without a valid license without averring any further  
12 or more particular facts."

13 SECTION 19. A new section of Chapter 61, Article 10 NMSA  
14 1978 is enacted to read:

15 "[NEW MATERIAL] LICENSURE--SUMMARY SUSPENSION--SUMMARY  
16 RESTRICTION--GROUNDS.--

17 A. The board may suspend or restrict a license to  
18 practice osteopathic medicine in New Mexico issued by the board  
19 without a hearing, simultaneously or at any time after the  
20 initiation of proceedings for a hearing provided pursuant to  
21 the Uniform Licensing Act, if the board finds that evidence in  
22 its possession indicates that the licensee:

23 (1) poses a clear and immediate danger to the  
24 public health and safety if the licensee continues to practice;

25 (2) has been adjudged mentally incompetent by

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1 a final order or adjudication by a court of competent  
2 jurisdiction; or

3 (3) has pled guilty to or has been found  
4 guilty of any offense relating to the practice of medicine or  
5 any violent criminal offense in this state or a substantially  
6 equivalent criminal offense in another jurisdiction.

7 B. A licensee shall not be required to comply with  
8 a summary suspension or restriction of a license until notice  
9 has been served in accordance with procedures established in  
10 board rules or the licensee has actual knowledge of an order of  
11 suspension or restriction, whichever occurs first.

12 C. A licensee whose license is suspended or  
13 restricted pursuant to this section shall be entitled to a  
14 hearing before the board pursuant to the Uniform Licensing Act  
15 within fifteen days from the date the licensee requests a  
16 hearing."

17 SECTION 20. A new section of Chapter 61, Article 10 NMSA  
18 1978 is enacted to read:

19 "[NEW MATERIAL] BOARD COMMUNICATION--PROTECTED ACTIONS.--

20 A. A person that makes a report to the board  
21 regarding actual or potential disciplinary action, including a  
22 complaint, shall be confidential communication and is not a  
23 public record for the purposes of the Inspection of Public  
24 Records Act.

25 B. Any data, communication or information that the

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1 board acquires, prepares or disseminates relating to actual or  
2 potential disciplinary action or its investigation of a  
3 complaint shall not be disclosed except to the extent necessary  
4 to:

- 5 (1) carry out the duties of the board;
- 6 (2) make a judicial appeal of a board action;

7 or

- 8 (3) refer a case to a law enforcement agency,  
9 a national database clearinghouse or another licensing board.

10 C. Information contained in a complaint filed with  
11 the board may be disclosed when the board or a court acts on a  
12 complaint and:

- 13 (1) issues a notice of contemplated action; or
- 14 (2) before issuing a notice of contemplated  
15 action, reaches a settlement.

16 D. A person shall not be subject to any civil  
17 damages or criminal prosecution for providing information to  
18 the board, whether as a report, a complaint or as testimony."

19 SECTION 21. A new section of Chapter 61, Article 10 NMSA  
20 1978 is enacted to read:

21 "[NEW MATERIAL] OSTEOPATHIC PHYSICIAN ASSISTANT--  
22 LICENSURE--SCOPE OF AUTHORITY--ANNUAL REGISTRATION OF  
23 EMPLOYMENT--EMPLOYMENT CHANGE.--

24 A. No person shall perform or attempt to perform as  
25 an osteopathic physician assistant without first applying for

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1 and obtaining a license from the board as an osteopathic  
2 physician assistant and having the person's supervision  
3 registered in accordance with board regulations.

4 B. Osteopathic physician assistants may prescribe,  
5 administer and distribute dangerous drugs other than controlled  
6 substances in Schedule I of the Controlled Substances Act  
7 pursuant to regulations adopted by the board after consultation  
8 with the board of pharmacy if the prescribing, administering  
9 and distributing are done under the direction of a supervising  
10 osteopathic physician and within the parameters of a board-  
11 approved formulary and guidelines established pursuant to  
12 Paragraph (3) of Subsection D of Section 61-10-5 NMSA 1978.  
13 The distribution process shall comply with state laws  
14 concerning prescription packaging, labeling and recordkeeping  
15 requirements.

16 C. An osteopathic physician assistant shall perform  
17 only those acts and duties assigned by a supervising  
18 osteopathic physician that are within the scope of practice of  
19 the supervising osteopathic physician.

20 D. An applicant for a license as an osteopathic  
21 physician assistant shall complete application forms that the  
22 board supplies and pay a fee as provided in Section 61-10-6.1  
23 NMSA 1978. Upon licensing by the board, the applicant shall  
24 have the applicant's name and address and other pertinent  
25 information enrolled by the board on a roster of osteopathic

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1 physician assistants.

2 E. Each osteopathic physician assistant shall  
3 biennially submit proof of completion of continuing education  
4 as required by the board and register the osteopathic physician  
5 assistant's name and current address, the name and office  
6 address of the supervising osteopathic physician and such  
7 additional information as the board deems necessary. Upon any  
8 change of supervision as an osteopathic physician assistant,  
9 the registration of supervision shall automatically be void.  
10 Each biennial registration or registration of new supervision  
11 shall be accompanied by a fee as provided in Section 61-10-6.1  
12 NMSA 1978."

13 SECTION 22. A new section of Chapter 61, Article 10 NMSA  
14 1978 is enacted to read:

15 "[NEW MATERIAL] OSTEOPATHIC PHYSICIAN ASSISTANTS--INACTIVE  
16 LICENSE.--

17 A. An osteopathic physician assistant who notifies  
18 the board in writing on forms prescribed by the board may elect  
19 to place the osteopathic physician assistant's license on an  
20 inactive status. An osteopathic physician assistant with an  
21 inactive license shall be excused from payment of renewal fees  
22 and shall not practice as an osteopathic physician assistant.

23 B. An osteopathic physician assistant who engages  
24 in practice while the osteopathic physician assistant's license  
25 is lapsed or on inactive status is practicing without a license

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1 and is subject to discipline pursuant to the Osteopathic  
2 Medicine Act.

3 C. An osteopathic physician assistant requesting  
4 restoration from inactive status shall pay the current renewal  
5 fee and fulfill the requirement for renewal pursuant to the  
6 Osteopathic Medicine Act."

7 SECTION 23. A new section of Chapter 61, Article 10 NMSA  
8 1978 is enacted to read:

9 "[NEW MATERIAL] OSTEOPATHIC PHYSICIAN ASSISTANTS--  
10 EXEMPTION FROM LICENSURE.--

11 A. An osteopathic physician assistant student  
12 enrolled in a physician assistant or osteopathic physician  
13 assistant educational program accredited by the board on allied  
14 health education and accreditation or by its successor shall be  
15 exempt from licensure while functioning as an osteopathic  
16 physician assistant student.

17 B. An osteopathic physician assistant employed by  
18 the federal government while performing duties incident to that  
19 employment is not required to be licensed as an osteopathic  
20 physician assistant pursuant to the Osteopathic Medicine Act."

21 SECTION 24. A new section of Chapter 61, Article 10 NMSA  
22 1978 is enacted to read:

23 "[NEW MATERIAL] RESPONSIBILITY.--Every osteopathic  
24 physician using, supervising or employing a registered  
25 osteopathic physician assistant shall be individually

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1 responsible and liable for the performance of the acts and  
2 omissions delegated to the osteopathic physician assistant.  
3 Nothing in the Osteopathic Medicine Act shall be construed to  
4 relieve the osteopathic physician assistant of responsibility  
5 and liability for any of the osteopathic physician assistant's  
6 own acts and omissions. An osteopathic physician assistant  
7 shall be supervised by an osteopathic physician in accordance  
8 with board rules."

9 SECTION 25. TEMPORARY PROVISION--BOARD OF OSTEOPATHIC  
10 MEDICAL EXAMINERS--BOARD OF OSTEOPATHIC MEDICINE.--The name of  
11 the board of osteopathic medical examiners is changed to the  
12 "board of osteopathic medicine". On the effective date of this  
13 act, all references in law to the board of osteopathic medical  
14 examiners shall be construed to be references to the board of  
15 osteopathic medicine. All references in law to the chair or  
16 members of the board of osteopathic medical examiners shall be  
17 construed to be references to the chair or members of the board  
18 of osteopathic medicine.

19 SECTION 26. REPEAL.--Sections 61-10-2 and 61-10A-1  
20 through 61-10A-7 NMSA 1978 (being Laws 1974, Chapter 78,  
21 Section 16, Laws 1979, Chapter 26, Sections 1 through 4, Laws  
22 1989, Chapter 9, Section 8, Laws 1997, Chapter 187, Sections 12  
23 and 13 and Laws 1979, Chapter 26, Sections 5 through 7, as  
24 amended) are repealed.