

HOUSE REGULATORY AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 398

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

AN ACT

RELATING TO LICENSING; RENAMING CHAPTER 61, ARTICLE 10 NMSA  
1978 THE "OSTEOPATHIC MEDICINE ACT"; REPEALING THE OSTEOPATHIC  
PHYSICIANS' ASSISTANTS ACT AND ADDING PROVISIONS RELATED TO  
OSTEOPATHIC PHYSICIAN ASSISTANTS TO THE OSTEOPATHIC MEDICINE  
ACT; AMENDING AND ENACTING SECTIONS OF THE OSTEOPATHIC MEDICINE  
ACT TO CREATE A BOARD OF OSTEOPATHIC MEDICINE AND MAKE CHANGES  
TO PROVISIONS RELATING TO BOARD DUTIES AND LICENSURE FOR  
OSTEOPATHIC PHYSICIANS, OSTEOPATHIC PHYSICIAN ASSISTANTS AND  
PHARMACIST CLINICIANS; PROVIDING FOR DELAYED REPEAL.

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

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

"[NEW MATERIAL] SHORT TITLE.--Chapter 61, Article 10 NMSA  
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 and surgery in New  
18 Mexico;

19           F. "osteopathic physician assistant" means a  
20 skilled person licensed by the board as being qualified by  
21 academic and practical training to provide patient services  
22 under the supervision and direction of the osteopathic  
23 physician who is responsible for the performance of that  
24 assistant, except as provided pursuant to Paragraph (5) of  
25 Subsection D of Section 61-10-5 NMSA 1978;

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1           G. "pharmacist clinician" means a pharmacist who  
 2           exercises prescriptive authority pursuant to the Pharmacist  
 3           Prescriptive Authority Act; and

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

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

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

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

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

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1 DUTIES--POWERS.--

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

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

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

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

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

22 (a) have been licensed as osteopathic  
23 physicians ~~[nor shall the public members]~~, as osteopathic  
24 physician assistants or as pharmacist clinicians; or

25 (b) have any significant financial

1 interest, direct or indirect, in the occupation regulated.

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

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

9 C. The board shall:

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

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

16 (3) protect the public from the unauthorized  
 17 practice of osteopathy;

18 (4) enforce and administer the provisions of  
 19 the Osteopathic Medicine Act;

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

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- 1                   (6) adopt and use a seal;  
2                   (7) administer oaths to applicants, witnesses  
3 and others appearing before the board, as the board deems  
4 appropriate;  
5                   (8) take testimony on matters within the  
6 board's jurisdiction;  
7                   (9) adopt and promulgate rules relating to the  
8 regulation and oversight of pharmacist clinicians;  
9                   (10) keep an accurate record of all of its  
10 meetings, receipts and disbursements;  
11                   (11) maintain records in which the name,  
12 address and license number of all licensees shall be recorded,  
13 together with a record of all license renewals, suspensions,  
14 revocations, probations, stipulations, censures, reprimands and  
15 finer;  
16                   (12) grant, deny, review, suspend and revoke  
17 licenses to practice medicine and censure, reprimand, fine and  
18 place on probation and stipulation licensees and applicants in  
19 accordance with the Uniform Licensing Act for any cause stated  
20 in the Osteopathic Medicine Act;  
21                   (13) hire or contract with investigators as it  
22 deems necessary to investigate possible violations of the  
23 Osteopathic Medicine Act;  
24                   (14) establish continuing medical education  
25 requirements for licensed osteopathic physicians and

1 osteopathic physician assistants; and

2 (15) establish committees as it deems  
3 necessary for executing board duties.

4 D. The board may adopt and enforce rules for  
5 osteopathic physician assistants for:

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

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

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

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

23 (5) allowing an osteopathic physician  
24 assistant to temporarily serve under the supervision of a  
25 physician who is not the osteopathic physician assistant's

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1 supervising osteopathic physician of record but who is a  
2 physician licensed under the Medical Practice Act or the  
3 Osteopathic Medicine Act; and

4 (6) the purpose of carrying out all other  
5 provisions of the Osteopathic Medicine Act.

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

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

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

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

5           ~~E. Examinations shall be made at least twice a year~~  
 6 ~~at the time and place fixed by the board. All applicants shall~~  
 7 ~~be given written notice of examinations at a reasonable prior~~  
 8 ~~date.]~~

9           H. The board shall have an annual election of a  
 10 chair and a vice chair and other officers as it deems  
 11 necessary.

12           I. The chair shall preside over the meetings and  
 13 affairs of the board. The vice chair shall perform those  
 14 duties that the chair assigns and shall serve as chair when the  
 15 chair is absent.

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

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

24           SECTION 5. Section 61-10-6 NMSA 1978 (being Laws 1933,  
 25 Chapter 117, Section 5, as amended) is repealed and a new

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1 Section 61-10-6 NMSA 1978 is enacted to read:

2 "61-10-6. [NEW MATERIAL] LICENSURE--REQUIREMENTS.--

3 A. The board may consider for licensure an  
4 individual who:

5 (1) is a graduate of a school of osteopathic  
6 medicine and surgery accredited by the American osteopathic  
7 association;

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

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

18 (4) makes an application in accordance with  
19 board rules and pays the fees required pursuant to Section  
20 61-10-6.1 NMSA 1978.

21 B. An applicant who has not completed two years of  
22 a board-approved nationally accredited post-graduate training  
23 program, but who otherwise meets all other licensing  
24 requirements, may present evidence to the board of the  
25 applicant's other professional experience for consideration by

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1 the board in lieu of the approved post-graduate program  
 2 required pursuant to Paragraph (3) of Subsection A of this  
 3 section.

4 C. As a condition of licensure, the board may  
 5 require an applicant for licensure to:

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

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

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

15 "61-10-6.1. FEES.--The board of osteopathic medicine may  
 16 charge the following fees,

17 ~~[A. an examination fee equal to the cost of~~  
 18 ~~purchasing the examination plus an administration fee not to~~  
 19 ~~exceed fifty percent of the examination fee;~~

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

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

24 A. pertaining to osteopathic physicians:

25 (1) an application fee not to exceed [five

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1 ~~hundred dollars (\$500)]~~ one thousand dollars (\$1,000) for  
2 triennial licensure of an osteopathic physician pursuant to  
3 Section 61-10-12 NMSA 1978;

4 ~~[D. an annual renewal fee not to exceed two hundred~~  
5 ~~dollars (\$200);~~

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

8 ~~F.]~~ (2) a triennial osteopathic physician  
9 licensure renewal fee not to exceed one thousand dollars  
10 (\$1,000);

11 (3) a fee not to exceed seventy-five dollars  
12 (\$75.00) for placing an osteopathic physician license on  
13 inactive status;

14 (4) a late fee not to exceed:

15 (a) two hundred dollars (\$200) for  
16 [applicants] osteopathic physicians who fail to [register]  
17 renew their licenses on or before July 1 of each year but who  
18 renew on or before September 29; and

19 (b) four hundred dollars (\$400) for  
20 osteopathic physicians who renew their licenses after September  
21 29;

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

25 ~~[H. a reasonable administrative fee for~~

1 ~~verification of license, publications and copying charges; and~~

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

4 ~~All fees are nonrefundable and shall be used by the board~~  
5 ~~to carry out its duties]~~

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

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

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

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

15 B. pertaining to osteopathic physician assistants  
16 and to pharmacist clinicians:

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

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

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

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1                   (4) an impaired osteopathic physician  
2 assistant and pharmacist clinician fee not to exceed one  
3 hundred dollars (\$100); and

4                   (5) a fee for an osteopathic physician  
5 assistant or pharmacist clinician license on inactive status  
6 not to exceed seventy-five dollars (\$75.00); and

7                   C. applicable to licensed and applicants for  
8 licensure as osteopathic physicians, osteopathic physician  
9 assistants and pharmacist clinicians:

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

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

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

20                   "61-10-7. [NEW MATERIAL] TEMPORARY LICENSE--  
21 QUALIFICATIONS.--

22                   A. In the interim between regular board meetings,  
23 the board's chair or an authorized representative of the board  
24 shall issue a temporary license to practice as an osteopathic  
25 physician or osteopathic physician assistant to a qualified

1 applicant who has filed a complete application for licensure in  
2 accordance with the Osteopathic Medicine Act and board rules.  
3 The temporary license shall expire on the date of the next  
4 regular meeting of the board, at which time the board shall  
5 grant final approval.

6 B. Upon written application, accompanied by proof  
7 of qualifications as specified by board rules, the board may  
8 issue a temporary license to an applicant who seeks temporary  
9 licensure to:

10 (1) provide services at an organized youth  
11 camp or school; provided that the practice of osteopathy shall  
12 be confined to enrollees, leaders and employees of the camp or  
13 school;

14 (2) assist in teaching;

15 (3) conduct research;

16 (4) perform a specialized diagnostic and  
17 treatment procedure;

18 (5) implement new technology; or

19 (6) pursue an educational purpose.

20 C. The board shall grant a temporary license only  
21 to an applicant who:

22 (1) submits a written application and  
23 accompanies the application with proof of qualifications as  
24 specified in board rules;

25 (2) pays a temporary license fee pursuant to

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1 Section 61-10-6.1 NMSA 1978; and

2 (3) is supervised by an osteopathic physician  
3 who is licensed in New Mexico and who submits an affidavit  
4 attesting to the qualifications of the applicant and the  
5 activities that the applicant will perform.

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

10 E. A temporary license shall:

11 (1) describe the activities to which the  
12 licensee shall be limited; and

13 (2) identify the osteopathic physician who  
14 will supervise the applicant during the time the applicant  
15 practices osteopathic medicine in the state."

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

18 "61-10-8. PROFESSIONAL EDUCATION.--~~[To be considered for~~  
19 ~~licensure to practice as an osteopathic physician and surgeon,~~  
20 ~~the applicant]~~

21 A. After July 1, 2015, a first-time applicant for  
22 licensure to practice as an osteopathic physician shall:

23 [A.] (1) be a graduate of a college of  
24 osteopathic medicine and surgery accredited by the American  
25 osteopathic association; and

1                    ~~[B.]~~ (2) have completed ~~[an]~~ at least two  
 2 years of post-graduate training approved by the American  
 3 osteopathic association or [American medical association  
 4 approved post-graduate one-year residency program or rotating  
 5 internship program] the accreditation council for graduate  
 6 medical education.

7                    B. An osteopathic physician who has been licensed  
 8 in this state or another state of the United States before July  
 9 1, 2015 shall have completed at least one year of post-graduate  
 10 training approved by the American osteopathic association or  
 11 the accreditation council for graduate medical education."

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

14                    "61-10-11. LICENSE ISSUED.--The board shall issue to each  
 15 applicant for a license to practice as provided in the  
 16 Osteopathic Medicine Act who ~~[successfully passes the~~  
 17 ~~examination shall be entitled to]~~ has the required education  
 18 qualifications and meets the requirements of that act a license  
 19 ~~[which]~~ that carries with it the title doctor of osteopathic  
 20 medicine and osteopathic physician with right to practice as  
 21 taught and practiced in the standard colleges of osteopathic  
 22 medicine and surgery."

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

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1 "61-10-12. [NEW MATERIAL] LICENSE BY ENDORSEMENT.--

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

4 (1) has graduated from a college of  
5 osteopathic medicine accredited by the American osteopathic  
6 association;

7 (2) is board-certified, in accordance with  
8 board rules, in a specialty recognized by a board-approved  
9 national credentialing program;

10 (3) has been a licensed osteopathic physician  
11 in the United States and has been actively engaged in the  
12 practice of osteopathy in another state for at least three  
13 consecutive years immediately prior to the year in which the  
14 application is made;

15 (4) holds an unrestricted license in another  
16 state;

17 (5) was not the subject of disciplinary action  
18 in another state; and

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

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

23 (1) is a graduate of a college of osteopathic  
24 medicine accredited by the American osteopathic association;  
25 and

.200743.1

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

4 C. The board may require as a condition of  
 5 licensure that an applicant for licensure by endorsement  
 6 pursuant to this section undergo a criminal background check;  
 7 provided that the applicant for licensure by endorsement shall  
 8 pay any fees for a criminal background check directly to the  
 9 screening entity that performs the check."

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

12 "61-10-13. DISPLAY OF LICENSES AND RENEWAL THEREOF.--  
 13 Every person holding a license authorizing [~~him~~] that person to  
 14 practice osteopathic medicine and surgery in this state shall  
 15 display the license and certificate of [~~annual~~] triennial  
 16 renewal in [~~his~~] the person's principal office practice  
 17 location."

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

21 "61-10-15. [NEW MATERIAL] REFUSAL AND REVOCATION OF  
 22 LICENSE.--

23 A. Upon satisfactory proof being made to the board  
 24 that an applicant for or holder of a license to practice  
 25 osteopathic medicine has been guilty of unprofessional or

.200743.1

1 dishonorable conduct, the board may:

2 (1) refuse to issue a license to an applicant;

3 (2) revoke or suspend a license; or

4 (3) fine, censure or reprimand a licensee.

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

13 C. If evidence fails to establish to the  
14 satisfaction of the board that the licensee is competent or if  
15 evidence shows that the licensee has not complied with the  
16 terms of probation, the board may revoke or suspend the  
17 licensee's license. If the board suspends a license, the  
18 licensee shall not practice during the term of suspension. A  
19 licensee whose license has been revoked or is in suspension and  
20 who thereafter practices or attempts or offers to practice in  
21 the state is guilty of a felony and shall be punished as  
22 provided in Section 61-10-16 NMSA 1978 unless:

23 (1) the period of suspension has expired;

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

1 (3) the board has reinstated the license.

2 D. The board shall not refuse to issue nor to renew  
3 nor suspend nor revoke any license for unprofessional or  
4 dishonorable conduct unless the person accused has been  
5 provided:

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

8 (2) a public hearing by the board, with right  
9 of review of the board's decision by the district court of the  
10 first judicial district by certiorari, on petition of the party  
11 against whom the board's decision is rendered.

12 E. The board may compel the attendance of witnesses  
13 and the production of relevant books and papers for the  
14 investigation of matters that may come before it, and the  
15 presiding officer of the board may administer the requisite  
16 oaths. The board has the same authority to compel the giving  
17 of testimony that is conferred on courts of justice.

18 F. As used in this section:

19 (1) "fee splitting" means offering,  
20 delivering, receiving or accepting any unearned rebate, refund,  
21 commission preference, patronage dividend, discount or other  
22 unearned consideration, whether in the form of money or  
23 otherwise, as compensation or inducement for referring  
24 patients, clients or customers to a person or organization,  
25 irrespective of any membership, proprietary interest or

.200743.1

1 co-ownership in or with a person to whom the patients, clients  
2 or customers are referred; and

3 (2) "unprofessional or dishonorable conduct"  
4 means conduct that the board has proscribed by rule and  
5 includes the following conduct of a licensee:

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

8 (b) employing a person to solicit  
9 patients for the licensee;

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

13 (d) obtaining a fee by fraud or  
14 misrepresentation;

15 (e) willfully or negligently divulging a  
16 professional confidence;

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

23 (g) habitual or excessive use of  
24 intoxicants or drugs;

25 (h) fraud or misrepresentation in

1 applying for or procuring a license to practice in this state  
2 or in connection with applying for or procuring renewal,  
3 including cheating on or attempting to subvert a licensing  
4 examination;

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

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

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

17 (l) gross negligence in the practice of  
18 a licensee;

19 (m) manifest incapacity or incompetence  
20 to practice as a licensee;

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

.200743.1

1 revocation is conclusive evidence;

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

5 (p) fee splitting;

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

9 (r) conduct likely to deceive, defraud  
10 or harm the public;

11 (s) repeated similar negligent acts;

12 (t) employing abusive billing practices;

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

20 (v) failure to report to the board  
21 surrender of a license or other authorization to practice in  
22 another state or jurisdiction or surrender of membership on any  
23 medical staff or in any medical or professional association or  
24 society following, in lieu of and while under disciplinary  
25 investigation by any of those authorities or bodies for acts or

.200743.1

1 conduct similar to acts or conduct that would constitute  
2 grounds for disciplinary action;

3 (w) failure to furnish the board, its  
4 investigators or representatives with information requested by  
5 the board;

6 (x) abandonment of a patient;

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

9 (z) injudicious prescribing,  
10 administering or dispensing of a drug or medicine;

11 (aa) failure to adequately supervise, as  
12 provided by board rule, an osteopathic physician or osteopathic  
13 physician assistant;

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

17 (cc) conduct unbecoming in a person  
18 licensed to practice or detrimental to the best interests of  
19 the public;

20 (dd) the surrender of a license or  
21 withdrawal of an application for a license before another state  
22 licensing board while an investigation or disciplinary action  
23 is pending before that board for acts or conduct similar to  
24 acts or conduct that would constitute grounds for action  
25 pursuant to this section;

.200743.1

1 (ee) sexual contact with a former  
2 patient of the licensee, other than the spouse of the licensee,  
3 within one year from the end of treatment;

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

7 (gg) improper management of medical  
8 records, including failure to maintain timely, accurate,  
9 legible and complete medical records;

10 (hh) failure to provide pertinent and  
11 necessary medical records to an osteopathic physician or  
12 patient of the osteopathic physician in a timely manner when  
13 legally requested to do so by the patient or by a legally  
14 designated representative of the patient;

15 (ii) undertreatment of pain as provided  
16 by board rule;

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

22 (kk) willfully or negligently divulging  
23 privileged information or a professional secret."

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

.200743.1

1           "61-10-17. RECORDS.--The board [~~of osteopathic medical~~  
2 ~~examiners~~] shall keep a record, which shall be open to all  
3 proper parties for inspection at all reasonable times, of its  
4 proceedings relating to the issuance, refusal, renewal,  
5 suspension or revocation of licenses to practice in accordance  
6 with [~~this~~] the Osteopathic Medicine Act. This record shall  
7 also contain the name, place of business and residence, the  
8 date and the number of the license of every osteopathic  
9 physician and osteopathic physician assistant licensed under  
10 [~~this~~] the Osteopathic Medicine Act."

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

13           "61-10-18. NO ADDITIONAL POWER CONFERRED ON PRIOR  
14 LICENSEES.--Nothing [~~herein~~] contained in the Osteopathic  
15 Medicine Act shall be construed as conferring any powers or  
16 authority not [~~heretofore~~] previously vested in osteopathic  
17 physicians or osteopathic physician assistants who hold  
18 licenses to practice osteopathy under any pre-existing law or  
19 regulation unless such licensees [~~be~~] are likewise licensed  
20 under the provisions of [~~this~~] the Osteopathic Medicine Act."

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

23           "61-10-19. [~~ANNUAL~~] TRIENNIAL RENEWAL OF LICENSE--  
24 CERTIFICATE--FEE.--

25           A. All [~~persons~~] osteopathic physicians and

.200743.1

1 osteopathic physician assistants legally licensed to practice  
2 osteopathic medicine [~~and surgery~~] in this state shall, on or  
3 before July 1 of [~~each~~] the third year after first-time  
4 licensure or the last licensure renewal, submit proof of  
5 completion of continuing education requirements as required by  
6 the board and pay to the secretary of the board [~~an annual~~] a  
7 triennial renewal fee as provided in Section 61-10-6.1 NMSA  
8 1978 for the renewal of [~~his~~] a license to practice osteopathic  
9 medicine [~~and surgery~~]. Upon payment of fees and proof of  
10 completion of continuing education requirements, the board  
11 shall issue a certificate of [~~annual~~] triennial renewal of  
12 license.

13 B. The secretary of the board shall send a written  
14 notice to every [~~person~~] osteopathic physician and osteopathic  
15 physician assistant holding a legal certificate to practice  
16 osteopathic medicine in this state at least thirty days prior  
17 to July 1 of [~~each~~] the year in which the osteopathic physician  
18 or osteopathic physician assistant is due for triennial renewal  
19 of licensure. The notice shall be directed to the last known  
20 address of the licensee, and notify [~~him~~] the licensee that it  
21 will be necessary [~~for him~~] to pay the [~~annual~~] triennial  
22 license renewal fee. Proper forms shall accompany the notice,  
23 and the licensee shall make application for the renewal of  
24 [~~his~~] the licensee's certificate on these forms. The fact that  
25 a [~~practitioner~~] licensee has not received [~~his~~] the licensee's

1 blank form from the board shall not, however, relieve [~~him~~] the  
 2 licensee of the duty to register on or before July 1 of the  
 3 third year after licensure or last renewal nor shall the  
 4 board's failure to mail the forms operate to exempt [~~him~~] the  
 5 osteopathic physician or osteopathic physician assistant from  
 6 the penalties provided in [~~Chapter 61, Article 10 NMSA 1978~~]  
 7 the Osteopathic Medicine Act."

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

10 "61-10-20. POST-GRADUATE EDUCATIONAL REQUIREMENTS.--For  
 11 the purpose of protecting the health and well-being of the  
 12 citizens of this state and for maintaining and continuing  
 13 informed professional knowledge and awareness, the board shall  
 14 establish mandatory continuing educational requirements for  
 15 osteopathic physicians and osteopathic physician assistants  
 16 licensed in this state. In establishing [~~such~~] these  
 17 requirements, the board shall recognize and give weight to  
 18 existing educational methods, procedures, devices and programs  
 19 in use among the various medical specialties and other  
 20 recognized medical groups and the consensus of the members of  
 21 the medical community. This section does not abrogate or  
 22 affect the status, force or operation of the Uniform Licensing  
 23 Act. The board shall not establish and enforce [~~such~~] these  
 24 requirements if they will reduce the availability of  
 25 osteopathic physicians or osteopathic physician assistants in a

.200743.1

1 community to an extent that adequate medical care is  
2 jeopardized."

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

5 "61-10-21. FAILURE TO COMPLY--CANCELLATION OF LICENSE--  
6 REINSTATEMENT--TEMPORARY CANCELLATION AT LICENSEE'S REQUEST.--

7 A. In the event any [~~licensee~~] osteopathic  
8 physician or osteopathic physician assistant licensed to  
9 practice osteopathic medicine in New Mexico fails to comply  
10 with the requirements of Section 61-10-19 NMSA 1978, [~~he~~] the  
11 licensee shall, upon order of the board [~~of osteopathic medical~~  
12 ~~examiners~~], forfeit [~~his~~] the licensee's right to practice  
13 osteopathic medicine in this state and [~~his~~] the licensee's  
14 license and certificate shall be canceled; provided, however,  
15 that the secretary of the board may reinstate [~~him~~] the  
16 licensee upon the payment of all fees due and upon the  
17 presentation of satisfactory evidence of the attendance at an  
18 educational program as provided for in [~~Chapter 61, Article 10~~  
19 ~~NMSA 1978~~] the Osteopathic Medicine Act.

20 B. It is further provided that any [~~person~~]  
21 osteopathic physician or osteopathic physician assistant  
22 licensed to practice osteopathic medicine in New Mexico  
23 desiring to withdraw from the active practice of [~~his~~  
24 ~~profession~~] osteopathic medicine in this state shall have the  
25 right to apply to the [~~secretary~~] chair of the board [~~of~~

1 ~~osteopathic medical examiners]~~ for a temporary suspension of  
 2 ~~[his]~~ the licensee's certificate to practice osteopathic  
 3 medicine in this state, with the right to renew and reinstate  
 4 ~~[his]~~ the certificate if ~~[he]~~ the licensee so desires, upon a  
 5 showing that ~~[he]~~ the licensee has paid the appropriate fees on  
 6 or before July 1 of each year."

7           **SECTION 18.** A new section of Chapter 61, Article 10 NMSA  
 8 1978 is enacted to read:

9           "[NEW MATERIAL] INJUNCTION TO STOP UNLICENSED PRACTICE OF  
 10 OSTEOPATHIC MEDICINE.--

11           A. The attorney general, district attorney, board  
 12 or any resident of any county where any person practices  
 13 osteopathic medicine without possessing a valid license to do  
 14 so may, in accordance with the laws of New Mexico governing  
 15 injunctions, maintain an action in the name of the state. To  
 16 enjoin a person from practicing osteopathic medicine until a  
 17 valid license to practice osteopathic medicine is secured, any  
 18 person who has been enjoined who violates the injunction shall  
 19 be punished for contempt of court; provided that the injunction  
 20 does not relieve any person practicing osteopathic medicine  
 21 without a valid license from a criminal prosecution therefore  
 22 as provided by law.

23           B. In charging any person in a complaint for  
 24 injunction, or in an affidavit, information or indictment with  
 25 practicing osteopathic medicine without a valid license, it is

.200743.1

1 sufficient to charge that the person did, upon a certain day  
2 and in a certain county, engage in the practice of osteopathic  
3 medicine without a valid license without averring any further  
4 or more particular facts."

5 SECTION 19. A new section of Chapter 61, Article 10 NMSA  
6 1978 is enacted to read:

7 "[NEW MATERIAL] LICENSURE--SUMMARY SUSPENSION--SUMMARY  
8 RESTRICTION--GROUNDS.--

9 A. The board may suspend or restrict a license to  
10 practice osteopathic medicine in New Mexico issued by the board  
11 without a hearing, simultaneously or at any time after the  
12 initiation of proceedings for a hearing provided pursuant to  
13 the Uniform Licensing Act, if the board finds that evidence in  
14 its possession indicates that the licensee:

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

17 (2) has been adjudged mentally incompetent by  
18 a final order or adjudication by a court of competent  
19 jurisdiction; or

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

24 B. A licensee shall not be required to comply with  
25 a summary suspension or restriction of a license until notice

1 has been served in accordance with procedures established in  
 2 board rules or the licensee has actual knowledge of an order of  
 3 suspension or restriction, whichever occurs first.

4 C. A licensee whose license is suspended or  
 5 restricted pursuant to this section shall be entitled to a  
 6 hearing before the board pursuant to the Uniform Licensing Act  
 7 within fifteen days from the date the licensee requests a  
 8 hearing."

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

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

12 A. A person that makes a report to the board  
 13 regarding actual or potential disciplinary action, including a  
 14 complaint, shall be confidential communication and is not a  
 15 public record for the purposes of the Inspection of Public  
 16 Records Act.

17 B. Any data, communication or information that the  
 18 board acquires, prepares or disseminates relating to actual or  
 19 potential disciplinary action or its investigation of a  
 20 complaint shall not be disclosed except to the extent necessary  
 21 to:

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

24 or

- 25 (3) refer a case to a law enforcement agency,

.200743.1

1 a national database clearinghouse or another licensing board.

2 C. Information contained in a complaint filed with  
3 the board may be disclosed when the board or a court acts on a  
4 complaint and:

- 5 (1) issues a notice of contemplated action; or
- 6 (2) before issuing a notice of contemplated  
7 action, reaches a settlement.

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

11 SECTION 21. A new section of Chapter 61, Article 10 NMSA  
12 1978 is enacted to read:

13 "NEW MATERIAL] OSTEOPATHIC PHYSICIAN ASSISTANT--  
14 LICENSURE--SCOPE OF AUTHORITY--ANNUAL REGISTRATION OF  
15 EMPLOYMENT--EMPLOYMENT CHANGE.--

16 A. No person shall perform or attempt to perform as  
17 an osteopathic physician assistant without first applying for  
18 and obtaining a license from the board as an osteopathic  
19 physician assistant and having the person's supervision  
20 registered in accordance with board regulations.

21 B. Osteopathic physician assistants may prescribe,  
22 administer and distribute dangerous drugs other than controlled  
23 substances in Schedule I of the Controlled Substances Act  
24 pursuant to regulations adopted by the board after consultation  
25 with the board of pharmacy if the prescribing, administering

underscored material = new  
[bracketed material] = delete

1 and distributing are done under the direction of a supervising  
2 osteopathic physician and within the parameters of a board-  
3 approved formulary and guidelines established pursuant to  
4 Paragraph (3) of Subsection D of Section 61-10-5 NMSA 1978.

5 The distribution process shall comply with state laws  
6 concerning prescription packaging, labeling and recordkeeping  
7 requirements.

8 C. An osteopathic physician assistant shall perform  
9 only those acts and duties assigned by a supervising  
10 osteopathic physician that are within the scope of practice of  
11 the supervising osteopathic physician.

12 D. An applicant for a license as an osteopathic  
13 physician assistant shall complete application forms that the  
14 board supplies and pay a fee as provided in Section 61-10-6.1  
15 NMSA 1978. Upon licensing by the board, the applicant shall  
16 have the applicant's name and address and other pertinent  
17 information enrolled by the board on a roster of osteopathic  
18 physician assistants.

19 E. Each osteopathic physician assistant shall  
20 triennially submit proof of completion of continuing education  
21 as required by the board and register the osteopathic physician  
22 assistant's name and current address, the name and office  
23 address of the supervising osteopathic physician and such  
24 additional information as the board deems necessary. Upon any  
25 change of supervision as an osteopathic physician assistant,

.200743.1

1 the registration of supervision shall automatically be void.  
2 Each triennial registration or registration of new supervision  
3 shall be accompanied by a fee as provided in Section 61-10-6.1  
4 NMSA 1978."

5 SECTION 22. A new section of Chapter 61, Article 10 NMSA  
6 1978 is enacted to read:

7 "[NEW MATERIAL] OSTEOPATHIC PHYSICIAN ASSISTANTS--INACTIVE  
8 LICENSE.--

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

15 B. An osteopathic physician assistant who engages  
16 in practice while the osteopathic physician assistant's license  
17 is lapsed or on inactive status is practicing without a license  
18 and is subject to discipline pursuant to the Osteopathic  
19 Medicine Act.

20 C. An osteopathic physician assistant requesting  
21 restoration from inactive status shall pay the current renewal  
22 fee and fulfill the requirement for renewal pursuant to the  
23 Osteopathic Medicine Act."

24 SECTION 23. A new section of Chapter 61, Article 10 NMSA  
25 1978 is enacted to read:

.200743.1

1           "[NEW MATERIAL] OSTEOPATHIC PHYSICIAN ASSISTANTS--  
2 EXEMPTION FROM LICENSURE.--

3           A. An osteopathic physician assistant student  
4 enrolled in a physician assistant or osteopathic physician  
5 assistant educational program accredited by the board on allied  
6 health education and accreditation or by its successor shall be  
7 exempt from licensure while functioning as an osteopathic  
8 physician assistant student.

9           B. An osteopathic physician assistant employed by  
10 the federal government while performing duties incident to that  
11 employment is not required to be licensed as an osteopathic  
12 physician assistant pursuant to the Osteopathic Medicine Act."

13           SECTION 24. A new section of Chapter 61, Article 10 NMSA  
14 1978 is enacted to read:

15           "[NEW MATERIAL] RESPONSIBILITY.--Every osteopathic  
16 physician using, supervising or employing a registered  
17 osteopathic physician assistant shall be individually  
18 responsible and liable for the performance of the acts and  
19 omissions delegated to the osteopathic physician assistant.  
20 Nothing in the Osteopathic Medicine Act shall be construed to  
21 relieve the osteopathic physician assistant of responsibility  
22 and liability for any of the osteopathic physician assistant's  
23 own acts and omissions. An osteopathic physician assistant  
24 shall be supervised by an osteopathic physician in accordance  
25 with board rules."

.200743.1

1           SECTION 25. Section 61-10-22 NMSA 1978 (being Laws 1979,  
2 Chapter 36, Section 2, as amended) is amended to read:

3           "61-10-22. TERMINATION OF AGENCY LIFE--DELAYED  
4 REPEAL.--The board of osteopathic medical examiners is  
5 terminated on July 1, [2015] 2021 pursuant to the Sunset Act.  
6 The board shall continue to operate according to the provisions  
7 of [~~Chapter 61, Article 10 NMSA 1978~~] the Osteopathic Medicine  
8 Act until July 1, [2016] 2022. Effective July 1, [2016,  
9 ~~Chapter 61, Article 10 NMSA 1978~~] 2022, the Osteopathic  
10 Medicine Act is repealed."

11           SECTION 26. TEMPORARY PROVISION--BOARD OF OSTEOPATHIC  
12 MEDICAL EXAMINERS--BOARD OF OSTEOPATHIC MEDICINE.--The name of  
13 the board of osteopathic medical examiners is changed to the  
14 "board of osteopathic medicine". On the effective date of this  
15 act, all references in law to the board of osteopathic medical  
16 examiners shall be construed to be references to the board of  
17 osteopathic medicine. All references in law to the chair or  
18 members of the board of osteopathic medical examiners shall be  
19 construed to be references to the chair or members of the board  
20 of osteopathic medicine.

21           SECTION 27. REPEAL.--Sections 61-10A-1 through 61-10A-7  
22 NMSA 1978 (being Laws 1979, Chapter 26, Sections 1 through 4,  
23 Laws 1989, Chapter 9, Section 8, Laws 1997, Chapter 187,  
24 Sections 12 and 13 and Laws 1979, Chapter 26, Sections 5  
25 through 7, as amended) are repealed.

.200743.1

