

HOUSE BILL 48

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Rod Montoya

This document incorporates committee amendments adopted during standing committee(s) consideration of this measure. It is a tool to show the amendments in context and is not to be used for introduction, amendment or substitution.

AN ACT

RELATING TO LICENSING OF OSTEOPATHIC PHYSICIANS AND OSTEOPATHIC PHYSICIAN ASSISTANTS; AMENDING, REPEALING AND ENACTING SECTIONS OF CHAPTER 61, ARTICLE 10 NMSA 1978; PROVIDING FOR PENALTIES; AMENDING THE PHARMACIST PRESCRIPTIVE AUTHORITY ACT TO REQUIRE THE BOARD OF OSTEOPATHIC MEDICINE TO ADOPT REGULATIONS FOR OSTEOPATHIC PHYSICIANS WHO SUPERVISE PHARMACY 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"."

**SECTION 2.** A new section of Chapter 61, Article 10 NMSA

.202204.4 Amendments in Context

underscored material = new  
[bracketed material] = delete  
-language-deleted = deleted by amendment  
New amended language = new by amendment

underscored material = new  
~~[bracketed material]~~ = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

1978 is enacted to read:

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

- A. "administer" means to apply a prepackaged drug to the body of a patient by any means;
- B. "board" means the board of osteopathic medicine;
- C. "dispense" means to deliver a drug directly to a patient and includes the compounding, labeling and repackaging of a drug from a bulk or original container;
- D. "distribute" means to administer or supply directly to a patient under the direct care of the distributing osteopathic physician's assistant one or more doses of drugs prepackaged by a licensed pharmacist and excludes the compounding or repackaging from a bulk or original container;
- E. "health care practitioner" means an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession;
- F. "osteopathic medicine" means the complete system or school of osteopathic medicine governed by the Osteopathic Medicine Act;
- G. "osteopathic physician" means a physician licensed to practice osteopathic medicine in New Mexico;
- H. "osteopathic physician assistant" means a skilled person licensed by the board as being qualified by

.202204.4 Amendments in Context

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

academic and practical training to provide patient services under supervision as provided by the Osteopathic Medicine Act;

I. "pharmacist clinician" means a pharmacist who exercises prescriptive authority pursuant to the Pharmacist Prescriptive Authority Act;

J. "prescribe" means to issue an order individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, bearing the name and address of the prescriber, the prescriber's license classification, the name and address of the patient and the name of the drug prescribed, directions for its use and the date of its issue; and

K. "supervising physician" means a physician licensed under the Medical Practice Act or an osteopathic physician."

**SECTION 3.** Section 61-10-2 NMSA 1978 (being Laws 1974, Chapter 78, Section 16) is amended to read:

"61-10-2. CRIMINAL OFFENDER'S CHARACTER EVALUATION.--The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted by [~~Sections 67-8-1 through 67-8-18 NMSA 1953~~] the Osteopathic Medicine Act."

**SECTION 4.** Section 61-10-3 NMSA 1978 (being Laws 1933, Chapter 117, Section 2, as amended) is amended to read:

underscored material = new  
[bracketed material] = delete  
language deleted = deleted by amendment  
New amended language = new by amendment

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

SECTION 5. Section 61-10-5 NMSA 1978 (being Laws 1933, Chapter 117, Section 4, as amended) is repealed and a new Section 61-10-5 NMSA 1978 is enacted to read:

"61-10-5. [NEW MATERIAL] BOARD OF OSTEOPATHIC MEDICINE--  
APPOINTMENT--TERMS--MEETINGS--MEMBERSHIP--EXAMINATIONS--  
DUTIES--POWERS.--

A. The "board of osteopathic medicine" is created. The board shall be administratively attached to the regulation and licensing department. The board shall consist of seven members appointed by the governor as follows:

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

(a) four members who are osteopathic physicians licensed in good standing pursuant to Section 61-10-8 NMSA 1978; and

(b) one member who is an osteopathic

underscored material = new  
~~[bracketed material]~~ = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

physician assistant licensed in good standing pursuant to the Osteopathic Medicine Act; and

(2) two public members. The public members of the board shall not:

(a) have been licensed as osteopathic physicians or as osteopathic physician assistants; or

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

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

C. The board shall:

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

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

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

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

underscoring = new  
[bracketed material] = delete  
~~language~~ = deleted by amendment  
New amended language

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

(6) adopt and use a seal;

(7) administer oaths to applicants, witnesses and others appearing before the board, as the board deems appropriate;

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

(9) adopt and promulgate rules relating to the oversight of osteopathic physicians who supervise pharmacist clinicians;

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

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

(12) grant, deny, review, suspend and revoke licenses to practice osteopathic medicine and censure, reprimand, fine and place on probation and stipulation

underscored material = new  
~~[bracketed material]~~ = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

licensees and applicants in accordance with the Uniform Licensing Act for any cause stated in the Osteopathic Medicine Act;

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

(14) establish continuing medical education requirements that coincide with continuing medical education cycles of the American osteopathic association for licensed osteopathic physicians and osteopathic physician assistants; and

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

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

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

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

(3) establishing when and for how long an osteopathic physician assistant is permitted to prescribe,

underscored material = new  
~~[bracketed material]~~ = delete  
~~language~~ = deleted by amendment  
New amended language = new by amendment

administer and distribute dangerous drugs other than controlled substances in Schedule I of the Controlled Substances Act after consultation with the board of pharmacy;

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

(5) allowing an osteopathic physician assistant to temporarily serve under a supervising physician other than the supervising physician of record; and

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

E. Board members shall be appointed for staggered terms of four years so that not more than three members' terms expire in any one year. A board member shall not serve more than two consecutive terms. The vacancy of the term of a member shall be filled by appointment by the governor to the unexpired portion of the four-year term. A board member whose term has expired shall serve until the member's successor is appointed.

F. The board shall meet at the call of the chair at least three times a year and may hold other meetings as the chair deems necessary. A majority of the board constitutes a quorum.

G. The board shall have an annual election of a



underscored material = new  
[bracketed material] = delete  
-language-deleted = deleted by amendment  
New amended language = new by amendment

chair and a vice chair and other officers as it deems necessary.

H. The chair shall preside over the meetings and affairs of the board. The vice chair shall perform those duties that the chair assigns and shall serve as chair when the chair is absent.

I. Members of the board are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance, for each day necessarily spent in the discharge of their duties.

J. A board member failing to attend three consecutive meetings, either regular or special, shall automatically be removed as a member of the board unless excused for reasons established in board rules."

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

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

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

(1) is a graduate of a school of osteopathic medicine accredited by the commission on osteopathic college accreditation ~~or~~ and recognized by the American osteopathic association;

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

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

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

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

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

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

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

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

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

**SECTION 7.** Section 61-10-6.1 NMSA 1978 (being Laws 1989, Chapter 371, Section 3) is repealed and a new Section 61-10-6.1 NMSA 1978 is enacted to read:

"61-10-6.1. [NEW MATERIAL] FEES.--The board may charge the following fees; provided that all fees are nonrefundable and shall be used by the board to carry out its duties:

A. pertaining to osteopathic physicians:

(1) an application fee not to exceed one thousand dollars (\$1,000) for triennial licensure of an osteopathic physician pursuant to Section 61-10-12 NMSA 1978;

(2) a triennial osteopathic physician licensure renewal fee not to exceed one thousand dollars (\$1,000);

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

(4) a late fee not to exceed:

(a) two hundred dollars (\$200) for osteopathic physicians who fail to renew their licenses on or before July 1 of the year in which their triennial licenses are

underscored material = new  
~~[bracketed material]~~ = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

due for renewal but who renew on or before September 29 of that year; and

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

(5) a reinstatement fee not to exceed five hundred dollars (\$500) for reinstatement of a revoked, suspended or inactive osteopathic physician license;

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

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

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

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

B. pertaining to osteopathic physician assistants:

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

(2) a registration of new supervision fee that is equal to one-half of the biennial license fee for osteopathic physician assistants;

(3) a late fee not to exceed twenty-five dollars (\$25.00) for osteopathic physician assistants who fail

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

to renew their licenses on or before July 1 of the year in which their biennial licenses are due for renewal;

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

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

C. pertaining to osteopathic physician and osteopathic physician assistant licensees or applicants:

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

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

**SECTION 8.** Section 61-10-7 NMSA 1978 (being Laws 1977, Chapter 155, Section 1) is repealed and a new Section 61-10-7 NMSA 1978 is enacted to read:

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

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

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

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

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

(1) provide services at an organized youth camp or school; provided that the practice of osteopathic medicine shall be confined to enrollees, leaders and employees of the camp or school;

(2) assist in teaching;

(3) conduct research;

(4) perform a specialized diagnostic and treatment procedure;

(5) implement new technology; or

(6) pursue an educational purpose.

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

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

(2) pays a temporary license fee pursuant to

underscored material = new  
[bracketed material] = delete  
-language-deleted = deleted by amendment  
New amended language = new by amendment

Section 61-10-6.1 NMSA 1978; and

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

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

E. A temporary license shall:

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

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

SECTION 9. Section 61-10-8 NMSA 1978 (being Laws 1933, Chapter 117, Section 6, as amended) is amended to read:

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

A. After July 1, 2016, a first-time applicant for licensure to practice as an osteopathic physician shall:

~~[A.]~~ (1) be a graduate of a college of osteopathic medicine ~~[and surgery]~~ accredited by the commission on osteopathic college accreditation ~~or~~ and recognized by the

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

American osteopathic association; and

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

B. An osteopathic physician who has been licensed in this state or another state of the United States before July 1, 2016 shall have completed at least one year of post-graduate training approved by the American osteopathic association or the accreditation council for graduate medical education."

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

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

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



underscored material = new  
[bracketed material] = delete  
language deleted = deleted by amendment  
New amended language = new by amendment

"61-10-12. LICENSE WITHOUT EXAMINATION.--The board may, in its discretion, issue a license without examination to an osteopathic physician who has been licensed in any country, state, territory or province and who is a graduate of a standard college of osteopathic medicine upon the following conditions:

- A. that the applicant is of good moral character;
- B. that the requirements to practice in the country, state, territory or province in which the applicant is already licensed ~~[be]~~ are equal to those of this state; and
- C. that the applicant shall be required to pay the fee designated for such license in Section ~~[67-8-5 NMSA 1953]~~ 61-10-6.1 NMSA 1978.

The board may also, in its discretion, issue a license without examination to an osteopathic physician who is a graduate of a standard college of osteopathic medicine and who has passed an examination for admission into the medical corps of any branch of the armed forces of the United States ~~[army, United States navy]~~ or the United States public health service."

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

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

underscored material = new  
~~[bracketed material]~~ = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

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

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

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

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

.202204.4 Amendments in Context

underscored material = new  
[bracketed material] = delete  
~~language~~ = deleted by amendment  
New amended language

- (1) the period of suspension has expired;
- (2) the board has modified the suspension to permit the practice of osteopathic medicine; or
- (3) the board has reinstated the license.

D. The board shall not refuse to issue or renew a license nor shall it suspend or revoke a license for unprofessional or dishonorable conduct unless the person accused has been provided:

- (1) at least twenty days' notice in writing of the charge against that person; and
- (2) a public hearing by the board, with right of review of the board's decision by the district court of the first judicial district by certiorari, on petition of the party against whom the board's decision is rendered.

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

F. As used in this section:

- (1) "fee splitting" means offering, delivering, receiving or accepting any unearned rebate, refund, commission preference, patronage dividend, discount or other unearned consideration, whether in the form of money or

underscored material = new  
[bracketed material] = delete  
~~language~~ = deleted by amendment  
New amended language

otherwise, as compensation or inducement for referring patients, clients or customers to a person or organization, irrespective of any membership, proprietary interest or co-ownership in or with a person to whom the patients, clients or customers are referred; and

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

- (a) procuring, aiding or abetting a criminal abortion;
- (b) employing a person to solicit patients for the licensee;
- (c) representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;
- (d) obtaining a fee by fraud or misrepresentation;
- (e) willfully or negligently divulging a professional confidence;
- (f) conviction of an offense punishable by incarceration in a state penitentiary or federal prison or conviction of a misdemeanor associated with the practice of the licensee. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of conviction;

underscored material = new  
[~~bracketed material~~] = delete  
~~language~~ = deleted by amendment  
New amended language = new by amendment

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

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

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

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

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

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

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

(n) discipline imposed on a licensee by  
another state, including denial, probation, suspension or

underscored material = new  
[~~bracketed material~~] = delete  
~~language~~ = deleted by amendment  
New amended language = new by amendment

revocation, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of suspension or revocation of the state making the suspension or revocation is conclusive evidence;

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

(p) fee splitting;

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

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

(s) repeated similar negligent acts;

(t) employing abusive billing practices;

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

(v) failure to report to the board surrender of a license or other authorization to practice in another state or jurisdiction or surrender of membership on any

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

medical staff or in any medical or professional association or society following, in lieu of and while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action;

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

(x) abandonment of a patient;

(y) being found mentally incompetent by a court of competent jurisdiction;

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

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

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

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

(dd) the surrender of a license or withdrawal of an application for a license before another state licensing board while an investigation or disciplinary action

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

is pending before that board for acts or conduct similar to acts or conduct that would constitute grounds for action pursuant to this section;

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

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

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

(hh) failure to provide pertinent and necessary medical records to another health care practitioner, to the patient of the osteopathic physician or to any other person in a timely manner when legally requested or authorized to do so by the patient or by a legally designated representative of the patient;

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

(jj) willfully or negligently divulging privileged information or a professional secret."



underscored material = new  
[bracketed material] = delete  
-language-deleted = deleted by amendment  
New amended language = new by amendment

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

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

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

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

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

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

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

B. All osteopathic physician assistants legally licensed to practice osteopathic medicine in this state shall, on or before July 1 of the second year after first-time licensure or the last licensure renewal, submit proof of completion of continuing education requirements as required by the board and pay to the secretary of the board a biennial renewal fee as provided in Section 61-10-6.1 NMSA 1978 for the renewal of a license to practice osteopathic medicine. Upon payment of fees and proof of completion of continuing education requirements, the board shall issue a certificate of biennial renewal of license.

.202204.4 Amendments in Context

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language

[B-] C. The ~~[secretary]~~ chair of the board shall send a written notice to every ~~[person]~~ osteopathic physician and osteopathic physician assistant holding a legal certificate to practice osteopathic medicine in this state at least thirty days prior to July 1 of ~~[each]~~ the year in which the osteopathic physician or osteopathic physician assistant is due for renewal of licensure. The notice shall be directed to the last known address of the licensee, and notify ~~[him]~~ the licensee that it will be necessary ~~[for him]~~ to pay the ~~[annual]~~ license renewal fee. Proper forms shall accompany the notice, and the licensee shall make application for the renewal of ~~[his]~~ the licensee's certificate on these forms. The fact that a ~~[practitioner]~~ licensee has not received ~~[his]~~ the licensee's blank form from the board shall not, however, relieve ~~[him]~~ the licensee of the duty to register on or before July 1 of the year of renewal nor shall the board's failure to mail the forms operate to exempt ~~[him]~~ the osteopathic physician or osteopathic physician assistant from the penalties provided in ~~[Chapter 61, Article 10 NMSA 1978]~~ the Osteopathic Medicine Act."

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

"61-10-20. POST-GRADUATE EDUCATIONAL REQUIREMENTS.--For the purpose of protecting the health and well-being of the citizens of this state and for maintaining and continuing

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

informed professional knowledge and awareness, the board shall establish mandatory continuing educational requirements for osteopathic physicians and osteopathic physician assistants licensed in this state. In establishing ~~[such]~~ these requirements, the board shall recognize and give weight to existing educational methods, procedures, devices and programs in use among the various medical specialties and other recognized medical groups and the consensus of the members of the medical community. This section does not abrogate or affect the status, force or operation of the Uniform Licensing Act. The board shall not establish and enforce ~~[such]~~ these requirements if they will reduce the availability of osteopathic physicians or osteopathic physician assistants in a community to an extent that adequate medical care is jeopardized."

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

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

A. In the event any ~~[licensee]~~ osteopathic physician or osteopathic physician assistant licensed to practice osteopathic medicine in New Mexico fails to comply with the requirements of Section 61-10-19 NMSA 1978, ~~[he]~~ the licensee shall, upon order of the board ~~[of osteopathic medical examiners]~~, forfeit ~~[his]~~ the licensee's right to practice

underscored material = new  
[bracketed material] = delete  
-language-deleted = deleted by amendment  
New amended language

osteopathic medicine in this state and ~~[his]~~ the licensee's license and certificate shall be canceled; provided, however, that the ~~[secretary]~~ chair of the board may reinstate ~~[him]~~ the licensee upon the payment of all fees due and upon the presentation of satisfactory evidence of the attendance at an educational program as provided for in ~~[Chapter 61, Article 10 NMSA 1978]~~ the Osteopathic Medicine Act.

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

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

"[NEW MATERIAL] PRACTICING WITHOUT LICENSE--PENALTY.--

A. A person who practices osteopathic medicine or who attempts to practice osteopathic medicine without first

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

complying with the provisions of the Osteopathic Medicine Act and without being the holder of a license entitling the person to practice osteopathic medicine in New Mexico is guilty of a fourth degree felony.

B. A person who practices osteopathic medicine across state lines or who attempts to practice osteopathic medicine across state lines without first complying with the provisions of the Osteopathic Medicine Act and without being the holder of a telemedicine license entitling the person to practice osteopathic medicine across state lines is guilty of a fourth degree felony.

C. A person convicted pursuant to Subsection A or B of this section shall be sentenced under the provisions of the Criminal Sentencing Act to imprisonment for a definite period not to exceed eighteen months and, in the discretion of the sentencing court, to a fine not to exceed five thousand dollars (\$5,000), or both. Each occurrence of practicing osteopathic medicine or attempting to practice osteopathic medicine without complying with the Osteopathic Medicine Act shall be a separate violation."

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

"[NEW MATERIAL] TELEMEDICINE LICENSE.--

A. The board shall issue a telemedicine license to allow the practice of osteopathic medicine across state lines

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

to an applicant who holds a full and unrestricted license to practice osteopathic medicine in another state or territory of the United States. The board shall establish by rule the requirements for licensure; provided the requirements shall not be more restrictive than those required for licensure by endorsement.

B. A telemedicine license shall be issued for a period not to exceed three years and may be renewed upon application, payment of fees as provided in the Osteopathic Medicine Act and compliance with other requirements established by rule of the board."

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

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

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

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

(2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent

underscored material = new  
[bracketed material] = delete  
~~language~~ = deleted by amendment  
New amended language = new by amendment

jurisdiction; or

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

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

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

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

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

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

B. Any data, communication or information that the board acquires, prepares or disseminates relating to actual or



underscored material = new  
[bracketed material] = delete  
~~language~~ = deleted by amendment  
New amended language

potential disciplinary action or its investigation of a complaint shall not be disclosed except to the extent necessary to:

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

or

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

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

- (1) issues a notice of contemplated action; or
- (2) reaches a settlement before issuing a

notice of contemplated action.

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

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

"[NEW MATERIAL] OSTEOPATHIC PHYSICIAN ASSISTANT--  
LICENSURE--SCOPE OF AUTHORITY--REGISTRATION OF SUPERVISION--  
CHANGE OF SUPERVISION.--

A. No person shall perform or attempt to perform as an osteopathic physician assistant without first applying for and obtaining a license from the board as an osteopathic

.202204.4 Amendments in Context

underscored material = new  
~~[bracketed material]~~ = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

physician assistant and having the person's supervision registered in accordance with board regulations.

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

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

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

E. Each osteopathic physician assistant shall

.202204.4 Amendments in Context

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

biennially submit proof of completion of continuing education as required by the board and register the osteopathic physician assistant's name and current address, the name and office address of the supervising physician and such additional information as the board deems necessary.

F. In addition to the biennial requirements regarding the osteopathic physician assistant's supervising physician in Subsection E of this section, each osteopathic physician assistant has an ongoing duty to notify the board of a termination of supervision and to register the name and office address of a new supervising physician and the date on which supervision will commence. Each biennial registration or registration of new supervision shall be accompanied by a fee as provided in Section 61-10-6.1 NMSA 1978."

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

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

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

B. An osteopathic physician assistant who engages

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

in practice while the osteopathic physician assistant's license is lapsed or on inactive status is practicing without a license and is subject to discipline pursuant to the Osteopathic Medicine Act.

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

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

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

A. An osteopathic physician assistant student enrolled in a physician assistant or osteopathic physician assistant educational program accredited by the commission on accreditation of allied health education programs or by its successor shall be exempt from licensure while functioning as an osteopathic physician assistant student.

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

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

"[NEW MATERIAL] RESPONSIBILITY.--Every osteopathic

underscored material = new  
[bracketed material] = delete  
language deleted = deleted by amendment  
New amended language = new by amendment

physician using, supervising or employing a registered osteopathic physician assistant shall be individually responsible and liable for the performance of the acts and omissions delegated to the osteopathic physician assistant. Nothing in the Osteopathic Medicine Act shall be construed to relieve the osteopathic physician assistant of responsibility and liability for any of the osteopathic physician assistant's own acts and omissions. An osteopathic physician assistant shall be supervised by an osteopathic physician in accordance with board rules."

SECTION 26. Section 61-10-22 NMSA 1978 (being Laws 1979, Chapter 36, Section 2, as amended) is amended to read:

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

SECTION 27. Section 61-11B-3 NMSA 1978 (being Laws 1993, Chapter 191, Section 3) is amended to read:

"61-11B-3. PHARMACIST CLINICIAN PRESCRIPTIVE AUTHORITY.--

A. A pharmacist clinician planning to exercise

underscored material = new  
[bracketed material] = delete  
~~language deleted~~ = deleted by amendment  
New amended language = new by amendment

prescriptive authority in ~~[his]~~ practice shall have on file at ~~[his]~~ the place of practice written guidelines or protocol. The guidelines or protocol shall authorize a pharmacist clinician to exercise prescriptive authority and shall be established and approved by a practitioner in accordance with regulations adopted by the board. A copy of the written guidelines or protocol shall be on file with the board. The practitioner who is a party to the guidelines or protocol shall be in active practice and the prescriptive authority that ~~[he]~~ the practitioner grants to a pharmacist clinician shall be within the scope of the practitioner's current practice.

B. The guidelines or protocol required by Subsection A of this section shall include:

(1) a statement identifying the practitioner authorized to prescribe dangerous drugs and the pharmacist clinician who is a party to the guidelines or protocol;

(2) a statement of the types of prescriptive authority decisions that the pharmacist clinician is authorized to make, which may include:

(a) a statement of the types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case; and

(b) a general statement of the procedures, decision criteria or plan the pharmacist clinician

underscored material = new  
[bracketed material] = delete  
-language-deleted = deleted by amendment  
New amended language = new by amendment

is to follow when exercising prescriptive authority;

(3) a statement of the activities the pharmacist clinician is to follow in the course of exercising prescriptive authority, including documentation of decisions made and a plan for communication or feedback to the authorizing practitioner concerning specific decisions made. Documentation may occur on the prescriptive record, patient profile, patient medical chart or in a separate log book; and

(4) a statement that describes appropriate mechanisms for reporting to the practitioner monitoring activities and results.

C. The written guidelines or protocol shall be reviewed and shall be revised every two years if necessary.

D. A pharmacist clinician planning to exercise prescriptive authority in ~~[his]~~ practice shall be authorized to monitor dangerous drug therapy.

E. The board shall adopt regulations to carry out the provisions of the Pharmacist Prescriptive Authority Act.

F. For the purpose of the Pharmacist Prescriptive Authority Act, the New Mexico medical board ~~[of medical examiners]~~ and the board of osteopathic medicine shall adopt ~~[regulations]~~ rules concerning the guidelines and protocol for their respective practitioners defined in Subsection ~~[G]~~ D of Section ~~[2 of that act]~~ 61-11B-2 NMSA 1978."

#### SECTION 28. TEMPORARY PROVISION--BOARD OF OSTEOPATHIC

.202204.4 Amendments in Context

underscoring = new  
[bracketed material] = delete  
~~language~~ = deleted by amendment  
New amended language = new by amendment

MEDICAL EXAMINERS--BOARD OF OSTEOPATHIC MEDICINE.--The name of the board of osteopathic medical examiners is changed to the "board of osteopathic medicine". On the effective date of this act, all references in law to the board of osteopathic medical examiners shall be construed to be references to the board of osteopathic medicine. All references in law to the chair or members of the board of osteopathic medical examiners shall be construed to be references to the chair or members of the board of osteopathic medicine.

**SECTION 29. REPEAL.**--Sections 61-10-1, 61-10-13 and 61-10A-1 through 61-10A-7 NMSA 1978 (being Laws 1933, Chapter 117, Sections 1 and 11, Laws 1979, Chapter 26, Sections 1 through 4, Laws 1989, Chapter 9, Section 8, Laws 1997, Chapter 187, Sections 12 and 13 and Laws 1979, Chapter 26, Sections 5 through 7, as amended) are repealed.

**SECTION 30. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2016.