

1 SENATE BILL 117

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 William P. Soules

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10 AN ACT

11 RELATING TO LICENSURE; ENACTING THE PRESCRIBING PSYCHOLOGIST
12 PRACTICE ACT; CREATING THE PRESCRIBING PSYCHOLOGIST ADVISORY
13 COUNCIL; REQUIRING THE NEW MEXICO MEDICAL BOARD TO ADMINISTER
14 THE PRESCRIBING PSYCHOLOGIST PRACTICE ACT; AMENDING THE
15 PROFESSIONAL PSYCHOLOGIST ACT TO REMOVE PRESCRIBING
16 PSYCHOLOGISTS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE
17 NMSA 1978.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. A new section of Chapter 61 NMSA 1978 is
21 enacted to read:

22 "[NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this
23 act may be cited as the "Prescribing Psychologist Practice
24 Act"."

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

2 "[NEW MATERIAL] DEFINITIONS.--As used in the Prescribing
3 Psychologist Practice Act:

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

5 B. "board-approved prescribing psychologist
6 supervisor" means a licensed prescribing psychologist who,
7 after five years of practice after being licensed without
8 condition, has applied to the board to supervise prescribing
9 psychologists with conditions;

10 C. "independently licensed prescribing clinician"
11 means a:

12 (1) licensed physician;

13 (2) osteopathic physician;

14 (3) nurse practitioner;

15 (4) psychiatric nurse practitioner; or

16 (5) clinical nurse specialist;

17 D. "licensed" means a person licensed by the board
18 to practice as a prescribing psychologist or a prescribing
19 psychologist with conditions;

20 E. "practice of psychology" means the observation,
21 description, evaluation, interpretation and modification of
22 human behavior by the application of psychological principles,
23 methods and procedures for the purpose of preventing or
24 eliminating symptomatic, maladaptive or undesired behavior and
25 of enhancing interpersonal relationships, work and life

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1 adjustment, personal effectiveness, behavioral health and
2 mental health; and further means the rendering of such
3 psychological services to individuals, families or groups
4 regardless of whether payment is received for services
5 rendered. The practice of psychology includes psychological
6 testing or neuropsychological testing and the evaluation or
7 assessment of personal characteristics such as intelligence,
8 personality, abilities, interests, aptitudes and
9 neuropsychological functioning; counseling, psychoanalysis,
10 psychotherapy, hypnosis, biofeedback, behavior analysis and
11 therapy; diagnosis and treatment of a mental and emotional
12 disorder or disability, alcoholism and substance abuse,
13 disorders of habit or conduct and the psychological aspects of
14 physical illness, accident, injury and disability; and
15 psychoeducational evaluation, therapy, remediation and
16 consultation;

17 F. "prescribing psychologist" means a licensed
18 psychologist who is trained in clinical psychopharmacology,
19 engages in the practice of psychology and holds the authority
20 to administer, prescribe, count and distribute without charge
21 medication to treat mental illness consistent with the
22 standards of practice for the profession of psychiatry;

23 G. "prescribing psychologist with conditions" means
24 a license issued by the board to a licensed psychologist that
25 permits the holder to practice psychology and to prescribe

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1 psychotropic medication pursuant to the Prescribing
2 Psychologist Practice Act;

3 H. "psychologist" means a person who engages in the
4 practice of psychology or holds the person's self out to the
5 public by any title or description of services representing the
6 person as a psychologist, which incorporates the words
7 "psychological", "psychologist" or "psychology", or when a
8 person describes the person's self as above and, under such
9 title or description, offers to render or renders services
10 involving the application of principles, methods and procedures
11 of the science and profession of psychology to persons for
12 compensation or other personal gain;

13 I. "psychotropic medication" means a controlled
14 substance or dangerous drug that may not be dispensed or
15 administered without a prescription whose use is consistent
16 with the standards of practice for the profession of
17 psychiatry;

18 J. "school" means a university or other institution
19 of higher education that is regionally accredited and that
20 offers a full-time graduate course of study in psychology as
21 defined by rule of the board or that is approved by the
22 American psychological association; and

23 K. "supervising clinician" means a licensed
24 physician, osteopathic physician, nurse practitioner,
25 psychiatric nurse practitioner or clinical nurse specialist or

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1 board-approved psychologist supervisor who is supervising a
2 psychologist in the prescribing of medication to treat mental
3 illness consistent with the standards of practice for the
4 profession of psychiatry."

5 SECTION 3. A new section of Chapter 61 NMSA 1978 is
6 enacted to read:

7 "[NEW MATERIAL] BOARD DUTIES.--The board shall:

8 A. pursuant to the State Rules Act, promulgate
9 rules as necessary to implement the Prescribing Psychologist
10 Practice Act, including rules for the initial licensure,
11 renewal and certification of prescribing psychologists;

12 B. establish standards of prescribing psychology
13 practice in accordance with those developed and accepted by the
14 profession;

15 C. develop educational requirements for the
16 expansion of the scope of practice of prescribing psychology;

17 D. examine, approve, deny, revoke, suspend and
18 renew the licenses of prescribing psychologists;

19 E. conduct hearings pursuant to the Uniform
20 Licensing Act upon complaints concerning the disciplining of a
21 prescribing psychologist;

22 F. prosecute and enjoin persons alleged to be in
23 violation of the Prescribing Psychologist Practice Act; and

24 G. set fees for licensure of prescribing
25 psychologists; provided that the fees do not to exceed:

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1 (1) seven hundred fifty dollars (\$750) for a
2 triennial prescribing psychologist license; and

3 (2) one hundred dollars (\$100) for a two-year
4 prescribing psychologist with conditions license."

5 SECTION 4. A new section of Chapter 61 NMSA 1978 is
6 enacted to read:

7 "[NEW MATERIAL] DRUGS--MEDICINES.--

8 A. A prescribing psychologist with conditions may
9 prescribe and administer psychotropic medication, including
10 intramuscular injections to include antipsychotic medication
11 and injectable naltrexone, under the supervision of a
12 supervising clinician.

13 B. A prescribing psychologist may prescribe, count
14 and administer psychotropic medication, including intramuscular
15 injections to include antipsychotic medications and injectable
16 naltrexone."

17 SECTION 5. A new section of Chapter 61 NMSA 1978 is
18 enacted to read:

19 "[NEW MATERIAL] LICENSURE APPLICATION--REQUIREMENTS--
20 RULEMAKING--ISSUANCE, DENIAL, RENEWAL AND REVOCATION OF
21 LICENSE.--

22 A. A psychologist may apply to the board for a
23 prescribing psychologist license. The application shall be
24 made on a form approved by the board and be accompanied by
25 evidence satisfactory to the board that the applicant:

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1 (1) has completed a doctoral program in
2 psychology from an accredited institution of higher education
3 or professional school, or, if the program was not accredited
4 at the time of the applicant's graduation, that the program
5 meets professional standards determined acceptable by the
6 board;

7 (2) holds a current license to practice
8 psychology in New Mexico;

9 (3) has successfully completed pharmacological
10 training from an institution of higher education approved by
11 the board;

12 (4) has passed a national certification
13 examination approved by association of state and provincial
14 psychology boards that tests the applicant's proficiency and
15 knowledge of psychopharmacology in the diagnosis, care and
16 treatment of mental disorders;

17 (5) within the five years immediately
18 preceding the date of application, has successfully completed
19 an organized program of education approved by the board and
20 consisting of didactic instruction of no fewer than four
21 hundred fifty classroom hours in at least the following core
22 areas of instruction:

- 23 (a) neuroscience;
24 (b) pharmacology;
25 (c) psychopharmacology;

- 1 (d) physiology;
2 (e) pathophysiology;
3 (f) appropriate and relevant physical
4 and laboratory assessment; and
5 (g) clinical pharmacotherapeutics;

6 (6) within the five years immediately
7 preceding the date of application, has been certified by each
8 of the applicant's supervising independently licensed
9 prescribing clinicians as having successfully completed a
10 supervised and relevant clinical experience, approved by the
11 board, of:

12 (a) no less than an eighty-hour
13 practicum in clinical assessment and pathophysiology under the
14 supervision of an approved supervising clinician; and

15 (b) an additional supervised practicum
16 of at least four hundred hours treating no fewer than one
17 hundred patients with mental disorders, which is supervised,
18 either in person, telephonically or by video conference, by a
19 board-approved supervising clinician determined to be competent
20 to train the applicant in the treatment of a diverse patient
21 population;

22 (7) has malpractice insurance sufficient to
23 satisfy the rules adopted by the board and provides coverage of
24 the applicant during the period that the license is active; and

25 (8) meets all other requirements as determined

1 by rule of the board for obtaining a prescribing psychologist
2 license.

3 B. The board shall issue a prescribing psychologist
4 license with conditions if it finds that the applicant has met
5 the requirements of Subsection A of this section. The license
6 shall be valid for a period of two years, at the end of which
7 the holder may reapply pursuant to Subsection A of this
8 section. A prescribing psychologist with conditions may
9 prescribe psychotropic medication under the supervision of a
10 supervising clinician subject to the following conditions:

11 (1) the psychologist shall notify the board of
12 the name of the psychologist's supervising clinician; and

13 (2) a supervising clinician shall notify the
14 supervising clinician's own licensing board of the name of each
15 psychologist under the supervising clinician's supervision.

16 C. A supervising clinician shall not be liable for
17 the acts of a prescribing psychologist under the supervising
18 clinician's supervision unless the injury or loss arises from
19 those acts under the direction and control of the supervising
20 clinician.

21 D. A psychologist who, at the time of the
22 enactment of the Prescribing Psychologist Practice Act, was
23 certified to unconditionally prescribe medication by the New
24 Mexico state board of psychologist examiners may apply to the
25 board for a license as a prescribing psychologist. The

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1 application shall be made on a form approved by the board and
2 be accompanied by evidence satisfactory to the board that the
3 applicant:

4 (1) has been issued a prescription certificate
5 that permits the psychologist to prescribe psychotropic
6 medication pursuant to the Professional Psychologist Act and
7 has successfully completed two years of prescribing
8 psychotropic medication as certified by the supervising
9 clinician;

10 (2) has successfully undergone a process of
11 independent peer review approved by the board;

12 (3) holds a current license to practice
13 psychology in New Mexico;

14 (4) has malpractice insurance sufficient to
15 satisfy the rules adopted by the board and provides coverage of
16 the applicant during the period that the prescribing
17 psychologist license is active; and

18 (5) meets all other requirements, as
19 determined by rule of the board, for obtaining a prescribing
20 psychologist license.

21 E. A prescribing psychologist may prescribe
22 psychotropic medication pursuant to the provisions of the
23 Prescribing Psychologist Practice Act if the psychologist
24 annually satisfies the continuing education requirements for
25 psychologists as set by the board, which shall be no fewer than

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1 twenty hours and no more than twenty-five hours each year.

2 F. The board shall promulgate rules providing for
3 the procedures to be followed in obtaining a prescribing
4 psychologist license.

5 G. The board shall promulgate rules establishing
6 the grounds for denial, suspension or revocation of prescribing
7 psychologist with conditions and prescribing psychologist
8 licenses authorized to be issued pursuant to this section,
9 including a provision for suspension or revocation of a license
10 to practice psychology upon suspension or revocation of a
11 prescribing psychologist or prescribing psychologist with
12 conditions license. Actions of denial, suspension or
13 revocation of a license shall be in accordance with the Medical
14 Practice Act."

15 SECTION 6. A new section of Chapter 61 NMSA 1978 is
16 enacted to read:

17 "[NEW MATERIAL] PRESCRIBING PRACTICES.--

18 A. A prescribing psychologist or a prescribing
19 psychologist with conditions may prescribe and administer
20 medication to treat mental illness within the recognized scope
21 of psychiatry and its standards of practice.

22 B. When prescribing medication for a patient, the
23 prescribing psychologist or the prescribing psychologist with
24 conditions shall maintain an ongoing collaborative relationship
25 with the health care practitioner who oversees the patient's

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1 general medical care, and such collaboration should be
2 documented in the patient's record.

3 C. If a patient presents for care to a prescribing
4 psychologist or a prescribing psychologist with conditions, but
5 does not have an established patient relationship with a
6 primary health care provider, and the prescribing psychologist
7 or prescribing psychologist with conditions believes that
8 delaying the initiation of medication might endanger the
9 patient's health or safety, the prescribing psychologist or the
10 prescribing psychologist with conditions may begin treatment
11 for no more than sixty days during the interval from when the
12 patient makes a new patient appointment until the patient is
13 seen by the new primary health care provider.

14 D. The guidelines shall ensure that the
15 prescribing psychologist or the prescribing psychologist with
16 conditions and the health care practitioner coordinate and
17 collaborate to provide optimal care for the patient. Nothing
18 in this subsection shall require a prescribing psychologist or
19 prescribing psychologist with conditions to give prior notice
20 to or obtain prior approval from a health care practitioner to
21 prescribe psychotropic medication to a patient with whom the
22 prescribing psychologist or prescribing psychologist with
23 conditions has established a psychologist-patient relationship;
24 provided that the psychologist provides written notice of the
25 prescription to the health care practitioner within twenty-four

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1 hours of its issuance to such patient.

2 E. A prescribing psychologist or a prescribing
3 psychologist with conditions shall not delegate prescriptive
4 authority to any other person. Records of all prescriptions
5 shall be maintained in patient records.

6 F. When authorized to prescribe controlled
7 substances, a prescribing psychologist or a prescribing
8 psychologist with conditions shall file with the board in a
9 timely manner all individual federal drug enforcement
10 administration registrations and numbers. The board shall
11 maintain current records on every prescribing psychologist,
12 including federal registrations and numbers.

13 G. For the purpose of this section:

14 (1) "collaborative relationship" means a
15 cooperative working relationship between a prescribing
16 psychologist or a prescribing psychologist with conditions and
17 a health care practitioner in the provision of patient care,
18 including diagnosis and cooperation in the management and
19 delivery of physical and mental health care; and

20 (2) "health care practitioner" means a
21 physician, osteopathic physician, nurse practitioner, physician
22 assistant or clinical nurse specialist."

23 SECTION 7. A new section of Chapter 61 NMSA 1978 is
24 enacted to read:

25 "[NEW MATERIAL] ISSUANCE AND RENEWAL OF PRESCRIBING
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1 PSYCHOLOGIST LICENSE.--

2 A. The board shall issue a prescribing psychologist
3 or a prescribing psychologist with conditions license to a
4 licensed psychologist who meets the qualifications under
5 Section 5 of the Prescribing Psychologist Practice Act and who
6 pays the licensing fees.

7 B. The board shall issue a prescribing psychologist
8 license to a licensed psychologist who, at the time of the
9 enactment of the Prescribing Psychologist Practice Act, was
10 certified to unconditionally prescribe medication by the New
11 Mexico state board of psychologist examiners.

12 C. The board shall issue a prescribing psychologist
13 with conditions license to a licensed psychologist who, at the
14 time of the enactment of the Prescribing Psychologist Practice
15 Act, was certified to prescribe medication on a conditional
16 basis by the New Mexico state board of psychologist examiners.

17 D. A license or certification shall be subject to
18 renewal every three years."

19 SECTION 8. A new section of Chapter 61 NMSA 1978 is
20 enacted to read:

21 "[NEW MATERIAL] PRESCRIBING PSYCHOLOGIST ADVISORY COUNCIL
22 CREATED.--

23 A. The "prescribing psychologist advisory council"
24 is created under the direction of the board. The council shall
25 advise the board regarding:

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1 (1) reviewing and recommending licensure of
2 prescribing psychologists;

3 (2) recommending additional education
4 requirements for prescribing psychologists;

5 (3) recommending continuing education
6 requirements;

7 (4) reviewing complaints for possible action;

8 (5) identifying disciplinary actions and
9 circumstances that require disciplinary action;

10 (6) recommending changes related to statutes
11 and rules; and

12 (7) other matters as requested by the board.

13 B. The council consists of five members selected by
14 the board as follows:

15 (1) one member shall be a physician
16 recommended by the board and the New Mexico medical society and
17 approved by the statewide organization of prescribing
18 psychologists; and

19 (2) four members shall be prescribing
20 psychologists selected from names submitted by the statewide
21 organization of prescribing psychologists.

22 C. A vacancy shall be filled in the manner of the
23 original appointment.

24 D. The council shall meet at least four times per
25 year.

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1 E. Members of the council shall be reimbursed as
2 nonsalaried public officers pursuant to the Per Diem and
3 Mileage Act, and members shall receive no other compensation,
4 perquisite or allowance for their service on the council."

5 **SECTION 9.** Section 61-3-23.5 NMSA 1978 (being Laws 2019,
6 Chapter 19, Section 7) is amended to read:

7 "61-3-23.5. SUPERVISION OF PSYCHOLOGIST IN THE
8 PRESCRIBING OF PSYCHOTROPIC MEDICATION BY NURSE PRACTITIONER OR
9 CLINICAL NURSE SPECIALIST.--

10 A. Subject to rules promulgated by the board, a
11 nurse practitioner or clinical nurse specialist may supervise a
12 psychologist in the prescribing of psychotropic medication
13 pursuant to the [~~Professional Psychologist~~] Prescribing
14 Psychologist Practice Act.

15 B. No later than January 1, 2020, the board shall
16 promulgate [~~regulations~~] rules for a nurse practitioner or
17 clinical nurse specialist who supervises a psychologist in the
18 prescribing of psychotropic medication pursuant to the
19 [~~Professional Psychologist~~] Prescribing Psychologist Practice
20 Act."

21 **SECTION 10.** Section 61-6-5 NMSA 1978 (being Laws 1973,
22 Chapter 361, Section 2, as amended) is amended to read:

23 "61-6-5. MEDICAL BOARD DUTIES AND POWERS.--The board
24 shall:

25 A. enforce and administer the provisions of the
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1 Medical Practice Act, the Physician Assistant Act, the
2 Anesthesiologist Assistants Act, the Genetic Counseling Act,
3 the Impaired Health Care Provider Act, the Polysomnography
4 Practice Act, the Prescribing Psychologist Practice Act, the
5 Naturopathic Doctors' Practice Act and the Naprapathic Practice
6 Act;

7 B. promulgate, in accordance with the State Rules
8 Act, all rules for the implementation and enforcement of the
9 provisions of the Medical Practice Act, the Physician Assistant
10 Act, the Anesthesiologist Assistants Act, the Genetic
11 Counseling Act, the Impaired Health Care Provider Act, the
12 Polysomnography Practice Act, the Prescribing Psychologist
13 Practice Act, the Naturopathic Doctors' Practice Act and the
14 Naprapathic Practice Act;

15 C. adopt and use a seal;

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

18 E. take testimony on matters within the board's
19 jurisdiction;

20 F. keep an accurate record of all its meetings,
21 receipts and disbursements;

22 G. maintain records in which the name, address and
23 license number of all licensees shall be recorded, together
24 with a record of all license renewals, suspensions,
25 revocations, probations, stipulations, censures, reprimands and

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1 fines;

2 H. discipline licensees or deny, review, suspend
3 and revoke licenses to practice medicine and censure,
4 reprimand, fine and place on probation and stipulation
5 licensees and applicants in accordance with the Uniform
6 Licensing Act for any cause stated in the law that the board is
7 charged with enforcing;

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

10 J. have the authority to hire or contract with
11 investigators to investigate possible violations of the Medical
12 Practice Act;

13 K. have the authority to hire a competent attorney
14 to give advice and counsel in regard to any matter connected
15 with the duties of the board, to represent the board in any
16 legal proceedings and to aid in the enforcement of the laws in
17 relation to a health care profession or occupation over which
18 the board has authority and to fix the compensation to be paid
19 to such attorney; provided, however, that such attorney shall
20 be compensated from the funds of the board;

21 L. establish continuing education requirements for
22 licensed practitioners over which the board has authority;

23 M. establish committees as it deems necessary for
24 carrying on its business;

25 N. hire or contract with a licensed physician to

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1 serve as medical director and fulfill specified duties of the
2 secretary-treasurer;

3 O. establish and maintain rules related to the
4 management of pain based on review of national standards for
5 pain management; and

6 P. have the authority to waive licensure fees for
7 the purpose of the recruitment and retention of health care
8 practitioners over which the board has authority."

9 SECTION 11. Section 61-6-6 NMSA 1978 (being Laws 1973,
10 Chapter 361, Section 1, as amended) is amended to read:

11 "61-6-6. DEFINITIONS.--As used in the Medical Practice
12 Act:

13 A. "approved postgraduate training program for
14 physicians" means a program approved by the accreditation
15 council for graduate medical education, the American
16 osteopathic association or other board-approved program;

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

18 C. "collaboration" means the process by which a
19 licensed physician and a physician assistant jointly contribute
20 to the health care and medical treatment of patients; provided
21 that:

22 (1) each collaborator performs actions that
23 the collaborator is licensed or otherwise authorized to
24 perform; and

25 (2) collaboration shall not be construed to

1 require the physical presence of the licensed physician at the
2 time and place services are rendered;

3 D. "licensed physician" means a medical or
4 osteopathic physician licensed under the Medical Practice Act
5 to practice medicine in New Mexico;

6 E. "licensee" or "health care practitioner" means a
7 medical physician, osteopathic physician, physician assistant,
8 polysomnographic technologist, anesthesiologist assistant,
9 prescribing psychologist, naturopathic doctor or naprapath
10 licensed by the board to practice in New Mexico;

11 F. "medical college or school in good standing" for
12 medical physicians means a board-approved medical college or
13 school that has as high a standard as that required by the
14 association of American medical colleges and the council on
15 medical education of the American medical association; and for
16 osteopathic physicians means a college of osteopathic medicine
17 accredited by the commission of osteopathic college
18 accreditation;

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

21 H. "physician assistant" means a health care
22 practitioner who is licensed by the board to practice as a
23 physician assistant and who provides services to patients with
24 the supervision of or in collaboration with a licensed
25 physician as set forth in rules promulgated by the board;

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

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

8 (1) advertising, holding out to the public or
9 representing in any manner that one is authorized to practice
10 medicine or to practice health care that is under the authority
11 of the board in this state;

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

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

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

23 (5) offering or undertaking to diagnose,
24 correct or treat in any manner or by any means, methods,
25 devices or instrumentalities any disease, illness, pain, wound,

1 fracture, infirmity, deformity, defect or abnormal physical or
2 mental condition of a person;

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

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

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

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

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

23 L. "sexual contact" means touching the primary
24 genital area, groin, anus, buttocks or breast of a patient or
25 allowing a patient to touch another's primary genital area,

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1 groin, anus, buttocks or breast in a manner that is commonly
2 recognized as outside the scope of acceptable medical or health
3 care practice;

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

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

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

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

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

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1 physician, practice as a physician assistant, an
2 anesthesiologist assistant, a genetic counselor, a naturopathic
3 practitioner [Ø], a naprapathic practitioner or a prescribing
4 psychologist or practice polysomnography, pursuant to Section
5 61-7-3 NMSA 1978. All proceedings shall be as required by the
6 Uniform Licensing Act or the Impaired Health Care Provider Act.

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

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

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1 the board or the license reinstated, is guilty of a felony and
2 shall be punished as provided in Section 61-6-20 NMSA 1978.

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

6 (1) procuring, aiding or abetting an illegal
7 procedure;

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

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

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

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

17 (6) conviction of an offense punishable by
18 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;

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

25 (8) fraud or misrepresentation in applying for

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

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

11 (10) 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 (11) aiding or abetting the practice of a
16 person not licensed by the board;

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

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

21 (14) discipline imposed on a licensee by
22 another licensing jurisdiction, including denial, probation,
23 suspension or revocation, based upon acts by the licensee
24 similar to acts described in this section. A certified copy of
25 the record of disciplinary action or sanction taken by another

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1 jurisdiction is conclusive evidence of the action;
2 (15) the use of a false, fraudulent or
3 deceptive statement in a document connected with the practice
4 of a licensee;

5 (16) fee splitting;

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

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

11 (19) repeated similar negligent acts or a
12 pattern of conduct otherwise described in this section or in
13 violation of a board rule;

14 (20) employing abusive billing practices;

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

17 (a) another licensing jurisdiction;

18 (b) a peer review body;

19 (c) a health care entity;

20 (d) a professional or medical society or
21 association;

22 (e) a governmental agency;

23 (f) a law enforcement agency; or

24 (g) a court for acts or conduct similar
25 to acts or conduct that would constitute grounds for action as

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1 defined in this section;

2 (22) failure to report to the board the denial
3 of licensure, surrender of a license or other authorization to
4 practice in another state or jurisdiction or surrender of
5 membership on any medical staff or in any medical or
6 professional association or society following, in lieu of and
7 while under disciplinary investigation by any of those
8 authorities or bodies for acts or conduct similar to acts or
9 conduct that would constitute grounds for action as defined in
10 this section;

11 (23) failure to furnish the board, its
12 investigators or representatives with information requested by
13 the board;

14 (24) abandonment of patients;

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

17 (26) injudicious prescribing, administering or
18 dispensing of a drug or medicine;

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

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

25 (29) conduct unbecoming in a person licensed

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1 to practice or detrimental to the best interests of the public;

2 (30) the surrender of a license or withdrawal
3 of an application for a license before another state licensing
4 board while an investigation or disciplinary action is pending
5 before that board for acts or conduct similar to acts or
6 conduct that would constitute grounds for action pursuant to
7 this section;

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

11 (32) sexual contact with a patient when the
12 licensee uses or exploits treatment, knowledge, emotions or
13 influence derived from the current or previous professional
14 relationship;

15 (33) improper management of medical records,
16 including failure to maintain timely, accurate, legible and
17 complete medical records;

18 (34) failure to provide pertinent and
19 necessary medical records to a physician or patient of the
20 physician in a timely manner when legally requested to do so by
21 the patient or by a legally designated representative of the
22 patient;

23 (35) undertreatment of pain as provided by
24 board rule;

25 (36) interaction with physicians, hospital

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1 personnel, patients, family members or others that interferes
2 with patient care or could reasonably be expected to adversely
3 impact the quality of care rendered to a patient;

4 (37) soliciting or receiving compensation by a
5 physician assistant or anesthesiologist assistant from a person
6 who is not an employer of the assistant;

7 (38) willfully or negligently divulging
8 privileged information or a professional secret; or

9 (39) the use of conversion therapy on a minor.

10 E. As used in this section:

11 (1) "conversion therapy" means any practice or
12 treatment that seeks to change a person's sexual orientation or
13 gender identity, including any effort to change behaviors or
14 gender expressions or to eliminate or reduce sexual or romantic
15 attractions or feelings toward persons of the same sex.

16 "Conversion therapy" does not mean:

17 (a) counseling or mental health services
18 that provide acceptance, support and understanding of a person
19 without seeking to change gender identity or sexual
20 orientation; or

21 (b) mental health services that
22 facilitate a person's coping, social support, sexual
23 orientation or gender identity exploration and development,
24 including an intervention to prevent or address unlawful
25 conduct or unsafe sexual practices, without seeking to change

1 gender identity or sexual orientation;

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

10 (3) "gender identity" means a person's self-
11 perception, or perception of that person by another, of the
12 person's identity as a male or female based upon the person's
13 appearance, behavior or physical characteristics that are in
14 accord with or opposed to the person's physical anatomy,
15 chromosomal sex or sex at birth;

16 (4) "minor" means a person under eighteen
17 years of age; and

18 (5) "sexual orientation" means
19 heterosexuality, homosexuality or bisexuality, whether actual
20 or perceived.

21 F. Licensees whose licenses are in a probationary
22 status shall pay reasonable expenses for maintaining
23 probationary status, including laboratory costs when laboratory
24 testing of biological fluids [~~are~~] is included as a condition
25 of probation."

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1 SECTION 13. Section 61-6-31 NMSA 1978 (being Laws 1989,
2 Chapter 269, Section 27, as amended) is amended to read:

3 "61-6-31. DISPOSITION OF FUNDS--NEW MEXICO MEDICAL BOARD
4 FUND CREATED--METHOD OF PAYMENTS.--

5 A. There is created the "New Mexico medical board
6 fund".

7 B. All funds received by the board and money
8 collected under the Medical Practice Act, the Physician
9 Assistant Act, the Anesthesiologist Assistants Act, the Genetic
10 Counseling Act, the Polysomnography Practice Act, the
11 Prescribing Psychologist Practice Act, the Impaired Health Care
12 Provider Act, the Naturopathic Doctors' Practice Act and the
13 Naprapathic Practice Act shall be deposited with the state
14 treasurer, who shall place the same to the credit of the New
15 Mexico medical board fund.

16 C. All payments out of the fund shall be made on
17 vouchers issued and signed by the secretary-treasurer of the
18 board or the designee of the secretary-treasurer upon warrants
19 drawn by the department of finance and administration in
20 accordance with the budget approved by that department.

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

24 (1) the performance of the provisions of the
25 Medical Practice Act, the Physician Assistant Act, the

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1 Anesthesiologist Assistants Act, the Genetic Counseling Act,
2 the Polysomnography Practice Act, the Prescribing Psychologist
3 Practice Act, the Impaired Health Care Provider Act, the
4 Naturopathic Doctors' Practice Act and the Naprapathic Practice
5 Act and the duties and powers imposed by those acts;

6 (2) the promotion of medical education and
7 standards in this state within the budgetary limits; and

8 (3) efforts to recruit and retain medical and
9 osteopathic physicians for practice in New Mexico.

10 E. All funds that may have accumulated to the
11 credit of the board under any previous law shall be transferred
12 to the New Mexico medical board fund and shall continue to be
13 available for use by the board in accordance with the
14 provisions of the Medical Practice Act, the Physician Assistant
15 Act, the Anesthesiologist Assistants Act, the Genetic
16 Counseling Act, the Polysomnography Practice Act, the
17 Prescribing Psychologist Practice Act, the Impaired Health Care
18 Provider Act, the Naturopathic Doctors' Practice Act and the
19 Naprapathic Practice Act. All money unused at the end of the
20 fiscal year shall not revert, but shall remain in the fund for
21 use in accordance with the provisions of the Medical Practice
22 Act, the Physician Assistant Act, the Anesthesiologist
23 Assistants Act, the Genetic Counseling Act, the Polysomnography
24 Practice Act, the Prescribing Psychologist Practice Act, the
25 Impaired Health Care Provider Act, the Naturopathic Doctors'

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1 Practice Act and the Naprapathic Practice Act."

2 SECTION 14. Section 61-9-3 NMSA 1978 (being Laws 1963,
3 Chapter 92, Section 3, as amended) is amended to read:

4 "61-9-3. DEFINITIONS.--As used in the Professional
5 Psychologist Act:

6 A. "board" means the New Mexico state board of
7 psychologist examiners;

8 [~~B. "conditional prescription certificate" means a~~
9 ~~document issued by the board to a licensed psychologist that~~
10 ~~permits the holder to prescribe psychotropic medication under~~
11 ~~the supervision of a supervising clinician pursuant to the~~
12 ~~Professional Psychologist Act;~~

13 [~~C. "independently licensed prescribing clinician"~~
14 ~~means a licensed physician, osteopathic physician, nurse~~
15 ~~practitioner, psychiatric nurse practitioner or clinical nurse~~
16 ~~specialist;~~

17 ~~D.]~~ B. "person" includes an individual, firm,
18 partnership, association or corporation;

19 [~~E. "prescribing psychologist" means a licensed~~
20 ~~psychologist who holds a valid prescription certificate;~~

21 F. "~~prescription certificate" means a document~~
22 ~~issued by the board to a licensed psychologist that permits the~~
23 ~~holder to prescribe psychotropic medication pursuant to the~~
24 ~~Professional Psychologist Act;~~

25 G. "~~psychotropic medication" means a controlled~~

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1 ~~substance or dangerous drug that may not be dispensed or~~
2 ~~administered without a prescription and whose primary~~
3 ~~indication for use has been approved by the federal food and~~
4 ~~drug administration for the treatment of mental disorders or is~~
5 ~~listed as a psychotherapeutic agent in *Drug Facts and*~~
6 ~~*Comparisons 2017*, or the most recent edition of that book, or~~
7 ~~in *American Hospital Formulary Service Drug Information*;~~

8 H.] C. "psychologist" means a person who engages in
9 the practice of psychology or holds the person's self out to
10 the public by any title or description of services representing
11 the person as a psychologist, which incorporates the words
12 "psychological", "psychologist", "psychology", or when a person
13 describes the person's self as above and, under such title or
14 description, offers to render or renders services involving the
15 application of principles, methods and procedures of the
16 science and profession of psychology to persons for
17 compensation or other personal gain;

18 [F.] D. "practice of psychology" means the
19 observation, description, evaluation, interpretation and
20 modification of human behavior by the application of
21 psychological principles, methods and procedures for the
22 purpose of preventing or eliminating symptomatic, maladaptive
23 or undesired behavior and of enhancing interpersonal
24 relationships, work and life adjustment, personal
25 effectiveness, behavioral health and mental health, and further

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1 means the rendering of such psychological services to
2 individuals, families or groups regardless of whether payment
3 is received for services rendered. The practice of psychology
4 includes psychological testing or neuropsychological testing
5 and the evaluation or assessment of personal characteristics
6 such as intelligence, personality, abilities, interests,
7 aptitudes and neuropsychological functioning; counseling,
8 psychoanalysis, psychotherapy, hypnosis, biofeedback, behavior
9 analysis and therapy; diagnosis and treatment of a mental and
10 emotional disorder or disability, alcoholism and substance
11 abuse, disorders of habit or conduct and the psychological
12 aspects of physical illness, accident, injury and disability;
13 and psychoeducational evaluation, therapy, remediation and
14 consultation; and

15 [J.] E. "school" or "college" means a university or
16 other institution of higher education that is regionally
17 accredited and that offers a full-time graduate course of study
18 in psychology as defined by rule of the board or that is
19 approved by the American psychological association [~~and~~

20 ~~K. "Supervising clinician" means a licensed~~
21 ~~physician, osteopathic physician, nurse practitioner,~~
22 ~~psychiatric nurse practitioner or clinical nurse specialist who~~
23 ~~is supervising a psychologist in the prescribing of~~
24 ~~psychotropic medication]."~~

25 SECTION 15. Section 61-9-10 NMSA 1978 (being Laws 1963,

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1 Chapter 92, Section 9, as amended) is amended to read:

2 "61-9-10. LICENSURE OF PSYCHOLOGISTS FROM OTHER AREAS--
3 EXPEDITED LICENSURE.--

4 A. Except as provided in Section 61-9-10.1 NMSA
5 1978 for temporary or other provisional licensure that is not
6 an expedited license, upon application accompanied by a fee as
7 required by the Professional Psychologist Act, the board shall,
8 without written or oral examination, issue an expedited license
9 to a person who furnishes, upon a form and in such manner as
10 the board prescribes, evidence to the board that the person has
11 been licensed or certified as a psychologist [~~or prescribing~~
12 ~~psychologist~~] by another licensing jurisdiction for two years.
13 An applicant seeking a license shall demonstrate to the board
14 that the training and education received by the applicant is
15 equivalent to the requirements for a doctoral degree in
16 psychology as provided in the Professional Psychologist Act;
17 that the applicant holds a valid, unrestricted license and is
18 in good standing with the licensing board of that licensing
19 jurisdiction; and the applicant has practiced psychology for at
20 least two years immediately prior to application in New Mexico.

21 B. The board shall, as soon as practicable but not
22 later than thirty days after an out-of-state licensee files an
23 application for an expedited license, process the application
24 and issue an expedited license in accordance with Section
25 61-1-31.1 NMSA 1978.

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