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SENATE BILL 306

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO ANIMALS; ENACTING THE ANIMAL PROTECTIVE SERVICES
ACT; CREATING LICENSING PROCEDURES FOR EUTHANASIA SERVICE
PROVIDERS; CREATING CERTIFICATION PROCEDURES FOR HUMANE
EUTHANASIA INSTRUCTORS; PROMOTING SAFE AND HUMANE CONDITIONS
FOR DOMESTIC ANIMALS IN PUBLIC ANIMAL SHELTER FACILITIES;
CREATING FUNDS; CREATING A BOARD WITH POWERS AND DUTIES;
PROVIDING FOR EXEMPTIONS; PROVIDING PENALTIES; MAKING AN
APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Animal Protective Services Act".

Section 2. PURPOSE.--The purpose of the Animal Protective
Services Act is to promote safe, healthy and clean living
conditions for animals housed in public animal shelter

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1 facilities and to implement humane euthanasia practices to be
2 followed by all such shelters.

3 Section 3. DEFINITIONS.--As used in the Animal Protective
4 Services Act:

5 A. "animal shelter facility" means a county or
6 municipal facility that provides shelter to animals on a
7 regular basis, including a dog pound, private humane society or
8 private animal shelter that temporarily houses stray, unwanted
9 or injured animals through administrative or contractual
10 arrangements with a local government agency;

11 B. "board" means the animal protective services
12 board;

13 C. "department" means the regulation and licensing
14 department;

15 D. "dispose" or "disposition" means adoption of an
16 animal, return of an animal to the owner, release of an animal
17 to a rescue group, release of an animal to another animal
18 shelter facility licensed pursuant to the Animal Protective
19 Services Act or to a rehabilitator licensed by the department
20 of game and fish or the United States fish and wildlife
21 service, or euthanasia of an animal;

22 E. "emergency field euthanasia" means the process
23 defined and accepted by either the American veterinary medicine
24 association or the humane society of the United States to
25 dispose of animals in emergency situations when safe and humane

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1 transport of the animal is not possible;

2 F. "euthanasia" means to produce a humane death by
3 techniques accepted by either the American veterinary medical
4 association or the humane society of the United States;

5 G. "euthanasia agency" means an entity that is
6 certified by the board to perform animal euthanasia;

7 H. "euthanasia drugs" means non-narcotic schedule
8 II or schedule III substances and chemicals used in euthanasia
9 procedures as set forth in the Controlled Substances Act that
10 are used for the purpose of animal euthanasia;

11 I. "euthanasia service provider" or "euthanasia
12 provider" means a person employed or contracted by a euthanasia
13 agency to administer euthanasia drugs to euthanize animals and
14 who is certified by the board to perform such services;

15 J. "humane euthanasia instructor" means a person
16 licensed by the board who is qualified to instruct and certify
17 other individuals in humane euthanasia techniques that are
18 recognized by the American veterinary medical association or
19 the humane society of the United States;

20 K. "pet animal" means a domestic animal that may be
21 maintained by a person in a county or municipal environment
22 pursuant to a county or municipal ordinance. A pet animal does
23 not include an animal that is used for working purposes on a
24 farm or ranch or livestock; and

25 L. "veterinarian" means a person who is licensed as

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1 a doctor of veterinary medicine by the board of veterinary
2 medicine pursuant to the Veterinary Practice Act.

3 Section 4. BOARD CREATED--MEMBERS--QUALIFICATIONS--
4 TERMS--VACANCIES--REMOVAL.--

5 A. The "animal protective services board" is
6 created. The board shall consist of seven members as follows:

7 (1) one animal shelter facility employee with
8 training and education in euthanasia;

9 (2) one licensed veterinarian who has provided
10 paid or unpaid services to an animal shelter;

11 (3) one representative from a nonprofit animal
12 advocate group;

13 (4) one member of the public;

14 (5) one member of the public who is an
15 employee of the animal shelter industry;

16 (6) one representative of the New Mexico
17 association of counties; and

18 (7) one representative of the New Mexico
19 municipal league.

20 No more than two board members shall be appointed from any
21 one county within the state. Appointments shall be made in
22 such manner that the terms of no more than two board members
23 expire on July 1 of each year.

24 B. The board is administratively attached to the
25 department.

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1 C. The board and its operations are governed by the
2 Uniform Licensing Act. If the provisions of the Uniform
3 Licensing Act conflict with the provisions of the Animal
4 Protective Services Act, the provisions of the Animal
5 Protective Services Act shall prevail.

6 D. The governor shall appoint board members for a
7 term of four years, except in the first year of the enactment
8 of the Animal Protective Services Act, when one or more members
9 shall be appointed for staggered terms of less than four years
10 so that no more than two board member terms expire in one year.
11 Subsequent appointments shall be made so that the terms of no
12 more than two board members expire in any one year. Board
13 members shall hold office until their successor is duly
14 qualified and appointed. Vacancies shall be filled by
15 appointment of the governor for the unexpired term within sixty
16 days of the vacancy in the same manner as original
17 appointments.

18 E. Members of the board shall be reimbursed as
19 provided in the Per Diem and Mileage Act and shall receive no
20 other compensation, perquisite or allowance, but shall be
21 permitted to attend at least one conference or seminar a year
22 relevant to their board position as the board's budget will
23 allow.

24 F. A simple majority of the appointed board members
25 constitutes a quorum.

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1 G. The board shall hold at least six regular
2 meetings each year and may meet at such other times as it deems
3 necessary.

4 H. A board member shall not serve more than two
5 full or partial terms, consecutive or otherwise.

6 I. A board member failing to attend three duly
7 noticed meetings, regular or special, within a twelve-month
8 period, without an excuse acceptable to the board, may be
9 removed as a board member.

10 J. The board shall elect a chairman and other
11 officers as it deems necessary to administer its duties.

12 Section 5. FUNDS CREATED.--

13 A. The "animal care and facility fund" is created
14 in the state treasury. All fees and civil fines collected by
15 the board pursuant to the Animal Protective Services Act shall
16 be transmitted to the state treasurer, who shall credit them to
17 the animal care and facility fund. Money credited to the fund
18 shall not be transferred or credited to the general fund or to
19 any other state fund. The animal care and facility fund shall
20 not be a part of the annual appropriations for the board. The
21 animal care and facility fund and donations to the fund shall
22 be used by the board to help animal shelters defray the cost of
23 implementing humane euthanasia techniques.

24 B. The "pet overpopulation fund" is created in the
25 state treasury. The pet overpopulation fund may accept gifts,

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1 grants and donations, including tax-deductible gifts of
2 personal services. Donations collected pursuant to the Animal
3 Protective Services Act shall be transmitted to the state
4 treasurer and credited to the pet overpopulation fund.
5 Donations to the pet overpopulation fund shall not be
6 transferred or credited to the general fund or to any other
7 state fund. The pet overpopulation fund shall not be a part of
8 the annual appropriation for the board. Donations to the pet
9 overpopulation fund shall be used by the board to help animal
10 shelter facilities defray the cost of developing and
11 implementing pet sterilization programs.

12 Section 6. BOARD POWERS AND DUTIES.--

13 A. The board shall:

14 (1) adopt minimum standards regarding the
15 infrastructure for all animal shelter facilities;

16 (2) adopt minimum operating standards for all
17 animal shelter facilities;

18 (3) adopt procedures for determining when
19 emergency field euthanasia shall apply;

20 (4) promulgate, adopt and revise rules
21 necessary to carry out the provisions of the Animal Protective
22 Services Act;

23 (5) have authority to issue licenses pursuant
24 to the Animal Protective Services Act;

25 (6) establish the types of licenses or

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1 certifications that may be issued pursuant to the Animal
2 Protective Services Act and establish criteria for issuing the
3 licenses;

4 (7) prescribe standards and approve curricula
5 for educational programs that will be used to train and prepare
6 persons for licensure or certification pursuant to the Animal
7 Protective Services Act;

8 (8) implement continuing education
9 requirements for licensees and certifications pursuant to the
10 Animal Protective Services Act;

11 (9) conduct administrative hearings upon
12 charges relating to violations of provisions or rules of the
13 Animal Protective Services Act in accordance with the Uniform
14 Licensing Act;

15 (10) provide for all examinations, licensing
16 and renewals of licenses and certifications pursuant to the
17 Animal Protective Services Act;

18 (11) establish fees for licenses and
19 certifications pursuant to the Animal Protective Services Act;

20 (12) establish committees as the board deems
21 necessary to effect the provisions of the Animal Protective
22 Services Act;

23 (13) apply for injunctive relief to enforce
24 the provisions of the Animal Protective Services Act;

25 (14) conduct national criminal background

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1 checks on applicants seeking licensure under the Animal
2 Protective Services Act;

3 (15) keep a record of all proceedings;

4 (16) make an annual report to the governor;

5 (17) provide for the inspection of animal
6 shelter facilities;

7 (18) develop mechanisms to address complaints
8 of animal shelter facility misconduct and noncompliance;

9 (19) develop mechanisms to address complaints
10 of licensee misconduct and noncompliance;

11 (20) develop a comprehensive pet animal
12 sterilization plan to reduce the financial burden of unwanted
13 animals;

14 (21) disburse money from the animal care and
15 facility fund and the pet overpopulation fund; and

16 (22) provide standards for maintaining records
17 concerning health care, euthanasia and transactions involving
18 pet animals.

19 B. A legal proceeding or other action for damages
20 shall not be instituted against the board or a board member or
21 employee for any act performed in good faith while carrying out
22 the powers and duties granted pursuant to the Animal Protective
23 Services Act.

24 Section 7. EUTHANASIA SERVICE PROVIDER--LICENSE.--

25 A. The board shall have authority over the

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1 licensing of euthanasia service providers.

2 B. Applicants for licensure by examination as a
3 euthanasia service provider shall be required to pass a
4 euthanasia service provider examination administered by the
5 board and shall be required to complete a training course
6 approved by the board in humane euthanasia practices.

7 C. A person licensed to practice as a euthanasia
8 service provider shall:

9 (1) have attained an age of at least
10 twenty-one years;

11 (2) not be convicted of a felony;

12 (3) not be guilty of fraud or deceit in
13 procuring or attempting to procure a license;

14 (4) not be intemperate or addicted to the use
15 of habit-forming drugs;

16 (5) not be mentally incompetent;

17 (6) not be guilty of unprofessional conduct;

18 (7) have passed the examination to qualify as
19 a euthanasia service provider;

20 (8) hold a certificate of completion in humane
21 euthanasia issued within one year of the date the euthanasia
22 service provider examination is successfully completed; and

23 (9) pay the required fee.

24 D. The board may issue a license to practice as a
25 euthanasia service provider without examination to a

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1 veterinarian, to a veterinary technician working under a
2 licensed veterinarian in accordance with the Veterinary
3 Practice Act or to an applicant who has been licensed under the
4 laws of another state if the applicant meets the qualifications
5 required for euthanasia service providers in this state, and
6 upon presenting satisfactory proof to the board that he has
7 been engaged in the practice of euthanasia for a period of not
8 less than one year prior to the date licensure is sought in
9 this state. The request for licensure shall be accompanied
10 with a certificate of completion in humane euthanasia.

11 E. A person whose euthanasia service provider
12 license expires while the person is on active duty with a
13 branch of the armed forces of the United States, called into
14 service or training with the state militia or in training or
15 education under the supervision of the United States government
16 prior to induction into military service may have the license
17 restored without paying renewal fees, if within two years after
18 the termination of that service, training or education, except
19 under conditions other than honorable, the board is furnished
20 with satisfactory evidence that the person had been engaged in
21 the service, training or education.

22 Section 8. HUMANE EUTHANASIA INSTRUCTORS--
23 CERTIFICATION.--

24 A. The board shall have authority over the
25 certification of humane euthanasia instructors.

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1 B. Applicants for certification by examination as
2 humane euthanasia instructors shall be required to pass an
3 instructor's examination administered by the board and shall be
4 required to complete an instructor's training course in humane
5 euthanasia practices.

6 C. A person certified to practice as a humane
7 euthanasia instructor shall:

8 (1) have participated in the euthanasia of
9 animals for a minimum of five years preceding the date of
10 application;

11 (2) not have been convicted of a felony;

12 (3) not have been found guilty of fraud or
13 deceit in procuring or attempting to procure any type of
14 certification;

15 (4) not be intemperate or addicted to the use
16 of habit-forming drugs;

17 (5) not have been judged mentally incompetent;

18 (6) not have been found guilty of
19 unprofessional conduct;

20 (7) have passed the examination to qualify as
21 a humane euthanasia instructor;

22 (8) hold a certificate of completion in humane
23 euthanasia instruction issued within one year preceding the
24 date the humane euthanasia instructor examination is
25 successfully completed; and

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1 (9) pay the required fee.

2 D. The board may issue a certification as a humane
3 euthanasia instructor without an examination to an applicant
4 who has been certified or licensed under the laws of another
5 state if the applicant meets the qualifications required for a
6 humane euthanasia instructor in this state, and upon presenting
7 satisfactory proof to the board that the applicant has been
8 engaged in the practice of euthanasia for a period of not less
9 than five years prior to the date certification is sought in
10 this state. The request for certification shall be accompanied
11 with a certificate of completion in humane euthanasia.

12 E. A person whose humane euthanasia instructor
13 certification expires while on active duty with the armed
14 forces of the United States, called into service or training
15 with the state militia or in training or education under the
16 supervision of the United States government prior to induction
17 into military service may have the certification restored
18 without paying renewal fees, if within two years after the
19 termination of that service, training or education, except
20 under conditions other than honorable, the board is furnished
21 with satisfactory evidence that the person has been engaged in
22 such service, training or education.

23 Section 9. EUTHANASIA--EUTHANASIA AGENCIES--
24 INSPECTIONS.--

25 A. An animal shelter facility shall be licensed as

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1 a euthanasia agency in order to perform or practice euthanasia
2 at the facility.

3 B. A person, other than a licensed veterinarian or
4 a veterinary technician working under a licensed veterinarian
5 in accordance with the Veterinary Practice Act, who is engaged
6 in euthanizing pet animals in this state shall be registered
7 with the board or contracted or employed by a euthanasia
8 agency.

9 C. Unless otherwise provided in the Animal
10 Protective Services Act, no person shall euthanize animals in
11 an animal shelter facility without possessing a license as a
12 euthanasia service provider issued by the board. Nothing in
13 the Animal Protective Services Act shall be construed as
14 preventing a licensed veterinarian, veterinary technician or a
15 certified humane euthanasia instructor from humanely
16 euthanizing animals during a board-approved course on
17 euthanasia instruction.

18 D. The board shall establish rules for inspecting
19 an animal shelter facility holding or claiming to hold a
20 license as a euthanasia agency in this state. Practitioners
21 shall be registered with or contracted or employed by a
22 euthanasia agency.

23 E. The board shall establish policies and
24 procedures for securing, using and disposing of euthanasia
25 drugs in accordance with requirements of the Controlled

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1 Substances Act and the federal Drug Enforcement Agency
2 Controlled Substances Act.

3 F. Nothing in the Animal Protective Services Act
4 shall be construed as allowing a licensed euthanasia service
5 provider or a certified humane euthanasia instructor to engage
6 in the practice of veterinary medicine when performing the
7 duties set forth in that act.

8 G. The board shall promulgate rules governing the
9 procedures for administering humane euthanasia.

10 Section 10. EXEMPTIONS.--

11 A. A veterinarian or a certified humane euthanasia
12 instructor who provides euthanasia instruction in courses
13 approved by the board shall be immune from prosecution for
14 subsequent misuse of euthanasia substances and from malpractice
15 by a person who has attended the courses.

16 B. A veterinarian who in good faith administers
17 euthanasia drugs in accordance with the Animal Protective
18 Services Act and its rules shall have immunity from civil or
19 criminal liability that may result from administering the
20 drugs.

21 C. A person filing a complaint with the board for
22 actions in violation of the Animal Protective Services Act
23 shall be immune from legal liability arising out of civil
24 action pertaining to the complaint, if the complaint was filed
25 in good faith and without actual malice.

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1 Section 11. VIOLATIONS.--

2 A. Unless otherwise provided in the Animal
3 Protective Services Act, it is a violation of that act for a
4 person or entity to:

5 (1) perform euthanasia on an animal in this
6 state without possessing a valid license pursuant to the
7 Veterinary Practice Act;

8 (2) solicit, advertise or offer to perform an
9 act for which licensure or certification is required, unless
10 the person holds a license or certification;

11 (3) refuse to comply with a cease and desist
12 order issued by the board;

13 (4) refuse or to fail to comply with the
14 provisions of the Animal Protective Services Act;

15 (5) make a material misstatement in a license
16 application or a license renewal application;

17 (6) intentionally make a material misstatement
18 to the department during an official investigation;

19 (7) impersonate an official or inspector;

20 (8) refuse or fail to comply with rules
21 adopted by the board or with a lawful order issued by the
22 board;

23 (9) aid or abet another in violating
24 provisions of the Animal Protective Services Act, or a rule
25 adopted by the board;

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1 (10) alter or falsify a certificate of
2 inspection, license or certification issued by the board;

3 (11) fail to carry out the duties of a
4 euthanasia service provider in a professional manner;

5 (12) abuse the use of a chemical substance or
6 be guilty of habitual or excessive use of intoxicants or drugs;

7 (13) sell or give chemical substances used in
8 euthanasia procedures to an unlicensed person;

9 (14) assist an unlicensed or unauthorized
10 person in euthanizing animals, except during a board-approved
11 course on euthanization; and

12 (15) violate a provision of the Animal
13 Protective Services Act.

14 B. It is a violation of the Animal Protective
15 Services Act for an animal shelter facility to:

16 (1) refuse to permit entry or inspection of
17 its facilities by the board or its designees;

18 (2) sell, offer for sale, barter, exchange or
19 otherwise transfer animals that are prohibited to be kept as a
20 pet animal by the department of game and fish, the United
21 States department of agriculture or any other regulatory
22 agency;

23 (3) allow a license issued pursuant to this
24 the Animal Protective Services Act to be used by an unlicensed
25 person; or

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1 (4) make a misrepresentation or false promise
2 through advertisements, employees, agents or other mechanisms
3 in connection with the euthanization or sterilization of an
4 animal.

5 C. It is a violation of the Animal Protective
6 Services Act for an employee or official of the board or a
7 person in the department to disclose or use for his own
8 advantage information derived from reports or records submitted
9 to the department or the board pursuant to that act.

10 Section 12. ENFORCEMENT AND INJUNCTIONS.--

11 A. The board or the board's designees shall enforce
12 the provisions of the Animal Protective Services Act.

13 B. Whenever the board has reasonable cause to
14 believe a violation of a provision of the Animal Protective
15 Services Act or a rule adopted pursuant to that act has
16 occurred and immediate enforcement is deemed necessary, the
17 board may issue a cease and desist order to require a person to
18 cease violations. At any time after service of the order to
19 cease and desist, the person may request a prompt hearing to
20 determine whether a violation occurred. If a person fails to
21 comply with a cease and desist order within twenty-four hours,
22 the board may bring a suit for a temporary restraining order
23 and for injunctive relief to prevent further violations.

24 C. Whenever the board possesses evidence that
25 indicates a person has engaged in or is about to engage in an

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1 act or practice constituting a violation of the Animal
2 Protective Services Act or a rule adopted pursuant to that act,
3 the board may seek to temporarily or permanently restrain or
4 enjoin the act or practice. The board shall not be required to
5 post a bond when seeking a temporary or permanent injunction.

6 Section 13. DISCIPLINARY ACTIONS--HEARINGS.--

7 A. In accordance with the procedures contained in
8 the Uniform Licensing Act, the board may deny, suspend, revoke,
9 reprimand, place on probation or take other action against a
10 license, certification or permit held or applied for pursuant
11 to the Animal Protective Services Act, including imposing a
12 civil penalty, upon a finding by the board that the licensee,
13 certificate or permit holder or applicant has performed,
14 committed or been engaged in acts in violation of the Animal
15 Protective Services Act or a rule adopted pursuant to that act.

16 B. The board may also issue letters of admonition
17 or deny, suspend, refuse to renew, restrict or revoke a
18 license, certification or permit authorized pursuant to the
19 Animal Protective Services Act if the applicant or licensee:

20 (1) has refused or failed to comply with a
21 provision of the Animal Protective Services Act, a rule adopted
22 pursuant to that act or an order of the board;

23 (2) is guilty of cruelty to animals as
24 determined by the board or pursuant to any statute of this
25 state or any other state;

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1 (3) has had an equivalent license or
2 certification denied, revoked or suspended by an authority;

3 (4) has refused to provide the board with
4 reasonable, complete and accurate information regarding the
5 care or euthanization of animals when requested by the board;

6 (5) has falsified information requested by the
7 board or the board's designee;

8 (6) has been convicted of a felony or other
9 crime involving moral turpitude; or

10 (7) has been adjudicated insane or is
11 manifestly incapacitated.

12 C. In a proceeding held pursuant to this section,
13 the board may accept as prima facie evidence of grounds for
14 disciplinary action any disciplinary action taken against a
15 licensee from another jurisdiction, if the violation that
16 prompted the disciplinary action in that jurisdiction would be
17 grounds for disciplinary action pursuant to this section.

18 D. A licensee whose license has been revoked may
19 not apply or reapply for a license pursuant to the Animal
20 Protective Services Act until two years from the date of such
21 revocation.

22 E. Disciplinary proceedings may be instituted by a
23 person by filing a complaint with the board. In addition, the
24 board may institute disciplinary proceedings upon a vote of a
25 majority of the board to do so. A party to a disciplinary

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1 hearing may obtain a copy of the hearing record upon payment of
2 costs for the copy.

3 F. The board shall not initiate a disciplinary
4 action more than two years after the date that it receives a
5 complaint or that it begins an investigation without a filed
6 complaint.

7 G. The board shall have full authority to
8 administer oaths, take statements, issue subpoenas requiring
9 the attendance of witnesses before the board; require
10 production of all books and records, articles or instruments;
11 and compel disclosure by the witnesses of all facts known to
12 them relative to matters under investigation.

13 H. The board may impose an administrative penalty
14 in an amount not to exceed five thousand dollars (\$5,000) on a
15 holder of a license, certificate or permit for violations of
16 the Animal Protective Services Act. The board may increase
17 this amount as it deems necessary through rules adopted by it.

18 I. A person or animal shelter facility whose
19 license, certificate or permit is suspended or revoked by the
20 board pursuant to the provisions of this section may, at the
21 discretion of the board, be relicensed or reinstated by the
22 board at any time without examination upon written application
23 to the board showing cause to justify relicensing or
24 reinstatement.

25 J. The board shall promulgate other rules

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1 pertaining to hearings, appeals and rehearings as it deems
2 necessary.

3 K. The board shall not be required to certify a
4 record to the court of appeals of a decision of the board until
5 the proper fee has been paid to the board for a copy and
6 certification of the record.

7 L. A person engaging in acts without a license or
8 certification issued by the board is guilty of a misdemeanor.
9 On conviction of a second or subsequent offense, the violator
10 is guilty of a fourth degree felony.

11 M. A person who practices, offers to practice,
12 attempts to practice or holds himself out as a certified
13 euthanasia service provider or a certified euthanasia agency
14 without holding a license or certification issued by the board
15 shall, in addition to any other penalty provided in this
16 section or any other law, pay a civil penalty to the board in
17 an amount not to exceed five thousand dollars (\$5,000) for each
18 offense.