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SENATE BILL 411

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Pete Campos

AN ACT

RELATING TO THE PRACTICE OF CHIROPRACTIC; AMENDING CERTAIN
SECTIONS OF THE CHIROPRACTIC PHYSICIAN PRACTICE ACT.

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

Section 1. Section 61-4-3 NMSA 1978 (being Laws 1968,
Chapter 3, Section 3, as amended) is amended to read:

"61-4-3. BOARD CREATED-- APPOINTMENT-- OFFICERS-- DUTIES--
COMPENSATION. --

A. There is created the "chiropractic board". The
board shall be administratively attached to the regulation and
licensing department. The board shall consist of six persons.
Four shall have been continuously engaged in the practice of
chiropractic in New Mexico for five years immediately prior to
their appointment. Two persons shall represent the public and
shall not have practiced chiropractic in this state or any

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1 other jurisdiction. A person shall not be appointed to the
2 board who is an officer or employee of or who is financially
3 interested in any school or college of chiropractic, medicine,
4 surgery or osteopathy.

5 B. Members of the board shall be appointed by the
6 governor for staggered terms of five years or less and in a
7 manner that the term of one board member expires on July 1 of
8 each year. A list of five names for each professional member
9 vacancy shall be submitted by the New Mexico chiropractic
10 association to the governor for his consideration in the
11 appointment of board members. A vacancy shall be filled by
12 appointment for the unexpired term. Board members shall serve
13 until their successors have been appointed and qualified.

14 C. The board shall annually elect a chairman and a
15 secretary-treasurer. A majority of the board constitutes a
16 quorum. The board shall meet quarterly. Special meetings may
17 be called by the chairman and shall be called upon the written
18 request of two members of the board. Notification of special
19 meetings shall be made by certified mail unless such notice is
20 waived by the entire board and the action noted in the minutes.
21 Notice of all regular meetings shall be made by regular mail at
22 least ten days prior to the meeting, and copies of the minutes
23 of all meetings shall be mailed to each board member within
24 thirty days after a meeting.

25 D. A board member failing to attend three

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1 consecutive meetings, either regular or special, shall
2 automatically be removed as a member of the board.

3 E. The board shall adopt a seal.

4 F. The board shall promulgate and file, in
5 accordance with the State Rules Act, all rules and regulations
6 necessary for the implementation and enforcement of the
7 provisions of the Chiropractic Physician Practice Act,
8 including educational requirements for a chiropractic
9 assistant.

10 ~~[G. The board shall cause examinations to be held~~
11 ~~at least twice a year, and all applicants shall be notified in~~
12 ~~writing of each examination.]~~

13 ~~H.]~~ G. The board, for the purpose of protecting the
14 health and well-being of the citizens of this state and
15 maintaining and continuing informed professional knowledge and
16 awareness, shall establish by regulations adopted in accordance
17 with the provisions of the Uniform Licensing Act mandatory
18 continuing education requirements for ~~[chiropractors]~~
19 chiropractic physicians licensed in this state.

20 ~~[I.]~~ H. Failure to comply with the rules and
21 regulations adopted by the board shall be grounds for
22 investigation, which may lead to revocation of license.

23 ~~[J.]~~ I. Members of the board shall be reimbursed as
24 provided in the Per Diem and Mileage Act, but shall receive no
25 other compensation, perquisite or allowance for each day

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1 necessarily spent in the discharge of their duties. "

2 Section 2. Section 61-4-4 NMSA 1978 (being Laws 1968,
3 Chapter 3, Section 4, as amended) is amended to read:

4 "61-4-4. APPLICATION REQUIREMENTS--EVALUATION. --

5 A. Each applicant for a license to practice
6 chiropractic shall:

7 [~~A.-~~] (1) make application on forms furnished
8 by the board;

9 [~~B.-~~] (2) submit evidence on oath satisfactory
10 to the board that the applicant has reached the age of
11 majority, has completed a preliminary education equal to the
12 requirements for graduation from high school, is of good moral
13 character and, after January 1, 1976, except for any student
14 [~~presently~~] currently enrolled in a college of chiropractic,
15 has completed two years of college-level study in an accredited
16 institution of higher learning and is a graduate of a college
17 of chiropractic [~~which~~] that meets the standards of
18 professional education prescribed in Section 61-4-5 NMSA 1978;
19 and

20 [~~C.-~~] (3) pay in advance to the board fees:

21 (a) for examination; and

22 (b) for issuance of a license.

23 B. In evaluating an application, the board may use
24 the services of a professional background information service
25 that compiles background information regarding applicants from

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1 multiple sources."

2 Section 3. Section 61-4-6 NMSA 1978 (being Laws 1968,
3 Chapter 3, Section 6, as amended) is amended to read:

4 "61-4-6. EXAMINATION--SUBJECTS--METHOD OF TREATMENT--
5 RECORDING LICENSE.--

6 A. The board shall recognize successful completion
7 of all parts of the national [~~board~~] boards examination.

8 B. The board shall examine each applicant in the
9 act of chiropractic adjusting, procedures and methods as shall
10 reveal the applicant's qualifications, provided that the board
11 may waive the requirement for the board-administered
12 examination upon proof of satisfactory completion of the
13 chiropractic national boards examination.

14 C. The board shall issue a license to all
15 applicants whose applications have been filed with and approved
16 by the board and who have paid the required fees and passed
17 either the board-administered examination with a general
18 average of not less than seventy-five percent with no subject
19 below sixty-five percent or the national boards examination
20 with a general average of not less than seventy-five percent
21 with no subject below sixty-five percent. A license shall be
22 refused to any applicant who fails to make application as
23 provided in this section, fails the examination or fails to pay
24 the required fees.

25 D. The license, when granted by the board, carries

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1 with it the title of doctor of chiropractic and entitles the
2 holder to diagnose using any necessary diagnostic procedures,
3 excluding invasive procedures, except as provided by the board
4 by rule and regulation, and treat injuries, deformities or
5 other physical or mental conditions relating to the basic
6 concepts of chiropractic by the use of any ~~[or all]~~ methods as
7 provided in this section, including but not limited to
8 palpating, diagnosing, adjusting and treating injuries and
9 defects of human beings by the application of manipulative,
10 manual and mechanical means, including all natural agencies
11 imbued with the healing act, such as food, water, heat, cold,
12 electricity and mechanical appliances, herbs, nutritional
13 supplements and homeopathic remedies, but excluding operative
14 surgery and prescription or use of controlled or dangerous
15 drugs. The holder may also supervise the use of any ~~[or all]~~
16 natural agencies imbued with the healing act, such as food,
17 water, heat, cold, electricity, mechanical appliances, herbs,
18 nutritional supplements and homeopathic remedies administered
19 by a chiropractic assistant.

20 E. Failure to display the license shall be grounds
21 for the suspension of the license to practice chiropractic
22 until so displayed and shall subject the licensee to the
23 penalties for practicing without a license. "

24 Section 4. Section 61-4-7 NMSA 1978 (being Laws 1968,
25 Chapter 3, Section 7, as amended) is amended to read:

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1 "61-4-7. DISPOSITION OF FUNDS-- CHIROPRACTIC FUND

2 CREATED--METHOD OF PAYMENT [~~BOND~~].--

3 A. There is created the "chiropractic fund".

4 B. All funds received by the board and money
5 collected under the Chiropractic Physician Practice Act shall
6 be deposited with the state treasurer. The state treasurer
7 shall place the money to the credit of the chiropractic fund.

8 C. Payments out of the chiropractic fund shall be
9 made on vouchers issued and signed by the [~~secretary~~]
10 secretary-treasurer of the board upon warrants drawn by the
11 department of finance and administration in accordance with the
12 budget approved by the department of finance and
13 administration.

14 D. All amounts paid into the chiropractic fund
15 shall be subject to the order of the board and shall only be
16 used for the purpose of meeting necessary expenses incurred in
17 the performance of the purposes of the Chiropractic Physician
18 Practice Act, the duties imposed by that act and the promotion
19 of chiropractic education and standards in this state. All
20 money unused at the end of the fiscal year shall remain in the
21 chiropractic fund for use in accordance with the provisions of
22 the Chiropractic Physician Practice Act to further its purpose.

23 E. All funds that may have accumulated to the
24 credit of the board under any previous act shall be continued
25 for use by the board in the administration of the Chiropractic

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1 Physician Practice Act.

2 ~~[F. The treasurer of the board shall give bond in~~
3 ~~the amount of five thousand dollars (\$5,000) for the faithful~~
4 ~~discharge of his duties, in such form as meets the approval of~~
5 ~~the board. The treasurer shall make, at the first meeting~~
6 ~~after July 1 of each year, an itemized report of all receipts~~
7 ~~and disbursements of the board for the prior year.~~

8 G.] F. The board shall, by rule, designate a
9 portion of the annual licensing fee for the exclusive purposes
10 of investigating and funding hearings regarding complaints
11 against doctors of chiropractic. "

12 Section 5. Section 61-4-10 NMSA 1978 (being Laws 1968,
13 Chapter 3, Section 10, as amended) is amended to read:

14 "61-4-10. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE. --

15 A. The board may refuse to issue or may suspend or
16 revoke any license or may censure, reprimand, fine or place on
17 probation and stipulation any licensee in accordance with the
18 procedures as contained in the Uniform Licensing Act upon the
19 grounds that the licensee or applicant:

20 (1) is convicted of a felony. A copy of the
21 record of conviction, certified to by the clerk of the court
22 entering the conviction, shall be conclusive evidence of such
23 conviction;

24 (2) is guilty of fraud or deceit in procuring
25 or attempting to procure a license in the chiropractic

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1 profession or in connection with applying for or procuring
2 license renewal;

3 (3) is guilty of incompetence;

4 (4) is habitually intemperate or is addicted
5 to the use of habit-forming drugs or is addicted to any vice to
6 such a degree as to render him unfit to practice chiropractic;

7 (5) is guilty of practicing or attempting to
8 practice under an assumed name or fails to use the title
9 "doctor of chiropractic", chiropractic physician or the
10 initials "D. C. " in connection with his practice or
11 advertisements;

12 (6) is guilty of failing to comply with any of
13 the provisions of the Chiropractic Physician Practice Act or
14 rules and regulations promulgated by the board and filed in
15 accordance with the State Rules Act;

16 (7) is guilty of willfully or negligently
17 practicing beyond the scope of chiropractic practice as defined
18 in the Chiropractic Physician Practice Act;

19 (8) is guilty of advertising by means of
20 knowingly false statements;

21 (9) has been declared mentally incompetent by
22 regularly constituted authorities or is manifestly
23 incapacitated to practice chiropractic;

24 (10) advertises or attempts to attract
25 patronage in any unethical manner prohibited by the rules and

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1 regulations of the board;

2 (11) is guilty of obtaining any fee by fraud
3 or misrepresentation;

4 (12) is guilty of making false or misleading
5 statements regarding his skill or the efficacy or value of
6 treatment or remedy prescribed or administered by him or at his
7 direction;

8 (13) is guilty of aiding or abetting the
9 practice of chiropractic by a person not licensed by the board;

10 (14) has incurred a prior suspension or
11 revocation in another state where the suspension or revocation
12 of a license to practice chiropractic was based upon acts by
13 the licensee similar to acts described in this section and by
14 board rules promulgated pursuant to Paragraph (6) of this
15 subsection. A certified copy of the record of suspension or
16 revocation of the state making such suspension or revocation is
17 conclusive evidence thereof;

18 (15) is guilty of making a false, misleading
19 or fraudulent claim; or

20 (16) is guilty of unprofessional conduct that
21 includes but is not limited to the following:

22 (a) procuring, aiding or abetting a
23 criminal abortion;

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

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1 can be cured;

2 (c) willfully or negligently divulging a
3 professional confidence;

4 (d) conviction of any offense punishable
5 by incarceration in a state penitentiary or federal prison. A
6 copy of the record of conviction, certified by the clerk of the
7 court entering the conviction, is conclusive evidence;

8 (e) impersonating another person
9 licensed in the practice of chiropractic or permitting or
10 allowing any person to use his license;

11 (f) gross negligence in the practice of
12 chiropractic;

13 (g) fee splitting;

14 (h) conduct likely to deceive, defraud
15 or harm the public;

16 (i) repeated similar negligent acts;

17 (j) employing abusive billing practices;

18 (k) failure to report to the board any
19 adverse action taken against him by: 1) another licensing
20 jurisdiction; 2) any peer review body; 3) any health care
21 entity; 4) any governmental agency; or 5) any court for acts or
22 conduct similar to acts or conduct that would constitute
23 grounds for action as ~~defined~~ provided in this section;

24 (l) failure to report to the board
25 surrender of a license or other authorization to practice

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1 chiropractic in another state or jurisdiction or surrender of
2 membership on any chiropractic staff or in any chiropractic or
3 professional association or society following, in lieu of, and
4 while under disciplinary investigation by any of those
5 authorities or bodies for acts or conduct similar to acts or
6 conduct that would constitute grounds for action as ~~defined~~
7 provided in this section;

8 (m) failure to furnish the board, its
9 investigators or representatives with information requested by
10 the board;

11 (n) abandonment of patients;

12 (o) failure to adequately supervise, as
13 provided by board regulation, a chiropractic assistant or
14 technician or professional licensee who renders care;

15 (p) intentionally engaging in sexual
16 contact with a patient other than his spouse during the doctor-
17 patient relationship; and

18 (q) conduct unbecoming a person licensed
19 to practice chiropractic or detrimental to the best interests
20 of the public.

21 B. The board may at its discretion hire
22 investigators ~~[to investigate]~~ or issue investigative subpoenas
23 for the purpose of investigating complaints made to the board
24 regarding chiropractic physicians.

25 C. A member of the board or any investigator or

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1 representative appointed by the board shall not be subject to
2 civil damages or criminal prosecution for any action taken in
3 good faith within the proper functions of the board.

4 D. A person shall not be subject to civil damages
5 or criminal prosecution for providing information to the board
6 in good faith, whether as a report, complaint or testimony.

7 E. All written and oral communication made by any
8 person to the board or an agent of the board relating to actual
9 or potential disciplinary action, including complaints made to
10 the board, are confidential communications and are not public
11 records for the purposes of the Inspection of Public Records
12 Act; provided that all information contained in a complaint
13 file is public information and subject to disclosure when the
14 board acts on a complaint.

15 [~~E.~~] F. Licensees shall bear all costs of
16 disciplinary proceedings unless exonerated. "