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HOUSE BILL 107

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Jeannette O. Wallace

AN ACT

RELATING TO HEALTH CARE; ASSIGNING THE DUTIES OF THE
NAPRAPATHIC PRACTICE BOARD TO THE NEW MEXICO MEDICAL BOARD;
ENACTING THE NAPRAPATHIC PRACTICE ACT; PROVIDING FOR THE
TRANSFER OF FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY,
CONTRACTUAL OBLIGATIONS AND REFERENCES; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE NMSA 1978; RECONCILING MULTIPLE
AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2008.

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

SECTION 1. Section 61-6-5 NMSA 1978 (being Laws 1973,
Chapter 361, Section 2, as amended by Laws 2008, Chapter 53,
Section 11 and by Laws 2008, Chapter 54, Section 11 and also by
Laws 2008, Chapter 55, Section 1) is amended to read:

"61-6-5. DUTIES AND POWERS.--The board shall:

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 [~~and~~], the
4 Polysomnography Practice Act and the Naprapathic Practice Act;

5 B. adopt, publish and file, in accordance with the
6 Uniform Licensing Act and the State Rules Act, all rules for
7 the implementation and enforcement of the provisions of the
8 Medical Practice Act, the Physician Assistant Act, the
9 Anesthesiologist Assistants Act, the Genetic Counseling Act,
10 the Impaired Health Care Provider Act, [~~and~~] the
11 Polysomnography Practice Act and the Naprapathic Practice Act;

12 C. adopt and use a seal;

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

15 E. take testimony on matters within the board's
16 jurisdiction;

17 F. keep an accurate record of all its meetings,
18 receipts and disbursements;

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

24 H. grant, deny, review, suspend and revoke licenses
25 to practice medicine and censure, reprimand, fine and place on

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1 probation and stipulation licensees and applicants in
2 accordance with the Uniform Licensing Act for any cause stated
3 in the Medical Practice Act [~~and~~], the Impaired Health Care
4 Provider Act and the Naprapathic Practice Act;

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

7 J. have the authority to hire or contract with
8 investigators to investigate possible violations of the Medical
9 Practice Act;

10 K. have the authority to hire a competent attorney
11 to give advice and counsel in regard to any matter connected
12 with the duties of the board, to represent the board in any
13 legal proceedings and to aid in the enforcement of the laws in
14 relation to the medical profession and to fix the compensation
15 to be paid to such attorney; provided, however, that such
16 attorney shall be compensated from the funds of the board;

17 L. establish continuing medical education
18 requirements for licensed physicians and continuing education
19 requirements for physician assistants;

20 M. establish committees as it deems necessary for
21 carrying on its business;

22 N. hire or contract with a licensed physician to
23 serve as medical director and fulfill specified duties of the
24 secretary-treasurer;

25 O. establish and maintain rules related to the

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1 management of pain based on review of national standards for
2 pain management; and

3 P. have the authority to waive licensure fees for
4 the purpose of medical doctor recruitment and retention."

5 SECTION 2. Section 61-6-6 NMSA 1978 (being Laws 1973,
6 Chapter 361, Section 1, as amended) is amended to read:

7 "61-6-6. DEFINITIONS.--As used in Chapter 61, Article 6
8 NMSA 1978:

9 A. "approved postgraduate training program" means a
10 program approved by the accrediting council on graduate medical
11 education of the American medical association or by the board;

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

13 C. "licensed physician" means a medical doctor
14 licensed under the Medical Practice Act to practice medicine in
15 New Mexico;

16 D. "licensee" means a medical doctor, physician
17 assistant, polysomnographic technologist [ø], anesthesiologist
18 assistant or naprapath licensed by the board to practice in New
19 Mexico;

20 E. "medical college or school in good standing"
21 means a board-approved medical college or school that has as
22 high a standard as that required by the association of American
23 medical colleges and the council on medical education of the
24 American medical association;

25 F. "medical student" means a student enrolled in a

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1 board-approved medical college or school in good standing;

2 G. "physician assistant" means a health
3 professional who is licensed by the board to practice as a
4 physician assistant and who provides services to patients under
5 the supervision and direction of a licensed physician;

6 H. "intern" means a first-year postgraduate student
7 upon whom a degree of doctor of medicine and surgery or
8 equivalent degree has been conferred by a medical college or
9 school in good standing;

10 I. "resident" means a graduate of a medical college
11 or school in good standing who is in training in a board-
12 approved and accredited residency training program in a
13 hospital or facility affiliated with an approved hospital and
14 who has been appointed to the position of "resident" or
15 "fellow" for the purpose of postgraduate medical training;

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

17 (1) advertising, holding out to the public or
18 representing in any manner that one is authorized to practice
19 medicine in this state;

20 (2) offering or undertaking to administer,
21 dispense or prescribe a drug or medicine for the use of another
22 person, except as authorized pursuant to a professional or
23 occupational licensing statute set forth in Chapter 61 NMSA
24 1978;

25 (3) offering or undertaking to give or

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1 administer, dispense or prescribe a drug or medicine for the
2 use of another person, except as directed by a licensed
3 physician;

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

6 (5) offering or undertaking to diagnose,
7 correct or treat in any manner or by any means, methods,
8 devices or instrumentalities any disease, illness, pain, wound,
9 fracture, infirmity, deformity, defect or abnormal physical or
10 mental condition of a person;

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

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

18 K. "the practice of medicine across state lines"
19 means:

20 (1) the rendering of a written or otherwise
21 documented medical opinion concerning diagnosis or treatment of
22 a patient within this state by a physician located outside this
23 state as a result of transmission of individual patient data by
24 electronic, telephonic or other means from within this state to
25 the physician or the physician's agent; or

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1 (2) the rendering of treatment to a patient
2 within this state by a physician located outside this state as
3 a result of transmission of individual patient data by
4 electronic, telephonic or other means from within this state to
5 the physician or the physician's agent;

6 L. "sexual contact" means touching the primary
7 genital area, groin, anus, buttocks or breast of a patient or
8 allowing a patient to touch another's primary genital area,
9 groin, anus, buttocks or breast in a manner that is commonly
10 recognized as outside the scope of acceptable medical practice;

11 M. "sexual penetration" means sexual intercourse,
12 cunnilingus, fellatio or anal intercourse, whether or not there
13 is any emission, or introducing any object into the genital or
14 anal openings of another in a manner that is commonly
15 recognized as outside the scope of acceptable medical practice;
16 and

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

19 **SECTION 3.** Section 61-6-31 NMSA 1978 (being Laws 1989,
20 Chapter 269, Section 27, as amended by Laws 2008, Chapter 53,
21 Section 13 and by Laws 2008, Chapter 54, Section 14 and also by
22 Laws 2008, Chapter 55, Section 2) is amended to read:

23 "61-6-31. DISPOSITION OF FUNDS--NEW MEXICO MEDICAL BOARD
24 FUND CREATED--METHOD OF PAYMENTS.--

25 A. There is created the "New Mexico medical board

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1 fund".

2 B. All funds received by the board and money
3 collected under the Medical Practice Act, the Physician
4 Assistant Act, the Anesthesiologist Assistants Act, the Genetic
5 Counseling Act, the Polysomnography Practice Act [~~and~~], the
6 Impaired Health Care Provider Act and the Naprapathic Practice
7 Act shall be deposited with the state treasurer who shall place
8 the same to the credit of the New Mexico medical board fund.

9 C. All payments out of the fund shall be made on
10 vouchers issued and signed by the secretary-treasurer of the
11 board or the designee of the secretary-treasurer upon warrants
12 drawn by the department of finance and administration in
13 accordance with the budget approved by that department.

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

17 (1) the performance of the provisions of the
18 Medical Practice Act, the Physician Assistant Act, the
19 Anesthesiologist Assistants Act, the Genetic Counseling Act,
20 the Polysomnography Practice Act [~~and~~], the Impaired Health
21 Care Provider Act and the Naprapathic Practice Act and the
22 duties and powers imposed by those acts;

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

25 (3) efforts to recruit and retain medical

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1 doctors for practice in New Mexico.

2 E. All funds that may have accumulated to the
3 credit of the board under any previous law shall be transferred
4 to the New Mexico medical board fund and shall continue to be
5 available for use by the board in accordance with the
6 provisions of the Medical Practice Act, the Physician Assistant
7 Act, the Anesthesiologist Assistants Act, the Genetic
8 Counseling Act, the Polysomnography Practice Act [~~and~~], the
9 Impaired Health Care Provider Act and the Naprapathic Practice
10 Act. All money unused at the end of the fiscal year shall not
11 revert, but shall remain in the fund for use in accordance with
12 the provisions of the Medical Practice Act, the Physician
13 Assistant Act, the Anesthesiologist Assistants Act, the Genetic
14 Counseling Act, the Polysomnography Practice Act [~~and~~], the
15 Impaired Health Care Provider Act and the Naprapathic Practice
16 Act."

17 SECTION 4. [NEW MATERIAL] SHORT TITLE.--Sections 4
18 through 13 of this act may be cited as the "Naprapathic
19 Practice Act".

20 SECTION 5. [NEW MATERIAL] DEFINITIONS.--As used in the
21 Naprapathic Practice Act:

- 22 A. "board" means the New Mexico medical board; and
23 B. "licensee" means a person licensed by the board
24 to practice naprapathy.

25 SECTION 6. [NEW MATERIAL] PRACTICE OF NAPRAPATHY--

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1 DESCRIPTION.--

2 A. Naprapathic practice includes the diagnosis and
3 treatment of persons with connective tissue disorders through
4 the use of special techniques, review of case history,
5 examination and palpation or treatment of a person by the use
6 of connective tissue manipulation, exercise, postural
7 counseling, nutritional counseling and the application or use
8 of heat, cold, light, water, radiant energy, electricity, sound
9 and air and assistive devices for the purpose of preventing,
10 correcting or alleviating a physical disability. Naprapathic
11 practice does not include surgery, acupuncture, Chinese herbal
12 medicine, pharmacology or invasive diagnostic testing.

13 B. A naprapath treats contractures, muscle spasms,
14 inflammations, scar tissue formation, adhesions, lesions,
15 laxity, hypotonicity, rigidity, structural imbalances, bruises,
16 contusions, muscular atrophy and partial separation of
17 connective tissue fibers.

18 C. Naprapathic practice may require the:
19 (1) performance of specialized tests and
20 measurements;
21 (2) administration of specialized treatment
22 procedures; and
23 (3) establishment and modification of
24 naprapathic treatment programs.

25 D. A naprapath may advise, supervise or teach

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1 another in the performance of naprapathy.

2 E. A naprapath shall refer to a licensed physician
3 any patient whose medical condition should, at the time of
4 evaluation or treatment, be determined to be beyond the scope
5 of practice of the naprapath.

6 SECTION 7. [NEW MATERIAL] LICENSE REQUIRED--EXCEPTIONS--
7 REGISTRATION.--

8 A. A person shall not practice naprapathy in the
9 state without a valid license issued by the board.

10 B. A person who is a naprapath practitioner
11 employed by a federal government facility or agency in New
12 Mexico is not required to be licensed pursuant to the
13 Naprapathic Practice Act.

14 C. A person who is enrolled in a program approved
15 by the board to provide training for naprapaths or a person
16 receiving continuing educational training to practice
17 naprapathy is not required to be licensed or registered with
18 the board.

19 D. A person teaching, advising or supervising
20 students of naprapathy or teaching continuing education for
21 naprapaths shall not practice naprapathy in New Mexico without
22 a license by the board unless:

23 (1) that person is in the state for less than
24 one month;

25 (2) that person is registered with the board

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1 as a teacher, advisor or supervisor; and

2 (3) the practice occurs in the course of that
3 person's duties as a teacher, advisor or supervisor.

4 E. Nothing in the Naprapathic Practice Act shall be
5 construed to prevent a person qualified as a member of a
6 recognized profession, the practice of which requires a license
7 or is regulated pursuant to the laws of New Mexico, from
8 rendering services within the scope of the person's license or
9 a state rule adopted to regulate the profession; provided that
10 the person does not make a representation as being a naprapath.

11 SECTION 8. [NEW MATERIAL] REQUIREMENTS FOR LICENSING.--

12 A. The board shall grant a license to practice
13 naprapathy to a person who:

14 (1) is at least twenty-one years of age;

15 (2) has submitted to the board:

16 (a) a completed application for
17 licensing on a form provided by the board;

18 (b) required documentation as required
19 by the board; and

20 (c) the required fees;
21 (3) has graduated from a two-year college-
22 level program or an equivalent program approved by the board;

23 (4) has completed, in not less than three
24 years, a four-year academic curriculum in naprapathy that is
25 approved by the board, and the person has successfully

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1 completed one hundred thirty-two hours of academic credit,
2 including sixty-six credit hours in basic science courses with
3 emphasis on the study of connective tissue, and sixty-six
4 credit hours in clinical naprapathic science, theory and
5 application;

6 (5) has passed the national board of
7 naprapathic examiners examination or holds a valid license as a
8 naprapath in another jurisdiction; and

9 (6) has met all other requirements of the
10 board.

11 B. The board may require a personal interview with
12 an applicant to evaluate that person's qualifications for a
13 license.

14 SECTION 9. [NEW MATERIAL] DESIGNATION AS NAPRAPATH--
15 DISPLAY OF LICENSE.--

16 A. A licensee is designated a "naprapath" and may
17 use that title in connection with the practice of the
18 profession of naprapathy.

19 B. A licensee may use the title "doctor of
20 naprapathy" or the letters "D.N." following the licensee's name
21 to indicate the licensee's professional status.

22 C. A licensee shall display the licensee's license
23 and diplomas in the licensee's place of business in a location
24 clearly visible to the licensee's patients.

25 SECTION 10. [NEW MATERIAL] LICENSE RENEWAL.--

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1 A. The board shall review licenses for renewal
2 annually, and all licenses to be renewed shall be renewed on
3 July 1. Applicants for license renewal shall submit:

4 (1) a renewal application on a form provided
5 by the board; and

6 (2) a license renewal fee.

7 B. The board may require proof of continuing
8 education or other proof of competence as a requirement for
9 renewal.

10 SECTION 11. [NEW MATERIAL] LICENSE FEES.--The board shall
11 establish a schedule of reasonable administrative and licensing
12 fees, but an individual fee shall not exceed one thousand
13 dollars (\$1,000).

14 SECTION 12. [NEW MATERIAL] OFFENSES--CRIMINAL
15 PENALTIES.--A person who practices naprapathy without a license
16 is guilty of a misdemeanor and shall be sentenced in accordance
17 with the provisions of Section 31-19-1 NMSA 1978.

18 SECTION 13. [NEW MATERIAL] VIOLATION--CIVIL PENALTIES.--
19 The board may fine any person who intentionally violates the
20 provisions of the Naprapathic Practice Act up to one thousand
21 dollars (\$1,000) or may suspend or revoke the licensee's
22 authority to practice naprapathy in New Mexico.

23 SECTION 14. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
24 APPROPRIATIONS AND PROPERTY--CONTRACTUAL OBLIGATIONS--STATUTORY
25 REFERENCES.--

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1 A. On July 1, 2011, all functions, appropriations,
2 money, records, furniture, equipment and other property of the
3 naprapathic practice board shall be transferred to the New
4 Mexico medical board.

5 B. On the effective date of this act, contractual
6 obligations of the naprapathic practice board are binding on
7 the New Mexico medical board.

8 C. On the effective date of this act, all
9 references in law to the naprapathic practice board shall be
10 deemed to be references in law to the New Mexico medical board.

11 **SECTION 15. REPEAL.**--Sections 61-12E-1 through 61-12E-17
12 NMSA 1978 (being Laws 2003, Chapter 60, Sections 1 through 17,
13 as amended) are repealed.

14 **SECTION 16. EFFECTIVE DATE.**--The effective date of the
15 provisions of this act is July 1, 2011.

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