SENATE BILL 471

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO CHIROPRACTIC PRACTICE; PROVIDING FOR A CERTIFIED ADVANCED PRACTICE CHIROPRACTIC PHYSICIAN TO PRESCRIBE AND ADMINISTER DANGEROUS DRUGS AND TO PERFORM CERTAIN OTHER PROCEDURES; DEFINING "CHIROPRACTIC MEDICINE"; AMENDING AND ENACTING CERTAIN SECTIONS OF THE CHIROPRACTIC PHYSICIAN PRACTICE ACT.

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

SECTION 1. Section 61-4-2 NMSA 1978 (being Laws 1968, Chapter 3, Section 2, as amended) is amended to read:

"61-4-2. DEFINITIONS.--As used in the Chiropractic Physician Practice Act:

A. "advanced practice chiropractic certification registry" means a compendium kept by the board that meets and maintains the board's established credentials for certified
advanced practice chiropractic physicians;

B. "certified advanced practice chiropractic physician" means a chiropractic physician who has been included in the advanced practice chiropractic certification registry;

C. "chiropractic medicine" means the science, art and philosophy of things natural, the science of locating and removing interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the articulations and adjacent structures, more especially those of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, adjustment and manipulation of the human structure [it shall include], including, but not [be] limited to, diagnosis and treatment of a condition for which the chiropractic physician has been educated and trained; the prescribing and administering of all natural agents to assist in the healing act, such as food, water, heat, cold, light, oxygen, electricity, mechanical appliances and medical devices; the selling of [herbs] herbal medicine, nutritional [supplements] medicine and homeopathic [remedies] medicine; the administering of a drug by injection by a certified advanced practice chiropractic physician; and any necessary diagnostic procedure [excluding invasive procedures]. Except as provided by the board by rule [and regulation. It], "chiropractic medicine"
shall exclude operative surgery and the prescription or use of controlled or dangerous drugs; and the practice of acupuncture substances, except where permitted by statute or rule;

D. "board" means the chiropractic board;

E. "chiropractic physician" includes doctor of chiropractic, chiropractor and chiropractic physician and means a person who practices chiropractic medicine as defined in the Chiropractic Physician Practice Act; and

F. "chiropractic assistant" means a person who practices under the on-premises supervision of a licensed chiropractic physician."

SECTION 2. 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" is created. 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 medicine in New Mexico for five years immediately prior to their appointment, at least one of whom shall be a certified advanced practice chiropractic physician. Two persons shall represent the public and shall not have practiced chiropractic medicine in this state or any
other jurisdiction. A person shall not be appointed to the
board who is an officer or employee of or who is financially
interested in any school or college of chiropractic medicine,
allopathic medicine, surgery or osteopathic medicine.

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

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

.191867.3

- 4 -
D. A board member failing to attend three consecutive meetings, either regular or special, shall automatically be removed as a member of the board.

E. The board shall adopt a seal.

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

G. The board, for the purpose of protecting the health and well-being of the citizens of this state and maintaining and continuing informed professional knowledge and awareness, shall establish by [regulations] rules adopted in accordance with the provisions of the Uniform Licensing Act mandatory continuing education requirements for chiropractic physicians and certified advanced practice chiropractic physicians licensed in this state.

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

I. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance for each day necessarily spent in the discharge of their duties."
SECTION 3. Section 61-4-4 NMSA 1978 (being Laws 1968, Chapter 3, Section 4, as amended) is amended to read:

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

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

(1) make application on forms furnished by the board;

(2) submit evidence on oath satisfactory to the board that the applicant has reached the age of majority, has completed a preliminary education equal to the requirements for graduation from high school, is of good moral character and, after January 1, 1976, except for any student currently enrolled in a college of chiropractic, has completed two years of college-level study in an accredited institution of higher learning and is a graduate of a college of chiropractic that meets the standards of professional education prescribed in Section 61-4-5 NMSA 1978; and

(3) pay in advance to the board fees:

(a) for examination; and

(b) for issuance of a license.

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

C. Each applicant for inclusion in the advanced
practice chiropractic certification registry shall furnish materials and proof of education and training as established by rule of the board."

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

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

A. The board shall recognize successful completion of all parts of the examination conducted by the national board of chiropractic examiners.

B. The board shall examine each applicant in the practice of chiropractic medicine, including adjusting, procedures and methods, as shall reveal the applicant's qualifications; provided that the board may waive the requirement for the board-administered examination upon proof of satisfactory completion of the examination conducted by the national board of chiropractic examiners.

C. The board shall issue a license to all applicants whose applications have been filed with and approved by the board and who have paid the required fees and passed either the board-administered examination with a general average of not less than seventy-five percent with no subject below sixty-five percent or the examination conducted by the national board of chiropractic examiners with a general average of not less than seventy-five percent with no subject below .191867.3
sixty-five percent. A license shall be refused to an applicant who fails to make application as provided in this section, fails the examination or fails to pay the required fees.

D. The license, when granted by the board, carries with it the title of doctor of chiropractic and entitles the holder to diagnose using any necessary diagnostic procedures, excluding invasive procedures, except as provided by the board by rule, and treat injuries, deformities or other physical or mental conditions relating to the basic concepts of chiropractic medicine by the use of any methods as provided in this section, including but not limited to palpating, diagnosing, adjusting and treating injuries and defects of human beings by the application of manipulative, manual and mechanical means, including all natural agencies imbued with the healing act, such as food, water, heat, cold, light, oxygen, electricity and mechanical appliances, [herbs] herbal medicine, nutritional [supplements] medicine and homeopathic [remedies] medicine but excluding operative surgery and prescription or use of controlled [or dangerous drugs] substances. The holder may also supervise the use of any natural agencies imbued with the healing act, such as food, water, heat, cold, light, oxygen, electricity, mechanical appliances, herbs, nutritional supplements and homeopathic remedies administered by a chiropractic assistant.

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

F. The board shall certify a chiropractic physician
as a "certified advanced practice chiropractic physician" when
the chiropractic physician has demonstrated completion of
advanced coursework and met other requirements established in
the Chiropractic Physician Practice Act and by rule of the
board."

SECTION 5. Section 61-4-9 NMSA 1978 (being Laws 1968,
Chapter 3, Section 9, as amended) is amended to read:

"61-4-9. PRIVILEGES AND OBLIGATIONS.--

A. Licensed chiropractic physicians shall observe
all health and hygiene laws and regulations of the state and
its political subdivisions and shall report births and deaths
to the proper authorities. Reports rendered by [chiropractors]
chiropractic physicians shall be accepted by officers of
departments or agencies to which they are made.

B. It is the purpose of the Chiropractic Physician
Practice Act to grant to [chiropractors] chiropractic
physicians the right to practice chiropractic medicine as
taught and practiced in standard accredited colleges of
chiropractic and to entitle the holder of a license the right
to diagnose, palpate and treat injuries, deformities and other
physical or mental conditions relating to the basic concepts of
chiropractic medicine by use of any methods provided in the Chiropractic Physician Practice Act, as provided in rules [and regulations] established and monitored by the board [but excluding operative surgery and prescription or use of controlled or dangerous drugs as provided in rules and regulations established and monitored by the board]."

SECTION 6. Section 61-4-9.1 NMSA 1978 (being Laws 2008, Chapter 44, Section 1) is amended to read:

"61-4-9.1. ADVANCED PRACTICE CHIROPRACTIC CERTIFICATION REGISTRY ESTABLISHED.--The board shall establish by rule the advanced practice chiropractic certification registry. A chiropractic physician authorized by the board to use the title "certified advanced practice chiropractic physician" shall have prescriptive authority for therapeutic and diagnostic purposes as authorized by statute and rule of the board. Only a chiropractic physician included in the advanced practice chiropractic certification registry may use the title certified advanced practice chiropractic physician, and it is unlawful for a person to use the certified advanced practice chiropractic physician title unless the person is included in the advanced practice chiropractic certification registry. The advanced practice chiropractic certification registry shall include a chiropractic physician who applies for the designation and:

A. holds a chiropractic license in good standing;
B. has completed three years of postgraduate clinical chiropractic practice or equivalent clinical experience as established by the board;

C. has [an advanced practice chiropractic certification by a nationally recognized credentialing agency providing credentialing and demonstrated competency by examination and additionally, after December 31, 2012, successful completion of a graduate degree in a chiropractic clinical practice specialty] a certification in advanced clinical chiropractic practice or its equivalent by a nationally recognized credentialing agency or institution and has demonstrated competency by examination;

D. has completed, prior to December 31, 2012, a minimum of ninety clinical and didactic contact course hours in pharmacology, pharmacognosy, medication administration and toxicology certified by an examination from an institution of higher education [approved by the board and the New Mexico medical board] that is accredited by an agency accredited by the United States department of education, or on or after December 31, 2012 has successfully completed a postgraduate degree in a clinical specialty; and

E. has completed annual continuing education for advanced practice chiropractic physicians as set by the board."

SECTION 7. Section 61-4-9.2 NMSA 1978 (being Laws 2008, Chapter 44, Section 2, as amended) is amended to read:
"61-4-9.2. CERTIFIED ADVANCED PRACTICE CHIROPRACTIC
PHYSICIAN AUTHORITY DEFINED.--

A. A certified advanced practice chiropractic
physician may prescribe, administer and dispense herbal
medicines, homeopathic medicines, over-the-counter drugs,
vitamins, carbohydrates, sugars, minerals, enzymes, glandular
products, protomorphogens, live cell products, gerovital, amino
acids, dietary supplements, foods for special dietary use,
bioidentical hormones, sterile water, sterile saline, sarapin
or its generic, caffeine, procaine, lidocaine, oxygen,
epinephrine and vapocoolants.

B. A formulary that includes all substances listed
in Subsection A of this section, including compounded
preparations for topical and oral administration, shall be
developed and approved by the board. A formulary for injection
that includes the substances in Subsection A of this section
that are within the scope of practice of the certified advanced
practice chiropractic physician shall be developed and approved
by the board. [Dangerous drugs or controlled substances, drugs
for administration by injection and substances] Any substance
not listed in Subsection A of this section shall be submitted
to the board of pharmacy [and the New Mexico medical board] for
approval."

SECTION 8. A new section of the Chiropractic Physician
Practice Act is enacted to read:

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"[NEW MATERIAL] CERTIFIED ADVANCED PRACTICE CHIROPRACTIC

PHYSICIAN--PRESCRIPTION AUTHORITY.--

A. A certified advanced practice chiropractic physician with a prescription certificate may prescribe, administer and dispense legend drugs or controlled substances included in Schedules III through V of the Controlled Substances Act.

B. A certified advanced practice chiropractic physician may apply to the board for a prescription certificate. The application for a prescription certificate shall be made on a form prescribed by the board and at a minimum contain evidence satisfactory to the board that the applicant:

   (1) has successfully completed a program in primary care clinical rotation from an institution of higher education or professional school that is accredited by an agency accredited by the United States department of education;

   (2) holds a current license to practice chiropractic medicine;

   (3) has successfully completed the advanced practice chiropractic certification program approved by the board and currently holds certification by the board in advanced practice chiropractic;

   (4) within the five years immediately preceding the date of application, has successfully completed
an organized program of medically supervised clinical rotation
as stated in Paragraph (1) of this subsection and consisting of
clinical and hands-on instruction of no fewer than five hundred
hours in at least the following core areas of instruction:

(a) clinical pharmacology;
(b) evidence-based clinical assessment;
(c) clinical pharmacotherapeutics;
(d) primary care case management; or
(e) patient safety and standards of
primary care;

(5) within five years immediately preceding
the date of application, successfully completed a clinical
experience pursuant to Paragraph (4) of this subsection and
approved by the board, under the supervision of a medical
doctor, osteopathic physician, certified nurse practitioner or
certified advanced practice chiropractic physician with a
prescription certificate;

(6) has professional liability insurance in
place that is sufficient to satisfy the rules adopted by the
board during the clinical education; and

(7) has obtained a declaration from the
supervising medical doctor, osteopathic physician, certified
nurse practitioner or certified advanced practice chiropractic
physician with a prescription certificate that the applicant
has successfully completed the prescribed clinical experience.
C. The board shall issue a prescription certificate if the board finds that the applicant has met the requirements of this section and the applicant:

1. holds a current license to practice chiropractic medicine; and
2. has professional liability insurance in place that is sufficient to satisfy the rules adopted by the board.

D. The board shall ensure that a certified advanced practice chiropractic physician with a prescription certificate:

1. continues to hold a current license to practice chiropractic medicine and continues to maintain professional liability insurance; and
2. annually satisfies the continuing education program requirements for prescribing advanced practice chiropractic physicians as set by the board, which continuing education program shall be no fewer than twenty hours each year.

E. The board shall promulgate rules providing for the issuance of a prescription certificate and renewal. The board shall also promulgate rules for the denial, suspension or revocation of a prescription certificate or renewal authorized to be issued pursuant to this section, including a provision for suspension or revocation of a license to practice.
chiropractic medicine upon suspension or revocation of a prescription certificate. Actions of denial, suspension or revocation of a certificate shall be in accordance with the Uniform Licensing Act."

SECTION 9. Section 61-4-9.3 NMSA 1978 (being Laws 2008, Chapter 44, Section 3) is amended to read:

"61-4-9.3. USE OF CHIROPRACTIC NAME LIMITED.--The terms "chiropractor", "chiropractic physician", [or] "chiropractic" or "chiropractic medicine" may be used only by persons licensed pursuant to the Chiropractic Physician Practice Act."

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

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

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

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

(2) is guilty of fraud or deceit in procuring or attempting to procure a license in the chiropractic profession or in connection with applying for or procuring..."
(3) is guilty of incompetence;

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

(5) is guilty of practicing or attempting to practice under an assumed name or fails to use the title "doctor of chiropractic", chiropractic physician or the initials "D.C." in connection with the licensee's or applicant's practice or advertisements;

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

(7) is guilty of willfully or negligently practicing beyond the scope of chiropractic [practice] medicine as defined in the Chiropractic Physician Practice Act;

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

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

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

191867.3

- 17 -
regulations] of the board;

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

(12) is guilty of making false or misleading statements regarding the licensee's or applicant's skill or the efficacy or value of treatment or remedy prescribed or administered by the licensee or applicant or at the licensee's or applicant's direction;

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

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

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

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

(a) procuring, aiding or abetting a criminal abortion;
(b) representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;

(c) willfully or negligently divulging a professional confidence;

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

(e) impersonating another person licensed in the practice of chiropractic medicine or permitting or allowing any person to use the licensee's or applicant's license;

(f) gross negligence in the practice of chiropractic medicine;

(g) fee splitting;

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

(i) repeated similar negligent acts;

(j) employing abusive billing practices;

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

(l) failure to report to the board
surrender of a license or other authorization to practice
chiropractic medicine in another state or jurisdiction or
surrender of membership on any chiropractic staff or in any
chiropractic medicine or professional association or society
following, in lieu of, and while under disciplinary
investigation by any of those authorities or bodies for acts or
conduct similar to acts or conduct that would constitute
grounds for action as provided in this section;

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

(n) abandonment of patients;

(o) failure to adequately supervise, as
provided by board [regulation] rule, a chiropractic medicine
assistant or technician or professional licensee who renders
care;

(p) intentionally engaging in sexual
contact with a patient other than the licensee's or applicant's
spouse during the doctor-patient relationship; and

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

B. The board may at its discretion hire

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investigators or issue investigative subpoenas for the purpose of investigating complaints made to the board regarding chiropractic physicians.

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

D. Licensees shall bear all costs of disciplinary proceedings unless exonerated."

SECTION 11. Section 61-4-12 NMSA 1978 (being Laws 1968, Chapter 3, Section 11, as amended) is amended to read:

"61-4-12. PENALTIES.--

A. Each of the following acts constitutes a misdemeanor punishable upon conviction by a fine of not less than fifty dollars ($50.00) or more than one thousand dollars ($1,000) or by imprisonment not to exceed one year, or both:

(1) practice of chiropractic medicine or an attempt to practice chiropractic medicine without a license;

(2) obtaining or attempting to obtain a license or practice in the profession for money or any other thing of value by fraudulent misrepresentation;"
(3) willfully falsifying any oath or affirmation required by the Chiropractic Physician Practice Act;

(4) practicing or attempting to practice under an assumed name; or

(5) advertising or attempting to attract patronage in any unethical manner prohibited by the rules [and regulations] of the board.

B. Any second violation of the act constitutes a fourth degree felony."

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

"61-4-13. ANNUAL RENEWAL OF LICENSE--FEE--NOTICE.--

A. A person licensed to practice chiropractic medicine in this state shall, on or before July 1 of each year, pay to the board an annual fee set by [regulation] rule and shall submit proof of completion of continuing education requirements as required by the board. The board shall send written notice to every person holding a license prior to June 1 of each year, directed to the last known address of the licensee, notifying [him] the licensee that it is necessary [for him] to pay the renewal fee as provided in the Chiropractic Physician Practice Act. Proper forms shall accompany the notice, upon which forms the licensee shall make application for the renewal of [his] the license. The licensee
is responsible for renewal of the license even if the licensee
does not receive the renewal notice.

B. The board shall establish a schedule of
reasonable fees for applications, licenses, certificates,
renewals, placement or inactive status and administrative
fees."

SECTION 13. Section 61-4-14 NMSA 1978 (being Laws 1968,
Chapter 3, Section 13) is amended to read:

"61-4-14. FAILURE TO RENEW--CANCELLATION--REINSTATEMENT--
PERMISSIVE TEMPORARY CANCELLATION.--[Any] A licensee who fails
to comply with the requirements for renewal as set forth in
Section 42 61-4-13 NMSA 1978 shall, upon order of the board,
forfeit [his] the right to practice chiropractic medicine in
this state, and [his] the licensee's license and any
certificates of renewal shall be [cancelled] canceled. The
board may reinstate [him] the licensee upon payment of all fees
or penalties due and upon the presentation of evidence of
attendance at educational programs as may be provided by [rules
and regulations] rule of the board. [Any] A person licensed to
practice chiropractic medicine in this state who desires to
withdraw from active practice in this state may apply to the
board for a temporary suspension of [his] the person's license
with the right to renew and reinstate [his] the license upon a
showing that [he] the person has paid [his] the annual license
renewal fee on or before [the first day of] July 1 of each
.191867.3

- 23 -
year; provided that no suspension shall be granted for a period of less than one year."

SECTION 14. Section 61-4-15 NMSA 1978 (being Laws 1968, Chapter 3, Section 14, as amended) is amended to read:

"61-4-15. EXEMPTIONS.--The Chiropractic Physician Practice Act does not apply to:

A. any commissioned officer of the armed forces of the United States in the discharge of [his] official duties;

B. a [chiropractor] chiropractic physician who is legally qualified to practice in the state or territory in which [he] the chiropractic physician resides, when in actual consultation with a licensed [chiropractor] chiropractic physician of this state; [or]

C. any bona fide student of any standard chiropractic college chiropractically analyzing and adjusting the human body under supervision of a licensed [chiropractor] chiropractic physician; or

D. the practice of acupuncture or oriental medicine."