

HOUSE BILL 349

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Dennis J. Roch

AN ACT

RELATING TO HEALTH CARE; AMENDING AND ENACTING SECTIONS OF THE DENTAL HEALTH CARE ACT; PROVIDING FOR LICENSURE AND A SCOPE OF PRACTICE FOR DENTAL THERAPISTS; PROVIDING FOR THE REGULATION, LICENSURE AND DISCIPLINE OF DENTAL THERAPISTS; AMENDING SECTIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT, THE NEW MEXICO DRUG, DEVICE AND COSMETIC ACT, THE PUBLIC ASSISTANCE ACT, CHAPTER 59A, ARTICLE 22 NMSA 1978, THE NONPROFIT HEALTH CARE PLAN LAW AND THE IMPAIRED DENTISTS AND DENTAL HYGIENISTS ACT; RENAMING THE IMPAIRED DENTISTS AND DENTAL HYGIENISTS ACT AS THE "IMPAIRED DENTAL PROFESSIONALS ACT"; PROVIDING PENALTIES.

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

SECTION 1. Section 61-5A-2 NMSA 1978 (being Laws 1994, Chapter 55, Section 2, as amended) is amended to read:

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1 "61-5A-2. PURPOSE.--

2 A. In the interest of the public health, safety and
3 welfare and to protect the public from the improper,
4 unprofessional, incompetent and unlawful practice of dentistry,
5 dental therapy and dental hygiene, it is necessary to provide
6 laws and rules controlling the granting and use of the
7 privilege to practice dentistry, dental therapy and dental
8 hygiene and to establish a board of dental health care, a joint
9 committee and a dental hygienists committee to implement and
10 enforce those laws and rules.

11 B. The primary duties of the New Mexico board of
12 dental health care are:

13 (1) to issue licenses to qualified dentists
14 and owners of dental practices;

15 (2) to certify qualified dental assistants,
16 expanded-function dental auxiliaries and community dental
17 health coordinators;

18 (3) to issue licenses to dental therapists in
19 accordance with the recommendation of the joint committee;

20 [~~(3)~~] (4) to issue licenses to dental
21 hygienists [~~through~~] in accordance with the recommendation of
22 the [~~dental hygienists~~] committee;

23 [~~(4)~~] (5) to discipline incompetent or
24 unprofessional dentists; dental assistants; owners of dental
25 practices; [~~and, through the~~] dental therapists in accordance

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1 with the recommendation of the joint committee; and dental
2 hygienists in accordance with the recommendation of the
3 committee [~~dental hygienists~~]; and

4 [~~(5)~~] (6) to aid in the rehabilitation of
5 impaired dentists, dental therapists and dental hygienists for
6 the purpose of protecting the public."

7 SECTION 2. Section 61-5A-3 NMSA 1978 (being Laws 1994,
8 Chapter 55, Section 3, as amended) is amended to read:

9 "61-5A-3. DEFINITIONS.--As used in the Dental Health Care
10 Act:

11 A. "assessment" means the review and documentation
12 of the oral condition, and the recognition and documentation of
13 deviations from the healthy condition, without a diagnosis to
14 determine the cause or nature of disease or its treatment;

15 B. "board" means the New Mexico board of dental
16 health care;

17 C. "certified dental assistant" means an individual
18 certified by the dental assisting national board;

19 D. "collaborative dental hygiene practice" means a
20 New Mexico licensed dental hygienist practicing according to
21 Subsections D through G of Section 61-5A-4 NMSA 1978;

22 E. "committee" means the New Mexico dental
23 hygienists committee;

24 F. "community dental health coordinator" means a
25 dental assistant, a dental hygienist or other trained personnel

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1 certified by the board as a community dental health coordinator
2 to provide educational, preventive and limited palliative care
3 and assessment services working collaboratively under the
4 general supervision of a licensed dentist in settings other
5 than traditional dental offices and clinics;

6 G. "consulting dentist" means a dentist who has
7 entered into an approved agreement to provide consultation and
8 create protocols with a collaborating dental hygienist and,
9 when required, to provide diagnosis and authorization for
10 services, in accordance with the rules of the board and the
11 committee;

12 H. "dental assistant certified in expanded
13 functions" means a dental assistant who meets specific
14 qualifications set forth by rule of the board;

15 I. "dental health professional shortage area" means
16 a geographic area of the state designated by a federal or state
17 agency as having a significantly limited number of dental
18 health care providers;

19 [H.] J. "dental hygiene-focused assessment" means
20 the documentation of existing oral and relevant system
21 conditions and the identification of potential oral disease to
22 develop, communicate, implement and evaluate a plan of oral
23 hygiene care and treatment;

24 [~~I.~~] "~~dental assistant certified in expanded~~
25 ~~functions" means a dental assistant who meets specific~~

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1 ~~qualifications set forth by rule of the board;~~

2 ~~J.~~ K. "dental hygienist" means an individual who
3 has graduated and received a degree from a dental hygiene
4 educational program that is accredited by the commission on
5 dental accreditation, that provides a minimum of two academic
6 years of dental hygiene curriculum and that is an institution
7 of higher education; and "dental hygienist" means, except as
8 the context otherwise requires, an individual who holds a
9 license to practice dental hygiene in New Mexico;

10 ~~K.~~ L. "dental laboratory" means any place where
11 dental restorative, prosthetic, cosmetic and therapeutic
12 devices or orthodontic appliances are fabricated, altered or
13 repaired by one or more persons under the orders and
14 authorization of a dentist;

15 ~~L.~~ M. "dental technician" means an individual,
16 other than a licensed dentist, who fabricates, alters, repairs
17 or assists in the fabrication, alteration or repair of dental
18 restorative, prosthetic, cosmetic and therapeutic devices or
19 orthodontic appliances under the orders and authorization of a
20 dentist;

21 N. "dental therapist" means an individual licensed
22 to practice dental therapy in the state;

23 O. "dental therapist management agreement" means a
24 written general supervision agreement between a dentist and a
25 dental therapist;

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1 P. "dental therapy representative" means an
2 individual who:

3 (1) publicly supports or recommends the
4 practice of dental therapy in the state;

5 (2) has knowledge of the practice of dental
6 therapy or of the educational or licensing requirements for the
7 practice of dental therapy; and

8 (3) has been nominated by a representative of:

9 (a) New Mexico health resources, inc.;

10 (b) health action New Mexico;

11 (c) a state or regional dental
12 therapists' association; or

13 (d) an institution of higher education
14 located in New Mexico that has a dental therapist education
15 program;

16 ~~[M-]~~ Q. "dentist" means an individual who has
17 graduated and received a degree from a school of dentistry that
18 is accredited by the commission on dental accreditation and,
19 except as the context otherwise requires, who holds a license
20 to practice dentistry in New Mexico;

21 ~~[N-]~~ R. "direct supervision" means the process
22 under which an act is performed when a dentist or a dental
23 therapist licensed pursuant to the Dental Health Care Act:

24 (1) is physically present throughout the
25 performance of the act;

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1 (2) orders, controls and accepts full
2 professional responsibility for the act performed; and

3 (3) evaluates and approves the procedure
4 performed before the patient departs the care setting;

5 [Θ-] S. "expanded-function dental auxiliary" means
6 a dental assistant, dental hygienist or other dental
7 practitioner that has received education beyond that required
8 for licensure or certification in that individual's scope of
9 practice and that has been certified by the board as an
10 expanded-function dental auxiliary who works under the direct
11 supervision of a dentist;

12 [~~P. "general supervision" means the authorization~~
13 ~~by a dentist of the procedures to be used by a dental~~
14 ~~hygienist, dental assistant or dental student and the execution~~
15 ~~of the procedures in accordance with a dentist's diagnosis and~~
16 ~~treatment plan at a time the dentist is not physically present~~
17 ~~and in facilities as designated by rule of the board;]~~

18 T. "general supervision" means a dentist's
19 authorization of the procedures that are executed:

20 (1) by a dental therapist, dental hygienist,
21 dental assistant or dental student while the dentist is not
22 physically present in the facility where a procedure is taking
23 place; and

24 (2) in accordance with the following:

25 (a) for a dental therapist, in

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1 accordance with the dental therapist's diagnosis and treatment
2 plan; and

3 (b) for a dental hygienist, dental
4 assistant or dental student, in accordance with a dentist's
5 diagnosis and treatment plan;

6 [Q-] U. "indirect supervision" means that a dentist
7 or dental therapist, or in certain settings a dental hygienist
8 or dental assistant certified in expanded functions, is present
9 in the treatment facility while authorized treatments are being
10 performed by a dental therapist, unlicensed graduate of a
11 dental therapy education program, dental hygienist, dental
12 assistant or dental student;

13 V. "joint committee" means the New Mexico dental
14 therapist joint committee that makes recommendations to the
15 board relating to the regulation of the practice of dental
16 therapy and licensure of dental therapists;

17 [R-] W. "non-dentist owner" means an individual not
18 licensed as a dentist in New Mexico or a corporate entity not
19 owned by a majority interest of a New Mexico licensed dentist
20 that employs or contracts with a dentist, dental therapist or
21 dental hygienist to provide dental, dental therapy or dental
22 hygiene services;

23 [S-] X. "palliative procedures" means nonsurgical,
24 reversible procedures that are meant to alleviate pain and
25 stabilize acute or emergent problems; [~~and~~]

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1 Y. "store-and-forward technology" means electronic
2 information, imaging and communication, including interactive
3 audio, video and data communications, that is transferred or
4 recorded or otherwise stored for asynchronous use;

5 [~~F.~~] Z. "teledentistry" means a dentist's use of
6 health information technology in real time to provide limited
7 diagnostic and treatment planning services in cooperation with
8 another dentist, a dental therapist, a dental hygienist, a
9 community dental health coordinator or a student enrolled in a
10 program of study to become a dental assistant, dental hygienist,
11 dental therapist or dentist; and

12 AA. "telehealth" means the use of electronic
13 information, imaging and communication technologies, including
14 interactive audio, video and data communications, as well as
15 store-and-forward technologies, to provide and support health
16 care delivery, diagnosis, consultation treatment, transfer of
17 medical data and education."

18 **SECTION 3.** Section 61-5A-9 NMSA 1978 (being Laws 1994,
19 Chapter 55, Section 9, as amended by Laws 2003, Chapter 408,
20 Section 5 and by Laws 2003, Chapter 409, Section 7) is amended
21 to read:

22 "61-5A-9. COMMITTEE CREATED--POWERS.--

23 A. There is created the nine-member "New Mexico
24 dental hygienists committee". The committee [~~shall be~~] is
25 administratively attached to the regulation and licensing

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1 department. The committee [~~shall consist~~] consists of five
2 dental hygienists, two dentists and two public members. The
3 dental hygienists shall be actively practicing and have been
4 licensed practitioners and residents of New Mexico for a period
5 of five years preceding the date of their appointment. The
6 dentists and public members shall be members of the board and
7 shall be elected annually to sit on the committee by those
8 members sitting on the board.

9 B. The governor may appoint the dental hygienists
10 from a list of names submitted by the New Mexico dental
11 hygienists association. There shall be one member from each
12 district. Members shall serve until their successors have been
13 appointed. No more than one member may be employed by or
14 receive remuneration from a dental or dental hygiene
15 educational institution.

16 C. Appointments for dental hygienist members shall
17 be for terms of five years. Appointments shall be made so that
18 the term of one dental hygienist expires on July 1 of each
19 year.

20 D. A committee member failing to attend three
21 committee or board meetings, either regular or special, during
22 the committee member's term shall automatically be removed as a
23 member of the committee unless excused from attendance by the
24 committee for good cause shown. Members of the committee not
25 sitting on the board shall not be required or allowed to attend

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1 board disciplinary hearings.

2 E. A committee member shall not serve more than two
3 full terms on any state-chartered board whose responsibility
4 includes the regulation of practice or licensure of dentistry
5 or dental hygiene in New Mexico. A partial term of three or
6 more years shall be considered a full term.

7 F. In the event of a vacancy, the secretary of the
8 committee shall immediately notify the governor, the committee
9 and board members and the New Mexico dental hygienists
10 association of the reason for its occurrence and action taken
11 by the committee, so as to expedite appointment of a new
12 committee member.

13 G. The committee shall meet at least four times
14 every year, and no more than two meetings shall be public rules
15 hearings. Regular meetings shall not be more than one hundred
16 twenty days apart. The committee may also hold special
17 meetings and emergency meetings in accordance with the rules of
18 the board and committee, upon written notification to all
19 members of the committee and the board.

20 H. Members of the committee shall be reimbursed as
21 provided in the Per Diem and Mileage Act and shall receive no
22 other compensation, perquisite or allowance.

23 I. A simple majority of the committee members
24 currently serving shall constitute a quorum, provided at least
25 two of that quorum are not hygienist members and three are

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1 hygienist members.

2 J. The committee shall elect officers annually as
3 deemed necessary to administer its duties and as provided in
4 rules [~~and regulations~~] of the board and committee.

5 K. The committee shall make recommendations to the
6 board, for ratification pursuant to Section 61-5A-11 NMSA 1978,
7 relating to the regulation, examination, licensing, continuing
8 education, scope of practice, standard of care, issuance of
9 investigative subpoenas and discipline of dental hygienists.

10 L. In accordance with the Uniform Licensing Act,
11 for any cause stated in the Dental Health Care Act, the
12 committee may make its recommendations to the board in matters
13 involving the granting, denial, review, censure, reprimand,
14 fining and placement on probation and stipulation, suspension
15 and revocation of licenses to practice dental hygiene."

16 SECTION 4. Section 61-5A-10 NMSA 1978 (being Laws 1994,
17 Chapter 55, Section 10, as amended) is amended to read:

18 "61-5A-10. POWERS AND DUTIES OF THE BOARD [~~AND~~
19 ~~COMMITTEE~~].--In addition to any other authority provided by
20 law, the board [~~and the committee, when designated~~] shall:

21 A. enforce and administer the provisions of the
22 Dental Health Care Act and the Dental Amalgam Waste Reduction
23 Act;

24 B. adopt, publish, file and revise, in accordance
25 with the Uniform Licensing Act and the State Rules Act, all

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1 rules as may be necessary to:

2 (1) regulate the examination and licensure of
3 dentists, [~~and, through the committee, regulate the examination~~
4 ~~and licensure of~~] dental therapists and dental hygienists;

5 (2) provide for the examination and
6 certification of dental assistants by the board;

7 (3) provide for the regulation of dental
8 technicians by the board;

9 (4) regulate the practice of dentistry, [~~and~~]
10 dental assisting, [~~and, through the committee, regulate the~~
11 ~~practice of~~] dental therapy and dental hygiene; and

12 (5) provide for the regulation and licensure
13 of non-dentist owners by the board;

14 C. adopt and use a seal;

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

18 E. keep an accurate record of all meetings,
19 receipts and disbursements;

20 F. grant, deny, review, suspend and revoke licenses
21 and certificates to practice dentistry, dental assisting, [~~and,~~
22 ~~through the committee~~] dental therapy and dental hygiene and
23 censure, reprimand, fine and place on probation and stipulation
24 dentists, dental assistants, [~~and, through the committee~~]
25 dental therapists and dental hygienists, in accordance with the

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1 Uniform Licensing Act for any cause stated in the Dental Health
2 Care Act and the Dental Amalgam Waste Reduction Act;

3 G. grant, deny, review, suspend and revoke licenses
4 to own dental practices and censure, reprimand, fine and place
5 on probation and stipulation non-dentist owners, in accordance
6 with the Uniform Licensing Act, for any cause stated in the
7 Dental Health Care Act and the Dental Amalgam Waste Reduction
8 Act;

9 H. maintain records of the name, address, license
10 number and such other demographic data as may serve the needs
11 of the board of licensees, together with a record of license
12 renewals, suspensions, revocations, probations, stipulations,
13 censures, reprimands and fines. The board shall make available
14 composite reports of demographic data but shall limit public
15 access to information regarding individuals to their names,
16 addresses, license numbers and license actions or as required
17 by statute;

18 I. hire and contract for services from persons as
19 necessary to carry out the board's duties;

20 J. establish ad hoc committees whose members shall
21 be appointed by the chair with the advice and consent of the
22 board or committee and shall include at least one member of the
23 board or committee as it deems necessary for carrying on its
24 business;

25 K. have the authority to pay per diem and mileage

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1 to individuals who are appointed by the board or the committee
2 to serve on ad hoc committees;

3 L. have the authority to hire or contract with
4 investigators to investigate possible violations of the Dental
5 Health Care Act and the Dental Amalgam Waste Reduction Act;

6 M. have the authority to issue investigative
7 subpoenas prior to the issuance of a notice of contemplated
8 action for the purpose of investigating complaints against
9 dentists, dental assistants, [~~and, through the committee~~]
10 dental therapists and dental hygienists licensed under the
11 Dental Health Care Act and the Dental Amalgam Waste Reduction
12 Act;

13 N. have the authority to sue or be sued and to
14 retain the services of an attorney at law for counsel and
15 representation regarding the carrying out of the board's
16 duties;

17 O. have the authority to create and maintain a
18 formulary, in consultation with the board of pharmacy, of
19 medications that a dental therapist or dental hygienist may
20 prescribe, administer or dispense in accordance with rules the
21 board has promulgated; and

22 P. establish continuing education or continued
23 competency requirements for dentists, certified dental
24 assistants in expanded functions, dental technicians, [~~and,~~
25 ~~through the committee~~] dental therapists and dental

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1 hygienists."

2 SECTION 5. A new section of the Dental Health Care Act is
3 enacted to read:

4 "[NEW MATERIAL] NEW MEXICO DENTAL THERAPIST JOINT
5 COMMITTEE--CREATION--MEMBERSHIP.--

6 A. There is created the thirteen-member "New Mexico
7 dental therapist joint committee". The joint committee shall
8 consist of thirteen members, including:

9 (1) five current members of the board who are
10 dentists;

11 (2) five current members of the New Mexico
12 dental hygienists committee who are dental hygienists;

13 (3) one dental therapist or dental therapy
14 representative; and

15 (4) two current public members of the board.

16 B. The joint committee shall make recommendations
17 to the board, for ratification pursuant to Section 61-5A-11
18 NMSA 1978, relating to the regulation, examination, licensing,
19 continuing education, scope of practice, standard of care,
20 issuance of investigative subpoenas and discipline of dental
21 therapists.

22 C. Within thirty days of the effective date of this
23 2015 act, the governor shall appoint the dental therapist or
24 dental therapy representative member of the joint committee
25 from a list of names submitted by New Mexico health resources,

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1 inc., health action New Mexico, a state or regional dental
2 therapists' association or a state institution of higher
3 education that has a dental therapy education program.

4 D. Appointment of the dental therapist or dental
5 therapy representative member shall be for a term of five
6 years.

7 E. A quorum at a meeting of the joint committee
8 shall include the dental therapist member or dental therapy
9 representative member of the joint committee.

10 F. In accordance with the Uniform Licensing Act,
11 for any cause stated in the Dental Health Care Act, the joint
12 committee may make its recommendations to the board in matters
13 involving the granting, denial, review, censure, reprimand,
14 fining and placement on probation and stipulation, suspension
15 and revocation of licenses to practice dental therapy.

16 G. By August 1, 2015, the joint committee shall
17 recommend for adoption and promulgation by the board rules
18 relating to the practice of dental therapy."

19 SECTION 6. Section 61-5A-11 NMSA 1978 (being Laws 1994,
20 Chapter 55, Section 11) is amended to read:

21 "61-5A-11. RATIFICATION OF DENTAL HYGIENIST COMMITTEE
22 RECOMMENDATIONS--JOINT COMMITTEE RECOMMENDATIONS.--

23 A. The board shall ratify the recommendations of
24 the dental hygienist committee or the joint committee unless
25 the board makes a specific finding that a recommendation is:

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- 1 (1) beyond the jurisdiction of the dental
2 hygienist committee or the joint committee;
3 (2) an undue financial impact upon the board;
4 or
5 (3) not supported by the record.

6 B. The board shall provide the necessary
7 ~~[expenditures]~~ funding for expenses incurred by the dental
8 hygienist committee, ~~[and]~~ the joint committee or the board in
9 implementing and executing ~~[the]~~ ratified recommendations."

10 SECTION 7. Section 61-5A-14.1 NMSA 1978 (being Laws 2011,
11 Chapter 113, Section 10) is amended to read:

12 "61-5A-14.1. PUBLIC-SERVICE LICENSURE.-- ~~[The board or the~~
13 ~~committee may issue a temporary public-service license to~~
14 ~~practice dentistry or dental hygiene to an applicant who is~~
15 ~~licensed to practice dentistry or dental hygiene in another~~
16 ~~state or territory of the United States or who is enrolled as a~~
17 ~~dental resident in a residency program in this state and the~~
18 ~~commission on dental accreditation has accredited that program.~~
19 ~~That applicant shall be otherwise qualified to practice~~
20 ~~dentistry or dental hygiene in this state. The following~~
21 ~~provisions shall apply:~~

22 A. ~~the applicant for public-service licensure shall~~
23 ~~hold a valid license in good standing in another state or~~
24 ~~territory of the United States or be enrolled as a dental~~
25 ~~resident in a residency program in the state that the~~

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1 ~~commission on dental accreditation has accredited;~~

2 ~~B. a temporary public-service license issued to a~~
3 ~~dental residency student who has not taken and passed a~~
4 ~~clinical examination accepted by the board shall not be renewed~~
5 ~~after the student has completed the residency program;~~

6 ~~C. the applicant shall practice dentistry or dental~~
7 ~~hygiene under the sponsorship of or in association with a~~
8 ~~licensed New Mexico dentist or dental hygienist;~~

9 ~~D. the public-service license may be issued for~~
10 ~~those activities as stipulated by the board or committee in the~~
11 ~~rules of the board. It may be issued upon written application~~
12 ~~of the applicant when accompanied by such proof of~~
13 ~~qualifications as the secretary-treasurer of the board or~~
14 ~~committee, in the secretary-treasurer's discretion, may~~
15 ~~require. Public-service licensees shall engage in only those~~
16 ~~activities specified on the public-service license for the time~~
17 ~~designated, and the public-service license shall identify the~~
18 ~~licensed New Mexico dentist or dental hygienist who will~~
19 ~~sponsor or associate with the applicant during the time the~~
20 ~~applicant practices dentistry or dental hygiene in New Mexico;~~

21 ~~E.]~~ A. The board may issue a temporary public-
22 service license to practice dentistry to an applicant who is
23 licensed to practice dentistry in another state or territory of
24 the United States or who is enrolled as a dental resident in a
25 residency program in the state that the commission on dental

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1 accreditation has accredited. The applicant shall be otherwise
2 qualified to practice dentistry in the state. The board shall
3 not renew the temporary public-service license of a dental
4 residency student who has completed the student's residency
5 program. The applicant shall practice dentistry under the
6 sponsorship of or in association with a licensed New Mexico
7 dentist, who shall be identified on the public-service license.
8 A public-service licensee shall engage only in those activities
9 the board specifies on the public-service license. The board
10 may issue the public-service license upon an applicant's
11 written application when accompanied by proof of qualifications
12 as specified in board rules.

13 B. Upon the recommendation of the joint committee,
14 the board shall issue a temporary public-service license to
15 practice dental therapy to an applicant who is licensed to
16 practice dental therapy in another state or another territory
17 of the United States. The applicant shall be otherwise
18 qualified to practice dental therapy in the state. The
19 applicant shall practice dental therapy under the sponsorship
20 of or in association with a licensed New Mexico dentist, dental
21 therapist or dental hygienist, who shall be identified on the
22 public-service license. A public-service licensee shall engage
23 only in those activities specified on the public-service
24 license. Upon the joint committee's recommendation, the board
25 shall issue the public-service license upon an applicant's

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1 written application when accompanied by proof of qualifications
2 as specified in board rules.

3 C. Upon the recommendation of the committee, the
4 board shall issue a temporary public-service license to
5 practice dental hygiene to an applicant who is licensed to
6 practice dental hygiene in another state or another territory
7 of the United States. The applicant shall be otherwise
8 qualified to practice dental hygiene in the state. The
9 applicant shall practice dental hygiene under the sponsorship
10 of or in association with a licensed New Mexico dentist, dental
11 therapist or dental hygienist, who shall be identified on the
12 public-service license. A public-service licensee shall engage
13 only in those activities specified on the public-service
14 license. Upon the recommendation of the committee, the board
15 shall issue the public-service license upon an applicant's
16 written application when accompanied by proof of qualifications
17 as specified in board rules.

18 D. The following provisions shall apply to any
19 public-service licensure granted pursuant to this section:

20 (1) a public-service license shall be valid
21 only for the time designated on the public-service license;

22 (2) the sponsoring or associating dentist,
23 dental therapist or dental hygienist shall submit an affidavit
24 attesting to the qualifications of the applicant and the
25 activities the applicant will perform; and

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1 [~~F.~~] (3) the public-service license shall be
2 issued for a period not to exceed twelve months and may be
3 renewed upon application and payment of required fees.

4 [~~G.—the~~] E. An application for a public-service
5 license under this section shall be accompanied by a license
6 fee.

7 [~~H.—the~~] F. A public-service licensee shall be
8 required to comply with the Dental Health Care Act and all
9 rules promulgated pursuant to that act. [~~and~~

10 ~~F.~~] G. A dentist, dental therapist or dental
11 hygienist providing dental care services to a charitable dental
12 care project may provide dental care pursuant to a presumptive
13 temporary public-service license valid for a period of no
14 longer than three days. The dentist, dental therapist or
15 dental hygienist shall be otherwise subject to the provisions
16 of this section and board rules governing public-service
17 licensure. This presumptive temporary public-service license
18 is only valid when:

19 (1) the dentist, dental therapist or dental
20 hygienist receives no compensation;

21 (2) the project is sponsored by an entity that
22 meets the board's definition of "entity" and that the board has
23 approved to undertake the charitable project;

24 (3) the dental care is performed within the
25 limits of the license that the dentist, dental therapist or

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1 dental hygienist holds in another jurisdiction;

2 (4) upon request, the out-of-state dentist,
3 dental therapist or dental hygienist produces any document
4 necessary to verify the dentist's, dental therapist's or dental
5 hygienist's credentials; and

6 (5) the out-of-state dentist, dental therapist
7 or dental hygienist works under the indirect supervision of a
8 dentist, dental therapist or dental hygienist licensed in this
9 state."

10 SECTION 8. Section 61-5A-15 NMSA 1978 (being Laws 1994,
11 Chapter 55, Section 15) is amended to read:

12 "61-5A-15. CONTENT OF [~~LICENSE~~] LICENSES AND
13 CERTIFICATES--DISPLAY OF [~~LICENSE--RENEWALS--RETIRE LICENSE~~]
14 LICENSES AND CERTIFICATES.--

15 A. All dental licenses issued by the board shall
16 bear:

- 17 (1) a serial number;
- 18 (2) the full name of the licensee;
- 19 (3) the date of issue;
- 20 (4) the seal of the board;
- 21 (5) if the license is a specialty license, the
22 specialty to which practice is limited;
- 23 (6) the signatures of a majority of the board
24 members; and
- 25 (7) the attestation of the board president and

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1 secretary.

2 B. All dental therapist licenses issued by the
3 board shall bear:

- 4 (1) a serial number;
- 5 (2) the full name of the licensee;
- 6 (3) the date of issue;
- 7 (4) the seal of the board;
- 8 (5) the signatures of a majority of the joint
9 committee members; and
- 10 (6) the attestation of the board president and
11 secretary.

12 [~~B.~~] C. All dental hygienist licenses issued by the
13 board shall bear:

- 14 (1) a serial number;
- 15 (2) the full name of the licensee;
- 16 (3) the date of issue;
- 17 (4) the seal of the board;
- 18 (5) the signatures of a majority of the
- 19 committee members; and
- 20 (6) the attestation of the board president and
- 21 secretary.

22 [~~C.~~] D. Certificates issued to dental assistants
23 shall bear:

- 24 (1) a serial number;
- 25 (2) the full name of the assistant;

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- 1 (3) the date of issue;
- 2 (4) the date of expiration;
- 3 (5) the expanded functions certified to
- 4 perform; and
- 5 (6) the attestation of the board secretary.

6 ~~[D-]~~ E. All licenses and certificates shall be
7 displayed in a conspicuous place in the office where the holder
8 practices. The license or certificate shall, upon request, be
9 exhibited to any ~~[of the members]~~ member or authorized agent of
10 the board, the joint committee or the committee ~~[or its~~
11 ~~authorized agent]~~."

12 SECTION 9. Section 61-5A-21 NMSA 1978 (being Laws 1994,
13 Chapter 55, Section 21, as amended) is amended to read:

14 "61-5A-21. DISCIPLINARY PROCEEDINGS--APPLICATION OF
15 UNIFORM LICENSING ACT.--

16 A. In accordance with the Uniform Licensing Act and
17 rules of the board, the board ~~[and committee]~~ may fine and may
18 deny, revoke, suspend, stipulate or otherwise limit any license
19 or certificate, including those of licensed non-dentist owners,
20 held or applied for under the Dental Health Care Act, upon
21 findings by the board ~~[or the committee]~~ that the licensee,
22 certificate holder or applicant:

- 23 (1) is guilty of fraud or deceit in procuring
- 24 or attempting to procure a license or certificate;
- 25 (2) has been convicted of a crime punishable

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1 by incarceration in a federal prison or state penitentiary;
2 provided a copy of the record of conviction, certified to by
3 the clerk of the court entering the conviction, shall be
4 conclusive evidence of such conviction;

5 (3) is guilty of gross incompetence or gross
6 negligence, as defined by rules of the board, in the practice
7 of dentistry, dental therapy, dental hygiene or dental
8 assisting;

9 (4) is habitually intemperate or is addicted
10 to the use of habit-forming drugs or is addicted to any vice to
11 such degree as to render the licensee unfit to practice;

12 (5) is guilty of unprofessional conduct as
13 defined by rule;

14 (6) is guilty of any violation of the
15 Controlled Substances Act;

16 (7) has violated any provisions of the Dental
17 Health Care Act or rule or regulation of the board [~~or the~~
18 ~~committee~~];

19 (8) is guilty of willfully or negligently
20 practicing beyond the scope of licensure;

21 (9) is guilty of practicing dentistry, dental
22 therapy or dental hygiene without a license or aiding or
23 abetting the practice of dentistry, dental therapy or dental
24 hygiene by a person not licensed under the Dental Health Care
25 Act;

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1 (10) is guilty of obtaining or attempting to
2 obtain any fee by fraud or misrepresentation or has otherwise
3 acted in a manner or by conduct likely to deceive, defraud or
4 harm the public;

5 (11) is guilty of patient abandonment;

6 (12) is guilty of failing to report to the
7 board any adverse action taken against the licensee by a
8 licensing authority, peer review body, malpractice insurance
9 carrier or other entity as defined in rules of the board [~~and~~
10 ~~the committee~~];

11 (13) has had a license, certificate or
12 registration to practice as a dentist, dental therapist or
13 dental hygienist revoked, suspended, denied, stipulated or
14 otherwise limited in any jurisdiction, territory or possession
15 of the United States or another country for actions of the
16 licensee similar to acts described in this subsection. A
17 certified copy of the decision of the jurisdiction taking such
18 disciplinary action will be conclusive evidence; or

19 (14) has failed to furnish the board, its
20 investigators or its representatives with information requested
21 by the board, the joint committee or the committee in the
22 course of an official investigation.

23 B. Disciplinary proceedings may be instituted by
24 sworn complaint by any person, including a board, joint
25 committee or committee member, and shall conform with the

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1 provisions of the Uniform Licensing Act.

2 ~~[G. Licensees and certificate holders shall bear~~
3 ~~the costs of disciplinary proceedings unless exonerated.~~

4 ~~D. Any person filing a sworn complaint shall be~~
5 ~~immune from liability arising out of civil action if the~~
6 ~~complaint is filed in good faith and without actual malice.~~

7 ~~E.]~~ C. Licensees whose licenses are in a
8 probationary status shall pay reasonable expenses for
9 maintaining probationary status, including but not limited to
10 laboratory costs when laboratory testing of biological fluids
11 or accounting costs when audits are included as a condition of
12 probation."

13 **SECTION 10.** Section 61-5A-24 NMSA 1978 (being Laws 1994,
14 Chapter 55, Section 24) is amended to read:

15 "61-5A-24. INJUNCTION TO STOP UNLICENSED DENTAL, DENTAL
16 THERAPY OR DENTAL HYGIENE PRACTICE.--

17 A. The attorney general, the district attorney, the
18 board, the joint committee, the committee or any citizen of any
19 county where any person practices dentistry, dental therapy or
20 dental hygiene without possessing a valid license to do so may,
21 in accordance with the laws of New Mexico governing
22 injunctions, maintain an action in the name of the state to
23 enjoin such person from practicing dentistry, dental therapy or
24 dental hygiene until a valid license to practice dentistry,
25 dental therapy or dental hygiene is secured [~~and~~]. Any person

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1 who has been enjoined who violates the injunction shall be
2 punished for contempt of court; provided that the injunction
3 does not relieve any person practicing dentistry, dental
4 therapy or dental hygiene without a valid license from a
5 criminal prosecution [~~therefore~~] as provided by law.

6 B. In charging any person in a complaint for
7 injunction, or in an affidavit, information or indictment with
8 practicing dentistry, dental therapy or dental hygiene without
9 a valid license, it is sufficient to charge that the person
10 did, upon a certain day and in a certain county, engage in the
11 practice of dentistry, dental therapy or dental hygiene without
12 a valid license, without averring any further or more
13 particular facts concerning the same."

14 SECTION 11. A new section of the Dental Health Care Act
15 is enacted to read:

16 "[NEW MATERIAL] DENTAL THERAPY PRACTICE--SCOPE OF
17 PRACTICE.--

18 A. As used in the Dental Health Care Act, "dental
19 therapy practice" means the application of the science of the
20 prevention and treatment of oral disease through education,
21 prevention, assessment, diagnosis and clinical and other
22 therapeutic services under the general supervision of a
23 dentist. "Dental therapy practice" includes the practice of
24 dental hygiene, as provided in Subsection B of Section 61-5A-4
25 NMSA 1978, and:

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- 1 (1) behavioral management, oral health
- 2 instruction and disease prevention education, including
- 3 nutritional counseling and dietary analysis;
- 4 (2) diagnosis of dental disease and the
- 5 formulation of an individualized treatment plan, including
- 6 caries risk assessment;
- 7 (3) preliminary charting of the oral cavity;
- 8 (4) prescribing, exposing and interpreting
- 9 radiographs;
- 10 (5) mechanical polishing of teeth and
- 11 restorations;
- 12 (6) application of topical preventive or
- 13 prophylactic agents, including fluoride varnishes and pit and
- 14 fissure sealants;
- 15 (7) pulp vitality testing;
- 16 (8) application of desensitizing medication or
- 17 resin;
- 18 (9) fabrication of athletic mouthguards;
- 19 (10) placement of temporary restoration;
- 20 (11) tissue conditioning and soft reline;
- 21 (12) traumatic restorative therapy;
- 22 (13) dressing changes;
- 23 (14) emergency replacement and stabilization
- 24 of an avulsed or dislodged tooth to prevent the unintended loss
- 25 of a tooth or teeth;

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- 1 (15) administration of local anesthetic;
2 (16) extractions of primary teeth;
3 (17) extractions of permanent teeth that are
4 not impacted and that do not need sectioning or an incision for
5 removal;
6 (18) emergency palliative treatment of dental
7 pain;
8 (19) placement and removal of space
9 maintainers;
10 (20) cavity preparation;
11 (21) restoration of primary and permanent
12 teeth;
13 (22) placement of temporary crowns;
14 (23) preparation and placement of pre-formed
15 crowns;
16 (24) pulpotomy of primary teeth;
17 (25) indirect and direct pulp capping on
18 primary and permanent teeth;
19 (26) suture removal;
20 (27) brush biopsies;
21 (28) simple repairs and adjustments to
22 removable prosthetic appliances;
23 (29) re-cementing of permanent crowns;
24 (30) prevention of potential orthodontic
25 problems by early identification and appropriate referral;

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1 (31) prevention, identification and management
2 of dental and medical emergencies and maintenance of current
3 basic life-support certification;

4 (32) dispensing and administration of
5 analgesics, anti-inflammatory medications and antibiotics only
6 within the parameters of a dental therapist management
7 agreement; and

8 (33) other related services as permitted by
9 board rules.

10 B. A dental therapist shall practice under the
11 general supervision of a dentist pursuant to a written
12 supervision agreement between the dentist and the dental
13 therapist. A dentist providing general supervision of a dental
14 therapist shall supervise no more than four dental therapists
15 at one time. The board shall adopt and promulgate rules to
16 establish minimum requirements for dental therapist management
17 agreements.

18 C. General supervision of a dental therapist
19 by a dentist includes communication between the dental
20 therapist and dentist by use of telehealth.

21 D. A dental therapist may provide dental therapy
22 services in private and public dental and medical offices,
23 public and community medical facilities, federal Indian health
24 service facilities, schools, hospitals and long-term care
25 facilities and other settings located in dental health

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1 professional shortage areas as established in rules that the
2 board has adopted and promulgated.

3 E. After five consecutive years of employment with
4 the same employer as a dental therapist, fifteen percent of the
5 patients that the dental therapist serves shall be medicaid
6 recipients.

7 F. To practice under the general supervision of a
8 dentist, a dental therapist shall enter into a dental therapist
9 management agreement with a dentist. The dental therapist
10 management agreement shall set forth the scope of practice and
11 conditions under which the dentist will provide general
12 supervision of the dental therapist. A dental therapist
13 management agreement shall not be subject to board or joint
14 committee approval. The dental therapist management agreement
15 shall be:

16 (1) submitted annually to the joint committee;

17 and

18 (2) signed and maintained by the dentist and
19 dental therapist.

20 G. A dentist and a dental therapist shall notify
21 the joint committee upon the dissolution of their dental
22 therapist management agreement.

23 H. A dental therapist may supervise under direct or
24 indirect supervision dental assistants and dental hygienists.
25 The dental therapist management agreement shall set forth the

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1 scope of practice and conditions under which the dental
2 therapist may supervise dental assistants and dental
3 hygienists."

4 SECTION 12. A new section of the Dental Health Care Act
5 is enacted to read:

6 "[NEW MATERIAL] DENTAL THERAPISTS--LICENSURE--UNAUTHORIZED
7 PRACTICE--IMPAIRED LICENSEES--DISCIPLINE--PENALTIES.--

8 A. To be licensed as a dental therapist, an
9 applicant shall:

10 (1) be licensed as a dental hygienist;

11 (2) have passed a written examination covering
12 the laws and rules for practice in the state; and

13 (3) have submitted, to the joint committee for
14 its approval and recommendation, proof:

15 (a) of graduation and receipt of a
16 degree from a dental therapy education program that provides a
17 competency-based curriculum, developed in partnership with an
18 accredited institution of higher education;

19 (b) of passage of a competency-based
20 examination given by a nationally recognized regional testing
21 agency if available or, if not available, by an institution of
22 higher education with a dental therapy education program; and

23 (c) after graduation from a dental
24 therapist competency-based education program, of having
25 completed a minimum of four hundred additional clinical hours

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1 under the indirect supervision of a dentist.

2 B. Upon notification from the dental therapy
3 education program that the dental therapist applicant has
4 graduated from the education program and passed the
5 competency-based examination, the board, in accordance with the
6 joint committee's recommendation, shall issue a permit for the
7 applicant to practice during the applicant's requirement to
8 complete four hundred additional clinical hours pursuant to
9 Subparagraph (c) of Paragraph (3) of Subsection A of this
10 section.

11 C. In accordance with the joint committee's
12 recommendation, the board shall issue a license to practice as
13 a dental therapist without a practical or clinical examination
14 to an applicant who is a licensed dental therapist by
15 examination under the laws of another state or territory of the
16 United States; provided that:

17 (1) the applicant's dental therapy license has
18 been in good standing in that jurisdiction for the two years
19 immediately preceding the application for licensure;

20 (2) the applicant has a valid license to
21 practice dental hygiene in that jurisdiction; and

22 (3) the applicant meets the requirements
23 relating to licensure as a dental therapist pursuant to the
24 Dental Health Care Act, including payment of appropriate fees
25 and passing of an examination covering the laws and rules of

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1 practice in the state.

2 D. After an applicant has met the qualifications
3 set forth in Subsections A through C of this section, the
4 board, in accordance with the joint committee's recommendation,
5 shall issue the applicant a license to practice as a dental
6 therapist.

7 E. A dental therapist shall renew the dental
8 therapist's license triennially in accordance with board rules.

9 F. A person who practices as a dental therapist or
10 who attempts to practice as a dental therapist in violation of
11 the provisions of the Dental Health Care Act or without a
12 license entitling the person to practice as a dental therapist
13 in the state is guilty of a misdemeanor pursuant to Section
14 31-19-1 NMSA 1978. Each occurrence of practicing as a dental
15 therapist or attempting to practice as a dental therapist
16 without complying with the Dental Health Care Act shall be a
17 separate violation.

18 G. Nothing in this section shall preclude an
19 individual from pursuing a degree in a combined dental therapy
20 and dental hygiene education program.

21 H. By August 1, 2015, the joint committee shall
22 establish rules relating to the practice of dental therapy in
23 accordance with the Dental Health Care Act. By December 31,
24 2015, the board shall ratify, adopt and promulgate the rules
25 the joint committee has established pursuant to this section,

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1 unless the board finds good cause not to ratify the rules that
2 the joint committee recommends because the rules:

3 (1) are beyond the jurisdiction of the
4 committee;

5 (2) will impose an undue financial impact upon
6 the board; or

7 (3) are not supported by the record.

8 I. In the event that the board has failed, without
9 good cause as described in Subsection H of this section, by
10 December 31, 2015 to ratify, adopt and promulgate rules the
11 joint committee has established pursuant to this section, the
12 board shall be deemed to have adopted and shall promulgate
13 those rules.

14 J. The joint committee shall establish, and, unless
15 it finds due cause in accordance with the provisions of
16 Subsection H of this section, the board shall ratify, adopt and
17 promulgate rules to provide for the expedited issuance of a
18 dental therapy license to an applicant after that applicant has
19 received a license to practice dental hygiene.

20 K. For purposes of this section, "entity" means a
21 corporation, business trust, estate, trust, partnership,
22 limited liability company, association, organization, joint
23 venture or any legal or commercial entity. As used in the
24 Dental Health Care Act, "entity" excludes an individual or
25 natural person."

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1 SECTION 13. A new section of the Dental Health Care Act
2 is enacted to read:

3 "[NEW MATERIAL] FEES.--In accordance with the provisions
4 of Section 61-5A-11 NMSA 1978, the board shall establish a
5 schedule of fees for dental therapists that shall be equivalent
6 to fifty percent of the fees established for dental hygienists
7 pursuant to Section 61-5A-20 NMSA 1978."

8 SECTION 14. Section 7-9-93 NMSA 1978 (being Laws 2004,
9 Chapter 116, Section 6, as amended) is amended to read:

10 "7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR
11 SERVICES PROVIDED BY HEALTH CARE PRACTITIONER.--

12 A. Receipts from payments by a managed health care
13 provider or health care insurer for commercial contract
14 services or medicare part C services provided by a health care
15 practitioner that are not otherwise deductible pursuant to
16 another provision of the Gross Receipts and Compensating Tax
17 Act may be deducted from gross receipts, provided that the
18 services are within the scope of practice of the person
19 providing the service. Receipts from fee-for-service payments
20 by a health care insurer may not be deducted from gross
21 receipts. The deduction provided by this section shall be
22 separately stated by the taxpayer.

23 B. For the purposes of this section:

24 (1) "commercial contract services" means
25 health care services performed by a health care practitioner

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1 pursuant to a contract with a managed health care provider or
2 health care insurer other than those health care services
3 provided for medicare patients pursuant to Title 18 of the
4 federal Social Security Act or for medicaid patients pursuant
5 to Title 19 or Title 21 of the federal Social Security Act;

6 (2) "health care insurer" means a person that:

7 (a) has a valid certificate of authority
8 in good standing pursuant to the New Mexico Insurance Code to
9 act as an insurer, health maintenance organization or nonprofit
10 health care plan or prepaid dental plan; and

11 (b) contracts to reimburse licensed
12 health care practitioners for providing basic health services
13 to enrollees at negotiated fee rates;

14 (3) "health care practitioner" means:

15 (a) a chiropractic physician licensed
16 pursuant to the provisions of the Chiropractic Physician
17 Practice Act;

18 (b) a dentist, dental therapist or
19 dental hygienist licensed pursuant to the Dental Health Care
20 Act;

21 (c) a doctor of oriental medicine
22 licensed pursuant to the provisions of the Acupuncture and
23 Oriental Medicine Practice Act;

24 (d) an optometrist licensed pursuant to
25 the provisions of the Optometry Act;

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1 (e) an osteopathic physician licensed
2 pursuant to the provisions of Chapter 61, Article 10 NMSA 1978
3 or an osteopathic physician's assistant licensed pursuant to
4 the provisions of the Osteopathic Physicians' Assistants Act;

5 (f) a physical therapist licensed
6 pursuant to the provisions of the Physical Therapy Act;

7 (g) a physician or physician assistant
8 licensed pursuant to the provisions of Chapter 61, Article 6
9 NMSA 1978;

10 (h) a podiatrist licensed pursuant to
11 the provisions of the Podiatry Act;

12 (i) a psychologist licensed pursuant to
13 the provisions of the Professional Psychologist Act;

14 (j) a registered lay midwife registered
15 by the department of health;

16 (k) a registered nurse or licensed
17 practical nurse licensed pursuant to the provisions of the
18 Nursing Practice Act;

19 (l) a registered occupational therapist
20 licensed pursuant to the provisions of the Occupational Therapy
21 Act;

22 (m) a respiratory care practitioner
23 licensed pursuant to the provisions of the Respiratory Care
24 Act;

25 (n) a speech-language pathologist or

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1 audiologist licensed pursuant to the Speech-Language Pathology,
2 Audiology and Hearing Aid Dispensing Practices Act;

3 (o) a professional clinical mental
4 health counselor, marriage and family therapist or professional
5 art therapist licensed pursuant to the provisions of the
6 Counseling and Therapy Practice Act who has obtained a master's
7 degree or a doctorate;

8 (p) an independent social worker
9 licensed pursuant to the provisions of the Social Work Practice
10 Act; and

11 (q) a clinical laboratory that is
12 accredited pursuant to 42 U.S.C. Section 263a but that is not a
13 laboratory in a physician's office or in a hospital defined
14 pursuant to 42 U.S.C. Section 1395x;

15 (4) "managed health care provider" means a
16 person that provides for the delivery of comprehensive basic
17 health care services and medically necessary services to
18 individuals enrolled in a plan through its own employed health
19 care providers or by contracting with selected or participating
20 health care providers. "Managed health care provider" includes
21 only those persons that provide comprehensive basic health care
22 services to enrollees on a contract basis, including the
23 following:

- 24 (a) health maintenance organizations;
- 25 (b) preferred provider organizations;

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- 1 (c) individual practice associations;
- 2 (d) competitive medical plans;
- 3 (e) exclusive provider organizations;
- 4 (f) integrated delivery systems;
- 5 (g) independent physician-provider
- 6 organizations;
- 7 (h) physician hospital-provider
- 8 organizations; and
- 9 (i) managed care services organizations;
- 10 and

11 (5) "medicare part C services" means services
12 performed pursuant to a contract with a managed health care
13 provider for medicare patients pursuant to Title 18 of the
14 federal Social Security Act."

15 SECTION 15. Section 26-1-2 NMSA 1978 (being Laws 1967,
16 Chapter 23, Section 2, as amended) is amended to read:

17 "26-1-2. DEFINITIONS.--As used in the New Mexico Drug,
18 Device and Cosmetic Act:

19 A. "board" means the board of pharmacy or its duly
20 authorized agent;

21 B. "person" includes an individual, partnership,
22 corporation, association, institution or establishment;

23 C. "biological product" means a virus, therapeutic
24 serum, toxin, antitoxin or analogous product applicable to the
25 prevention, treatment or cure of diseases or injuries of humans

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1 and domestic animals, and, as used within the meaning of this
2 definition:

3 (1) a "virus" is interpreted to be a product
4 containing the minute living cause of an infectious disease and
5 includes filterable viruses, bacteria, rickettsia, fungi and
6 protozoa;

7 (2) a "therapeutic serum" is a product
8 obtained from blood by removing the clot or clot components and
9 the blood cells;

10 (3) a "toxin" is a product containing a
11 soluble substance poisonous to laboratory animals or humans in
12 doses of one milliliter or less of the product and, following
13 the injection of nonfatal doses into an animal, having the
14 property of or causing to be produced therein another soluble
15 substance that specifically neutralizes the poisonous substance
16 and that is demonstrable in the serum of the animal thus
17 immunized; and

18 (4) an "antitoxin" is a product containing the
19 soluble substance in serum or other body fluid of an immunized
20 animal that specifically neutralizes the toxin against which
21 the animal is immune;

22 D. "controlled substance" means a drug, substance
23 or immediate precursor enumerated in Schedules I through V of
24 the Controlled Substances Act;

25 E. "drug" means articles:

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- 1 (1) recognized in an official compendium;
- 2 (2) intended for use in the diagnosis, cure,
- 3 mitigation, treatment or prevention of disease in humans or
- 4 other animals and includes the domestic animal biological
- 5 products regulated under the federal Virus-Serum-Toxin Act,
- 6 37 Stat 832-833, 21 U.S.C. 151-158, and the biological products
- 7 applicable to humans regulated under Federal 58 Stat 690, as
- 8 amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended,
- 9 and 42 U.S.C. 262;
- 10 (3) other than food, that affect the structure
- 11 or any function of the human body or the bodies of other
- 12 animals; and
- 13 (4) intended for use as a component of
- 14 Paragraph (1), (2) or (3) of this subsection, but "drug" does
- 15 not include devices or their component parts or accessories;
- 16 F. "dangerous drug" means a drug, other than a
- 17 controlled substance enumerated in Schedule I of the Controlled
- 18 Substances Act, that because of a potentiality for harmful
- 19 effect or the method of its use or the collateral measures
- 20 necessary to its use is not safe except under the supervision
- 21 of a practitioner licensed by law to direct the use of such
- 22 drug and hence for which adequate directions for use cannot be
- 23 prepared. "Adequate directions for use" means directions under
- 24 which the layperson can use a drug or device safely and for the
- 25 purposes for which it is intended. A drug shall be dispensed

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1 only upon the prescription or drug order of a practitioner
2 licensed by law to administer or prescribe the drug if it:

3 (1) is a habit-forming drug and contains any
4 quantity of a narcotic or hypnotic substance or a chemical
5 derivative of such substance that has been found under the
6 federal act and the board to be habit forming;

7 (2) because of its toxicity or other potential
8 for harmful effect or the method of its use or the collateral
9 measures necessary to its use is not safe for use except under
10 the supervision of a practitioner licensed by law to administer
11 or prescribe the drug;

12 (3) is limited by an approved application by
13 Section 505 of the federal act to the use under the
14 professional supervision of a practitioner licensed by law to
15 administer or prescribe the drug;

16 (4) bears the legend: "Caution: federal law
17 prohibits dispensing without prescription.";

18 (5) bears the legend: "Caution: federal law
19 restricts this drug to use by or on the order of a licensed
20 veterinarian."; or

21 (6) bears the legend "RX only";

22 G. "counterfeit drug" means a drug that is
23 deliberately and fraudulently mislabeled with respect to its
24 identity, ingredients or sources. Types of such pharmaceutical
25 counterfeits may include:

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1 (1) "identical copies", which are counterfeits
2 made with the same ingredients, formulas and packaging as the
3 originals but not made by the original manufacturer;

4 (2) "look-alikes", which are products that
5 feature high-quality packaging and convincing appearances but
6 contain little or no active ingredients and may contain harmful
7 substances;

8 (3) "rejects", which are drugs that have been
9 rejected by the manufacturer for not meeting quality standards;
10 and

11 (4) "relabels", which are drugs that have
12 passed their expiration dates or have been distributed by
13 unauthorized foreign sources and may include placebos created
14 for late-phase clinical trials;

15 H. "device", except when used in Subsection P of
16 this section and in Subsection G of Section 26-1-3, Subsection
17 L and Paragraph (4) of Subsection A of Section 26-1-11 and
18 Subsection C of Section 26-1-24 NMSA 1978, means an instrument,
19 apparatus, implement, machine, contrivance, implant, in vitro
20 reagent or other similar or related article, including any
21 component, part or accessory, that is:

22 (1) recognized in an official compendium;

23 (2) intended for use in the diagnosis of
24 disease or other conditions or in the cure, mitigation,
25 treatment or prevention of disease in humans or other animals;

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1 or

2 (3) intended to affect the structure or a
3 function of the human body or the bodies of other animals and
4 that does not achieve any of its principal intended purposes
5 through chemical action within or on the human body or the
6 bodies of other animals and that is not dependent on being
7 metabolized for achievement of any of its principal intended
8 purposes;

9 I. "prescription" means an order given individually
10 for the person for whom prescribed, either directly from a
11 licensed practitioner or the practitioner's agent to the
12 pharmacist, including by means of electronic transmission, or
13 indirectly by means of a written order signed by the
14 prescriber, and bearing the name and address of the prescriber,
15 the prescriber's license classification, the name and address
16 of the patient, the name and quantity of the drug prescribed,
17 directions for use and the date of issue;

18 J. "practitioner" means a certified advanced
19 practice chiropractic physician, physician, doctor of oriental
20 medicine, dentist, veterinarian, euthanasia technician,
21 certified nurse practitioner, clinical nurse specialist,
22 pharmacist, pharmacist clinician, certified nurse-midwife,
23 physician assistant, prescribing psychologist, dental
24 therapist, dental hygienist or other person licensed or
25 certified to prescribe and administer drugs that are subject to

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1 the New Mexico Drug, Device and Cosmetic Act;

2 K. "cosmetic" means:

3 (1) articles intended to be rubbed, poured,
4 sprinkled or sprayed on, introduced into or otherwise applied
5 to the human body or any part thereof for cleansing,
6 beautifying, promoting attractiveness or altering the
7 appearance; and

8 (2) articles intended for use as a component
9 of any articles enumerated in Paragraph (1) of this subsection,
10 except that the term shall not include soap;

11 L. "official compendium" means the official United
12 States pharmacopoeia national formulary or the official
13 homeopathic pharmacopoeia of the United States or any
14 supplement to either of them;

15 M. "label" means a display of written, printed or
16 graphic matter upon the immediate container of an article. A
17 requirement made by or under the authority of the New Mexico
18 Drug, Device and Cosmetic Act that any word, statement or other
19 information appear on the label shall not be considered to be
20 complied with unless the word, statement or other information
21 also appears on the outside container or wrapper, if any, of
22 the retail package of the article or is easily legible through
23 the outside container or wrapper;

24 N. "immediate container" does not include package
25 liners;

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1 O. "labeling" means all labels and other written,
2 printed or graphic matter:

3 (1) on an article or its containers or
4 wrappers; or

5 (2) accompanying an article;

6 P. "misbranded" means a label to an article that is
7 misleading. In determining whether the label is misleading,
8 there shall be taken into account, among other things, not only
9 representations made or suggested by statement, word, design,
10 device or any combination of the foregoing, but also the extent
11 to which the label fails to reveal facts material in the light
12 of such representations or material with respect to
13 consequences that may result from the use of the article to
14 which the label relates under the conditions of use prescribed
15 in the label or under such conditions of use as are customary
16 or usual;

17 Q. "advertisement" means all representations
18 disseminated in any manner or by any means, other than by
19 labeling, for the purpose of inducing, or that are likely to
20 induce, directly or indirectly, the purchase of drugs, devices
21 or cosmetics;

22 R. "antiseptic", when used in the labeling or
23 advertisement of an antiseptic, shall be considered to be a
24 representation that it is a germicide, except in the case of a
25 drug purporting to be or represented as an antiseptic for

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1 inhibitory use as a wet dressing, ointment, dusting powder or
2 such other use as involves prolonged contact with the body;

3 S. "new drug" means a drug:

4 (1) the composition of which is such that the
5 drug is not generally recognized, among experts qualified by
6 scientific training and experience to evaluate the safety and
7 efficacy of drugs, as safe and effective for use under the
8 conditions prescribed, recommended or suggested in the labeling
9 thereof; or

10 (2) the composition of which is such that the
11 drug, as a result of investigation to determine its safety and
12 efficacy for use under such conditions, has become so
13 recognized, but that has not, otherwise than in such
14 investigations, been used to a material extent or for a
15 material time under such conditions;

16 T. "contaminated with filth" applies to a drug,
17 device or cosmetic not securely protected from dirt, dust and,
18 as far as may be necessary by all reasonable means, from all
19 foreign or injurious contaminations, or a drug, device or
20 cosmetic found to contain dirt, dust, foreign or injurious
21 contamination or infestation;

22 U. "selling of drugs, devices or cosmetics" shall
23 be considered to include the manufacture, production,
24 processing, packing, exposure, offer, possession and holding of
25 any such article for sale and the sale and the supplying or

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1 applying of any such article in the conduct of a drug or
2 cosmetic establishment;

3 V. "color additive" means a material that:

4 (1) is a dye, pigment or other substance made
5 by a process of synthesis or similar artifice or extracted,
6 isolated or otherwise derived, with or without intermediate or
7 final change of identity, from a vegetable, mineral, animal or
8 other source; or

9 (2) when added or applied to a drug or
10 cosmetic or to the human body or a part thereof, is capable,
11 alone or through reaction with other substances, of imparting
12 color thereto; except that such term does not include any
13 material that has been or hereafter is exempted under the
14 federal act;

15 W. "federal act" means the Federal Food, Drug and
16 Cosmetic Act;

17 X. "restricted device" means a device for which the
18 sale, distribution or use is lawful only upon the written or
19 oral authorization of a practitioner licensed by law to
20 administer, prescribe or use the device and for which the
21 federal food and drug administration requires special training
22 or skills of the practitioner to use or prescribe. This
23 definition does not include custom devices defined in the
24 federal act and exempt from performance standards or premarket
25 approval requirements under Section 520(b) of the federal act;

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1 Y. "prescription device" means a device that,
2 because of its potential for harm, the method of its use or the
3 collateral measures necessary to its use, is not safe except
4 under the supervision of a practitioner licensed in this state
5 to direct the use of such device and for which "adequate
6 directions for use" cannot be prepared, but that bears the
7 label: "Caution: federal law restricts this device to sale by
8 or on the order of a _____", the blank to be filled with
9 the word "physician", "physician assistant", "certified
10 advanced practice chiropractic physician", "doctor of oriental
11 medicine", "dentist", "veterinarian", "euthanasia technician",
12 "certified nurse practitioner", "clinical nurse specialist",
13 "pharmacist", "pharmacist clinician", "certified nurse-
14 midwife", "dental therapist" or "dental hygienist" or with the
15 descriptive designation of any other practitioner licensed in
16 this state to use or order the use of the device;

17 Z. "valid practitioner-patient relationship" means
18 a professional relationship, as defined by the practitioner's
19 licensing board, between the practitioner and the patient;

20 AA. "pedigree" means the recorded history of a
21 drug; and

22 BB. "drug order" means an order either directly
23 from a licensed practitioner or the practitioner's agent to the
24 pharmacist, including by means of electronic transmission or
25 indirectly by means of a written order signed by the licensed

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1 practitioner or the practitioner's agent, and bearing the name
2 and address of the practitioner and the practitioner's license
3 classification and the name and quantity of the drug or device
4 ordered for use at an inpatient or outpatient facility."

5 SECTION 16. Section 27-2-12 NMSA 1978 (being Laws 1973,
6 Chapter 376, Section 16, as amended) is amended to read:

7 "27-2-12. MEDICAL ASSISTANCE PROGRAMS.--

8 A. Consistent with the federal act and subject to
9 the appropriation and availability of federal and state funds,
10 the medical assistance division of the department may by rule
11 provide medical assistance, including the services of licensed
12 doctors of oriental medicine, licensed chiropractic physicians,
13 licensed dental therapists and licensed dental hygienists in
14 collaborating practice, to persons eligible for public
15 assistance programs under the federal act.

16 B. Subject to appropriation and availability of
17 federal, state or other funds received by the state from public
18 or private grants or donations, the medical assistance division
19 of the department may by rule provide medical assistance,
20 including assistance in the payment of premiums for medical or
21 long-term care insurance, to children up to the age of twelve
22 if not part of a sibling group; children up to the age of
23 eighteen if part of a sibling group that includes a child up to
24 the age of twelve; and pregnant women who are residents of the
25 state of New Mexico and who are ineligible for public

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1 assistance under the federal act. The department, in
2 implementing the provisions of this subsection, shall:

3 (1) establish rules that encourage pregnant
4 women to participate in prenatal care; and

5 (2) not provide a benefit package that exceeds
6 the benefit package provided to state employees."

7 SECTION 17. Section 59A-22-32 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 454, as amended) is amended to read:

9 "59A-22-32. FREEDOM OF CHOICE OF HOSPITAL AND
10 PRACTITIONER.--

11 A. Within the area and limits of coverage offered
12 an insured and selected by the insured in the application for
13 insurance, the right of a person to exercise full freedom of
14 choice in the selection of a hospital for hospital care or of a
15 practitioner of the healing arts or optometrist, psychologist,
16 podiatrist, physician assistant, certified nurse-midwife,
17 registered lay midwife, dental hygienist, dental therapist or
18 registered nurse in expanded practice, as defined in Subsection
19 B of this section, for treatment of an illness or injury within
20 that person's scope of practice shall not be restricted under
21 any new policy of health insurance, contract or health care
22 plan issued after June 30, 1967 in this state or in the
23 processing of a claim thereunder. A person insured or claiming
24 benefits under any such health insurance policy, contract or
25 health care plan providing within its coverage for payment of

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1 service benefits or indemnity for hospital care or treatment of
2 persons for the cure or correction of any physical or mental
3 condition shall be deemed to have complied with the
4 requirements of the policy, contract or health care plan as to
5 submission of proof of loss upon submitting written proof
6 supported by the certificate of any hospital currently licensed
7 by the department of health or any practitioner of the healing
8 arts or optometrist, psychologist, podiatrist, physician
9 assistant, certified nurse-midwife, registered lay midwife,
10 dental hygienist, dental therapist or registered nurse in
11 expanded practice.

12 B. As used in this section:

13 (1) "hospital care" means hospital service
14 provided through a hospital that is maintained by the state or
15 a political subdivision of the state or a place that is
16 currently licensed as a hospital by the department of health
17 and has accommodations for resident bed patients, a licensed
18 professional registered nurse always on duty or call, a
19 laboratory and an operating room where surgical operations are
20 performed, but "hospital care" does not include a convalescent
21 or nursing or rest home;

22 (2) "practitioner of the healing arts" means a
23 person holding a license or certificate authorizing the
24 licensee to offer or undertake to diagnose, treat, operate on
25 or prescribe for any human pain, injury, disease, deformity or

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1 physical or mental condition pursuant to:

2 (a) the Chiropractic Physician Practice
3 Act;

4 (b) the Dental Health Care Act;

5 (c) the Medical Practice Act;

6 (d) Chapter 61, Article 10 NMSA 1978;

7 and

8 (e) the Acupuncture and Oriental
9 Medicine Practice Act;

10 (3) "optometrist" means a person holding a
11 license provided for in the Optometry Act;

12 (4) "podiatrist" means a person holding a
13 license provided for in the Podiatry Act;

14 (5) "psychologist" means a person who is duly
15 licensed or certified in the state where the service is
16 rendered and has a doctoral degree in psychology and has had at
17 least two years of clinical experience in a recognized health
18 setting or has met the standards of the national register of
19 health service providers in psychology;

20 (6) "physician assistant" means a person who
21 is licensed by the New Mexico medical board to practice as a
22 physician assistant and who provides services to patients under
23 the supervision and direction of a licensed physician;

24 (7) "certified nurse-midwife" means a person
25 licensed by the board of nursing as a registered nurse and who

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1 is registered with the public health division of the department
2 of health as a certified nurse-midwife;

3 (8) "registered lay midwife" means a person
4 who practices lay midwifery and is registered as a registered
5 lay midwife by the public health division of the department of
6 health; ~~and~~

7 (9) "registered nurse in expanded practice"
8 means a person licensed by the board of nursing as a registered
9 nurse approved for expanded practice pursuant to the Nursing
10 Practice Act as a certified nurse practitioner, certified
11 registered nurse anesthetist, certified clinical nurse
12 specialist in psychiatric mental health nursing or clinical
13 nurse specialist in private practice and who has a master's
14 degree or doctorate in a defined clinical nursing [~~speciality~~]
15 specialty and is certified by a national nursing organization;

16 (10) "dental hygienist" means an individual
17 licensed to practice dental hygiene pursuant to the Dental
18 Health Care Act; and

19 (11) "dental therapist" means an individual
20 licensed to practice dental therapy pursuant to the Dental
21 Health Care Act.

22 C. This section shall apply to any such policy that
23 is delivered or issued for delivery in this state on or after
24 July 1, 1979 and to any existing group policy or plan on its
25 anniversary or renewal date after June 30, 1979 or at

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1 expiration of the applicable collective bargaining contract, if
2 any, whichever is later."

3 SECTION 18. Section 59A-47-28.4 NMSA 1978 (being Laws
4 2003, Chapter 343, Section 4) is amended to read:

5 "59A-47-28.4. COVERAGE FOR DENTAL THERAPISTS AND
6 COLLABORATIVE PRACTICE DENTAL HYGIENISTS.--An individual or
7 group subscriber contract delivered or issued for delivery in
8 New Mexico that, on a prepaid, service or indemnity basis,
9 provides for treatment of persons for the prevention, cure or
10 correction of any illness or physical or mental condition shall
11 include coverage for the services of a dental therapist and of
12 a dental hygienist in a collaborative practice pursuant to the
13 Dental Health Care Act."

14 SECTION 19. Section 61-5B-1 NMSA 1978 (being Laws 1994,
15 Chapter 55, Section 30) is amended to read:

16 "61-5B-1. SHORT TITLE.--~~[Sections 31 through 41 of this~~
17 ~~act]~~ Chapter 61, Article 5B NMSA 1978 shall be cited as the
18 "Impaired ~~[Dentists and]~~ Dental ~~[Hygienists]~~ Professionals
19 Act"."

20 SECTION 20. Section 61-5B-2 NMSA 1978 (being Laws 1994,
21 Chapter 55, Section 31, as amended) is amended to read:

22 "61-5B-2. DEFINITIONS.--As used in the Impaired ~~[Dentists~~
23 ~~and]~~ Dental ~~[Hygienists]~~ Professionals Act:

24 A. "board" means the New Mexico board of dental
25 health care;

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1 B. "dental hygienists committee" means the New
2 Mexico dental hygienists committee;

3 C. "dental therapy representative" means an
4 individual who:

5 (1) publicly supports or recommends the
6 practice of dental therapy in the state;

7 (2) has knowledge of the practice of dental
8 therapy or of the educational or licensing requirements for the
9 practice of dental therapy; and

10 (3) has been nominated by a representative of:

11 (a) New Mexico health resources, inc.;

12 (b) health action New Mexico;

13 (c) a state or regional dental
14 therapists' association; or

15 (d) an institution of higher education
16 located in New Mexico that has a dental therapist education
17 program;

18 [~~G.~~] D. "dentistry, dental therapy or dental
19 hygiene" means the practice of dentistry, dental therapy or
20 dental hygiene; [~~and~~]

21 E. "joint committee" means the New Mexico dental
22 therapist joint committee that makes recommendations to the
23 board relating to the regulation of the practice of dental
24 therapy and licensure of dental therapists; and

25 [~~D.~~] F. "licensee" means a dentist, dental

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1 therapist or dental hygienist licensed by the board."

2 SECTION 21. Section 61-5B-3 NMSA 1978 (being Laws 1994,
3 Chapter 55, Section 32) is amended to read:

4 "61-5B-3. GROUNDS FOR RESTRICTION, SUSPENSION,
5 REVOCATION, STIPULATION OR OTHER LIMITATION OF LICENSE OR
6 CERTIFICATE.--The license of any [~~dentist or dental~~
7 ~~hygienist~~] licensee to practice dentistry, dental therapy or
8 dental hygiene, or the certificate of a dental assistant to
9 practice dental assisting, in this state shall be subject to
10 restriction, suspension, revocation or stipulation or may
11 otherwise be limited in case of inability of the licensee or
12 certificate holder to practice with reasonable skill and
13 safety to patients by reason of one or more of the following:

14 A. mental illness;

15 B. physical illness, including but not limited to
16 deterioration through the aging process or loss of motor
17 skills;

18 C. habitual or excessive use or abuse of drugs,
19 as defined in the Controlled Substances Act; or

20 D. habitual or excessive use or abuse of
21 alcohol."

22 SECTION 22. Section 61-5B-4 NMSA 1978 (being Laws 1994,
23 Chapter 55, Section 33) is amended to read:

24 "61-5B-4. BOARD, JOINT COMMITTEE OR DENTAL HYGIENISTS
25 COMMITTEE--ADDITIONAL POWERS AND DUTIES AS RELATED TO THE

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1 IMPAIRED [~~DENTISTS AND~~] DENTAL [~~HYGIENISTS~~] PROFESSIONALS
2 ACT.--

3 A. If the board, joint committee or dental
4 hygienists committee has reasonable cause to believe that a
5 [~~person licensed to practice dentistry or dental hygiene~~]
6 licensee is unable to practice with reasonable skill and
7 safety to patients because of a condition described in the
8 Impaired [~~Dentists and~~] Dental [~~Hygienists~~] Professionals
9 Act, the board shall cause an examination of [~~such~~] the
10 licensee to be made and shall, following the examination,
11 take appropriate action within the provisions of the Impaired
12 [~~Dentists and~~] Dental [~~Hygienists~~] Professionals Act.

13 B. Examination of a licensee pursuant to an order
14 of the board shall be conducted by an examining committee
15 designated by the board. [~~Each examining committee shall be~~
16 ~~composed of two duly licensed dentists, or two duly licensed~~
17 ~~dental hygienists if the licensee is a dental hygienist, and~~
18 ~~two duly licensed physicians, one of whom shall be a~~
19 ~~psychiatrist who is knowledgeable and experienced in the~~
20 ~~field of chemical dependency if a question of mental illness~~
21 ~~or dependency is involved. Whenever possible, examining~~
22 ~~committee members shall be selected for their knowledge or~~
23 ~~experience in the areas of alcoholism, chemical dependency,~~
24 ~~mental health and geriatrics and may be rehabilitated~~
25 ~~impaired dentists, dental hygienists or physicians. In~~

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1 ~~designating the members of such examining committee, the~~
2 ~~board may consider nominations from the New Mexico dental~~
3 ~~association for the dentist member, the New Mexico dental~~
4 ~~hygienists' association for dental hygiene members thereof~~
5 ~~and nomination from the New Mexico medical society for the~~
6 ~~physician members thereof. No current members of the board,~~
7 ~~dental hygienists committee or New Mexico board of medical~~
8 ~~examiners shall be designated as a member of an examining~~
9 ~~committee.] An examining committee shall be composed of two~~
10 ~~licensed physicians, one of whom shall be a psychiatrist who~~
11 ~~is knowledgeable and experienced in the field of chemical~~
12 ~~dependency if a question of mental illness or dependency is~~
13 ~~involved. An examining committee shall also include~~
14 ~~additional members in the following manner:~~

15 (1) if the licensee is a dentist, the
16 examining committee shall include two licensed dentists;

17 (2) if the licensee is a dental therapist,
18 the examining committee shall include two licensed dental
19 therapists or two dental therapy representatives; and

20 (3) if the licensee is a dental hygienist,
21 the examining committee shall include two licensed dental
22 hygienists.

23 C. Whenever possible, examining committee members
24 shall be selected for their knowledge of or experience in the
25 areas of alcoholism, chemical dependency, mental health and

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1 geriatrics. Members of the examining committee may be
2 rehabilitated impaired dentists, dental therapists, dental
3 hygienists or physicians.

4 D. In designating the members of an examining
5 committee, the licensing authority may consider nominations
6 from the New Mexico medical society for physician members and
7 nominations from the following entities:

8 (1) for dentist members, from the New Mexico
9 dental association;

10 (2) for dental therapist members, a state or
11 regional dental therapists' association, if available, or a
12 dental therapy education program located in the state; and

13 (3) for dental hygienist members, the New
14 Mexico dental hygienists' association.

15 E. A current member of the board, the joint
16 committee, the dental hygienists committee or the New Mexico
17 board of medical examiners shall not be designated as a
18 member of an examining committee."

19 **SECTION 23.** Section 61-5B-5 NMSA 1978 (being Laws 1994,
20 Chapter 55, Section 34) is amended to read:

21 "61-5B-5. EXAMINATION BY COMMITTEE.--

22 A. The examining committee assigned to examine a
23 licensee pursuant to referral by the board shall conduct an
24 examination of the licensee for the purpose of determining
25 the fitness of the licensee to practice dentistry, dental

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1 therapy or dental hygiene with reasonable skill and safety to
2 patients, either on a restricted or unrestricted basis, and
3 shall report its findings and recommendations to the board.
4 The findings and recommendations shall be based on findings
5 by the examining committee that the licensee examined
6 possesses one or more of the impairments set forth in the
7 Impaired [~~Dentists and~~] Dental [~~Hygienists~~] Professionals Act
8 and [~~such~~] the impairment does, in fact, affect the ability
9 of the licensee to skillfully and safely practice dentistry,
10 dental therapy or dental hygiene. The examining committee
11 shall order the licensee to appear before it for a hearing
12 and give the licensee fifteen days' notice of the time and
13 place of the hearing, together with a statement of the cause
14 for [~~such examination~~] the hearing. The notice shall be
15 served upon the licensee either personally or by registered
16 or certified mail with return receipt requested.

17 B. If the examining committee, in its discretion,
18 deems a mental or physical examination of the licensee
19 necessary to its determination of the fitness of the licensee
20 to practice, the examining committee shall order the licensee
21 to submit to [~~such~~] the examination. Any [~~person licensed to~~
22 ~~practice dentistry or dental hygiene~~] licensee in this state
23 shall, by so practicing or by making or filing an annual
24 registration to practice dentistry, dental therapy or dental
25 hygiene in this state, be deemed to have:

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1 (1) given consent to submit to mental or
2 physical examination when so directed by the examining
3 committee; and

4 (2) waived all objections to the
5 admissibility of the report of the examining committee to the
6 board, the joint committee or the dental hygienists committee
7 on the grounds of privileged communication.

8 C. Any licensee who submits to a diagnostic
9 mental or physical examination as ordered by the examining
10 committee shall have a right to designate an accompanying
11 individual to be present at the examination and make an
12 independent report to the board.

13 D. Failure of a licensee to comply with an
14 examining committee order under Subsection B of this section
15 to appear before it for hearing or to submit to mental or
16 physical examination under this section shall be reported by
17 the examining committee to the board, the joint committee or
18 the dental hygienists committee and, unless due to
19 circumstances beyond the control of the licensee, shall be
20 grounds for the immediate and summary suspension by the board
21 [~~of the licensee~~] to practice dentistry, dental therapy or
22 dental hygiene in this state until further order of the
23 board."

24 SECTION 24. Section 61-5B-6 NMSA 1978 (being Laws 1994,
25 Chapter 55, Section 35) is amended to read:

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1 "61-5B-6. VOLUNTARY RESTRICTION OF LICENSURE.--

2 A. A licensee may request in writing to the board
3 a restriction to practice under [~~his~~] the licensee's existing
4 license, and the board [~~and the dental hygienists committee~~]
5 shall have authority, if [~~it deems~~] deemed appropriate, to
6 attach stipulations to the licensure of the licensee to
7 practice dentistry, dental therapy or dental hygiene within
8 specified limitations and waive the commencement of [~~any~~] a
9 proceeding. Removal of a voluntary restriction on licensure
10 to practice dentistry, dental therapy or dental hygiene shall
11 be subject to the procedure for reinstatement of license. As
12 a condition for accepting such voluntary limitation of
13 practice, the board may require [~~each~~] the licensee to:

14 (1) agree to and accept care, counseling or
15 treatment of physicians or other appropriate health care
16 providers acceptable to the board;

17 (2) participate in a program of education
18 prescribed by the board; or

19 (3) practice under the direction of a
20 dentist acceptable to the board for a specified period of
21 time.

22 B. Subject to the provisions of the Impaired
23 [~~Dentists and~~] Dental [~~Hygienists~~] Professionals Act, a
24 violation of any of the conditions of the voluntary
25 limitation of practice statement by [~~such~~] the licensee shall

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1 be due cause for the refusal of renewal, or the suspension or
2 revocation, of the license by the board."

3 SECTION 25. Section 61-5B-7 NMSA 1978 (being Laws 1994,
4 Chapter 55, Section 36) is amended to read:

5 "61-5B-7. REPORT TO THE BOARD, JOINT COMMITTEE OR
6 DENTAL HYGIENISTS COMMITTEE--ACTION.--

7 A. The examining committee shall report to the
8 board, joint committee or the dental hygienists committee its
9 findings on the examination of the licensee, the
10 determination of the examining committee as to the fitness of
11 the licensee to engage in the practice of dentistry, dental
12 therapy or dental hygiene with reasonable skill and safety to
13 patients, either on a restricted or unrestricted basis, and
14 any intervention that the examining committee may recommend.
15 Such recommendation by the examining committee shall be
16 advisory only and shall not be binding on the board.

17 B. The board, joint committee or dental
18 hygienists committee may accept or reject the recommendation
19 of the examining committee to permit a licensee to continue
20 to practice with or without any restriction on [~~his~~] the
21 licensee's licensure to practice dentistry, dental therapy or
22 dental hygiene or may refer the matter back to the examining
23 committee for further examination [~~and report thereon~~].

24 C. In the absence of a voluntary agreement by a
25 licensee for restriction of the licensure of the dentist,

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1 dental therapist or the dental hygienist to practice
2 dentistry or dental hygiene, [~~any~~] the licensee shall be
3 entitled to a hearing before the board under and in
4 accordance with the procedure contained in the Uniform
5 Licensing Act and a determination on the evidence as to
6 whether [~~or not~~] restriction, suspension or revocation of
7 licensure shall be imposed."

8 SECTION 26. Section 61-5B-8 NMSA 1978 (being Laws 1994,
9 Chapter 55, Section 37) is amended to read:

10 "61-5B-8. PROCEEDINGS.--

11 A. The board may formally proceed against a
12 licensee under the Impaired [~~Dentists and~~] Dental
13 [~~Hygienists~~] Professionals Act in accordance with the
14 procedures contained in the Uniform Licensing Act.

15 B. When the licensee being considered for action
16 is a dental hygienist, the board shall act upon
17 recommendation of the dental hygienists committee on all
18 aspects of procedures in the Impaired [~~Dentists and~~] Dental
19 [~~Hygienists~~] Professionals Act.

20 C. When the licensee being considered for action
21 is a dental therapist, the board shall act upon
22 recommendation of the joint committee on all aspects of
23 procedures pursuant to the Impaired Dental Professionals Act.

24 [~~G-~~] D. At the conclusion of [the] a hearing
25 conducted pursuant to the Impaired Dental Professionals Act,

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1 the board [~~or the dental hygienists committee~~] shall make the
2 following findings:

3 (1) whether [~~or not~~] the licensee is
4 impaired by one of the grounds for restriction, suspension or
5 revocation listed [~~herein~~] in Section 61-5B-3 NMSA 1978;

6 (2) whether [~~or not such~~] the impairment
7 does in fact limit the ability of the licensee to practice
8 dentistry, dental therapy or dental hygiene skillfully and
9 safely; and

10 (3) to what extent [~~such~~] the impairment
11 limits the ability of the licensee to practice dentistry,
12 dental therapy or dental hygiene skillfully and safely and
13 whether the board [~~or dental hygienists committee~~] finds that
14 [~~such~~] the impairment is such that the license should be
15 suspended, revoked or restricted in the licensee's practice
16 of dentistry, dental therapy or dental hygiene. [~~and;~~

17 ~~(4)]~~ D. If the finding recommends suspension or
18 restriction of the ability of the licensee to practice
19 dentistry, dental therapy or dental hygiene, [~~then~~] the board
20 shall make specific recommendations as to the length and
21 nature of the suspension or restriction and shall recommend
22 how [~~such~~] the suspension or restriction shall be carried out
23 and supervised.

24 [~~D.~~] E. At the conclusion of the hearing, the
25 board [~~or the dental hygienists committee~~] shall make a

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1 determination of the merits and may order one or more of the
2 following:

3 (1) placement of the licensee on probation
4 on such terms and conditions as it deems proper for the
5 protection of the public;

6 (2) suspension or restriction of the license
7 of the licensee to practice dentistry, dental therapy or
8 dental hygiene for the duration of the licensee's impairment;

9 (3) revocation of the license of the
10 licensee to practice dentistry, dental therapy or dental
11 hygiene; or

12 (4) reinstatement of the license of the
13 licensee to practice dentistry, dental therapy or dental
14 hygiene without restriction.

15 [~~E.~~] F. The board may temporarily suspend the
16 license of any licensee without a hearing, simultaneously
17 with the institution of proceedings under the Uniform
18 Licensing Act, if it finds that the evidence in support of
19 the determination of the examining committee is clear and
20 convincing and that continuation in practice would constitute
21 an imminent danger to public health and safety.

22 [~~F.~~] G. Neither the record of the proceeding nor
23 any order entered against a licensee may be used against the
24 licensee in any other legal proceeding except upon judicial
25 review."

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1 SECTION 27. Section 61-5B-9 NMSA 1978 (being Laws 1994,
2 Chapter 55, Section 38) is amended to read:

3 "61-5B-9. REINSTATEMENT OF LICENSE.--

4 A. A licensee whose licensure has been
5 restricted, suspended or revoked under the Impaired [~~Dentists~~
6 and] Dental [~~Hygienists~~] Professionals Act, voluntarily or by
7 action of the board, shall have a right at reasonable
8 intervals to petition for reinstatement of the license and to
9 demonstrate that the licensee can resume the competent
10 practice of dentistry, dental therapy or dental hygiene with
11 reasonable skill and safety to patients.

12 B. The petition shall be made in writing. If the
13 licensee is a dental hygienist, the dental hygienists
14 committee shall be advised and given all information [~~so that~~
15 ~~their~~] that the dental hygienists committee requests to
16 inform its decision. The dental hygienists committee shall
17 provide its recommendation [~~can be given~~] to the board for
18 ratification.

19 C. If the licensee is a dental therapist, the
20 joint committee shall be advised and given all information
21 that the joint committee requests to inform its decision.
22 The joint committee shall provide its recommendation to the
23 board for ratification in accordance with the provisions of
24 Section 61-5A-11 NMSA 1978.

25 [~~G.~~] D. Action of the board on [~~the~~] a petition

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1 for reinstatement shall be initiated by referral to and
2 examination by [~~the~~] an examining committee.

3 [~~D-~~] E. The board may, in its discretion, upon
4 written recommendation of the examining committee, restore
5 the licensure of the licensee on a general or limited basis."

6 **SECTION 28.** Section 61-5B-10 NMSA 1978 (being Laws
7 1994, Chapter 55, Section 39) is amended to read:

8 "61-5B-10. IMPAIRED DENTISTS, DENTAL THERAPISTS AND
9 DENTAL HYGIENISTS TREATMENT PROGRAM.--

10 A. The board has the authority to enter into an
11 agreement with a nonprofit corporation to implement an
12 impaired dentists, dental therapists and dental hygienists
13 treatment program.

14 B. For the purposes of this section:

15 (1) "dental therapist" means an individual
16 licensed to perform dental therapy pursuant to the provisions
17 of the Dental Health Care Act; and

18 (2) "impaired dentists, dental therapists
19 and dental hygienists treatment program" means a program of
20 care and rehabilitation services provided by those
21 organizations authorized by the board to provide for the
22 [~~detention~~] detection, intervention and monitoring of an
23 impaired [~~dentist or dental hygienist~~] licensee."

24 **SECTION 29.** Section 61-5B-11 NMSA 1978 (being Laws
25 1994, Chapter 55, Section 40) is amended to read:

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1 "61-5B-11. IMPAIRED [~~DENTISTS AND~~] DENTAL [HYGIENISTS]
2 PROFESSIONALS FUND CREATED.--

3 A. There is created an "impaired [~~dentists and~~]
4 dental [~~hygienist~~] professionals fund".

5 B. The fund shall be initially established by an
6 assessment to all licensees as determined by the board, the
7 joint committee and the dental hygienists committee.

8 C. All [~~funds~~] money received by the board for an
9 impaired assessment, either special or at time of
10 relicensure, shall be deposited with the state treasurer.
11 The state treasurer shall credit this money to the [~~impaired~~
12 ~~dentists and dental hygienists~~] fund.

13 D. Payments out of the fund shall be [~~on~~] made
14 pursuant to vouchers issued and signed by the secretary-
15 treasurer of the board upon warrants drawn by the department
16 of finance and administration [~~in accordance with the~~
17 ~~responsibilities of the board~~] as approved by that
18 department.

19 E. All amounts paid into the fund are subject to
20 the order of the board and are to be used only for meeting
21 necessary expenses incurred in executing the provisions and
22 duties of the Impaired [~~Dentists and~~] Dental [~~Hygienists~~]
23 Professionals Act. All money unused at the end of any fiscal
24 year shall remain in the fund for use in accordance with
25 provisions of the Impaired [~~Dentists and~~] Dental [~~Hygienists~~]

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1 Professionals Act.

2 F. Licensees shall be assessed an impaired fee at
3 the time of renewal. The amount of the impaired fee shall be
4 determined by the board, the joint committee and the dental
5 hygienists committee and shall be established to meet the
6 need for enforcing the Impaired [~~Dentists and~~] Dental
7 [~~Hygienists~~] Professionals Act.

8 G. The fund shall be used for the purpose of
9 administration, testing, monitoring, hearings and
10 consultation fees by the board, the joint committee or the
11 dental hygienists committee or [~~their~~] its agent, which are
12 necessary to enforce the Impaired [~~Dentists and~~] Dental
13 [~~Hygienists~~] Professionals Act. It is not the purpose of the
14 fund to pay for treatment of impaired dentists, [~~and~~] dental
15 therapists or dental hygienists."