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SENATE BILL 78

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO LICENSING OF OSTEOPATHIC PHYSICIANS AND OSTEOPATHIC
PHYSICIAN ASSISTANTS; AMENDING, REPEALING AND ENACTING SECTIONS
OF CHAPTER 61, ARTICLE 10 NMSA 1978; PROVIDING FOR PENALTIES;
AMENDING THE PHARMACIST PRESCRIPTIVE AUTHORITY ACT TO REQUIRE
THE BOARD OF OSTEOPATHIC MEDICINE TO ADOPT REGULATIONS FOR
OSTEOPATHIC PHYSICIANS WHO SUPERVISE PHARMACY CLINICIANS;
PROVIDING FOR DELAYED REPEAL.

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

SECTION 1. A new section of Chapter 61, Article 10 NMSA
1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Chapter 61, Article 10 NMSA
1978 may be cited as the "Osteopathic Medicine Act"."

SECTION 2. A new section of Chapter 61, Article 10 NMSA
1978 is enacted to read:

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1 "[NEW MATERIAL] DEFINITIONS.--As used in the Osteopathic
2 Medicine Act:

3 A. "administer" means to apply a prepackaged drug
4 to the body of a patient by any means;

5 B. "board" means the board of osteopathic medicine;

6 C. "dispense" means to deliver a drug directly to a
7 patient and includes the compounding, labeling and repackaging
8 of a drug from a bulk or original container;

9 D. "distribute" means to administer or supply
10 directly to a patient under the direct care of the distributing
11 osteopathic physician's assistant one or more doses of drugs
12 prepackaged by a licensed pharmacist and excludes the
13 compounding or repackaging from a bulk or original container;

14 E. "health care practitioner" means an individual
15 licensed, certified or otherwise authorized or permitted by law
16 to provide health care in the ordinary course of business or
17 practice of a profession;

18 F. "osteopathic medicine" means the complete system
19 or school of osteopathic medicine governed by the Osteopathic
20 Medicine Act;

21 G. "osteopathic physician" means a physician
22 licensed to practice osteopathic medicine in New Mexico;

23 H. "osteopathic physician assistant" means a
24 skilled person licensed by the board as being qualified by
25 academic and practical training to provide patient services

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1 under supervision as provided by the Osteopathic Medicine Act;

2 I. "pharmacist clinician" means a pharmacist who
3 exercises prescriptive authority pursuant to the Pharmacist
4 Prescriptive Authority Act;

5 J. "prescribe" means to issue an order individually
6 for the person for whom prescribed, either directly from the
7 prescriber to the pharmacist or indirectly by means of a
8 written order signed by the prescriber, bearing the name and
9 address of the prescriber, the prescriber's license
10 classification, the name and address of the patient and the
11 name of the drug prescribed, directions for its use and the
12 date of its issue; and

13 K. "supervising physician" means a physician
14 licensed under the Medical Practice Act or an osteopathic
15 physician."

16 SECTION 3. Section 61-10-2 NMSA 1978 (being Laws 1974,
17 Chapter 78, Section 16) is amended to read:

18 "61-10-2. CRIMINAL OFFENDER'S CHARACTER EVALUATION.--The
19 provisions of the Criminal Offender Employment Act shall govern
20 any consideration of criminal records required or permitted by
21 [~~Sections 67-8-1 through 67-8-18 NMSA 1953~~] the Osteopathic
22 Medicine Act."

23 SECTION 4. Section 61-10-3 NMSA 1978 (being Laws 1933,
24 Chapter 117, Section 2, as amended) is amended to read:

25 "61-10-3. LICENSE.--It [~~shall be~~] is unlawful for any

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1 person to practice as an osteopathic physician in this state
2 without a license [~~so to do~~] issued by the board [~~of~~
3 ~~osteopathic medical examiners~~]; provided that any license or
4 certificate [~~heretofore~~] previously issued under the laws of
5 this state authorizing its holder to practice osteopathic
6 medicine shall in no [~~wise~~] way be affected by the provisions
7 of [~~this~~] the Osteopathic Medicine Act."

8 SECTION 5. Section 61-10-5 NMSA 1978 (being Laws 1933,
9 Chapter 117, Section 4, as amended) is repealed and a new
10 Section 61-10-5 NMSA 1978 is enacted to read:

11 "61-10-5. [NEW MATERIAL] BOARD OF OSTEOPATHIC MEDICINE--
12 APPOINTMENT--TERMS--MEETINGS--MEMBERSHIP--EXAMINATIONS--
13 DUTIES--POWERS.--

14 A. The "board of osteopathic medicine" is created.
15 The board shall be administratively attached to the regulation
16 and licensing department. The board shall consist of seven
17 members appointed by the governor as follows:

18 (1) five members with at least two years of
19 experience in their respective fields immediately preceding
20 their appointment who are licensed as follows:

21 (a) four members who are osteopathic
22 physicians licensed in good standing pursuant to Section
23 61-10-8 NMSA 1978; and

24 (b) one member who is an osteopathic
25 physician assistant licensed in good standing pursuant to the

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1 Osteopathic Medicine Act; and

2 (2) two public members. The public members of
3 the board shall not:

4 (a) have been licensed as osteopathic
5 physicians or as osteopathic physician assistants; or

6 (b) have any significant financial
7 interest, direct or indirect, in the occupation regulated.

8 B. The governor shall appoint board members who are
9 osteopathic physicians and osteopathic physician assistants
10 respectively from a list of five qualified osteopathic
11 physicians and five osteopathic physician assistants that the
12 New Mexico osteopathic medical association or its authorized
13 governing body or council provides.

14 C. The board shall:

15 (1) issue licenses to individuals who meet the
16 qualifications for licensure as osteopathic physicians or
17 osteopathic physician assistants;

18 (2) discipline osteopathic physicians and
19 osteopathic physician assistants for incompetence or
20 unprofessional or dishonorable conduct;

21 (3) protect the public from the unauthorized
22 practice of osteopathy;

23 (4) enforce and administer the provisions of
24 the Osteopathic Medicine Act;

25 (5) adopt and promulgate in accordance with

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1 the Uniform Licensing Act and the State Rules Act all rules for
2 the implementation and enforcement of the Osteopathic Medicine
3 Act. Rulemaking shall include adoption and promulgation of
4 rules related to the management of pain based on a review of
5 national standards for pain management;

6 (6) adopt and use a seal;

7 (7) administer oaths to applicants, witnesses
8 and others appearing before the board, as the board deems
9 appropriate;

10 (8) take testimony on matters within the
11 board's jurisdiction;

12 (9) adopt and promulgate rules relating to the
13 oversight of osteopathic physicians who supervise pharmacist
14 clinicians;

15 (10) keep an accurate record of all of its
16 meetings, receipts and disbursements;

17 (11) maintain records in which the name,
18 address and license number of all licensees shall be recorded,
19 together with a record of all license renewals, suspensions,
20 revocations, probations, stipulations, censures, reprimands and
21 fines;

22 (12) grant, deny, review, suspend and revoke
23 licenses to practice osteopathic medicine and censure,
24 reprimand, fine and place on probation and stipulation
25 licensees and applicants in accordance with the Uniform

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1 Licensing Act for any cause stated in the Osteopathic Medicine
2 Act;

3 (13) hire or contract with investigators as it
4 deems necessary to investigate possible violations of the
5 Osteopathic Medicine Act;

6 (14) establish continuing medical education
7 requirements that coincide with continuing medical education
8 cycles of the American osteopathic association for licensed
9 osteopathic physicians and osteopathic physician assistants;
10 and

11 (15) establish committees as it deems
12 necessary for executing board duties.

13 D. The board may adopt and enforce rules for
14 osteopathic physician assistants for:

15 (1) establishing qualifications of education,
16 skill and experience for licensure of a person as an
17 osteopathic physician assistant and providing forms and
18 procedures for licensure and for biennial registration of
19 supervision;

20 (2) examining and evaluating applicants for
21 licensure as an osteopathic physician assistant as to their
22 skill, knowledge and experience in the field of medical care;

23 (3) establishing when and for how long an
24 osteopathic physician assistant is permitted to prescribe,
25 administer and distribute dangerous drugs other than controlled

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1 substances in Schedule I of the Controlled Substances Act after
2 consultation with the board of pharmacy;

3 (4) allowing a supervising osteopathic
4 physician to temporarily delegate supervisory responsibilities
5 for an osteopathic physician assistant to another supervising
6 physician;

7 (5) allowing an osteopathic physician
8 assistant to temporarily serve under a supervising physician
9 other than the supervising physician of record; and

10 (6) the purpose of carrying out all other
11 provisions of the Osteopathic Medicine Act.

12 E. Board members shall be appointed for staggered
13 terms of four years so that not more than three members' terms
14 expire in any one year. A board member shall not serve more
15 than two consecutive terms. The vacancy of the term of a
16 member shall be filled by appointment by the governor to the
17 unexpired portion of the four-year term. A board member whose
18 term has expired shall serve until the member's successor is
19 appointed.

20 F. The board shall meet at the call of the chair at
21 least three times a year and may hold other meetings as the
22 chair deems necessary. A majority of the board constitutes a
23 quorum.

24 G. The board shall have an annual election of a
25 chair and a vice chair and other officers as it deems

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1 necessary.

2 H. The chair shall preside over the meetings and
3 affairs of the board. The vice chair shall perform those
4 duties that the chair assigns and shall serve as chair when the
5 chair is absent.

6 I. Members of the board are entitled to receive per
7 diem and mileage as provided in the Per Diem and Mileage Act,
8 but shall receive no other compensation, perquisite or
9 allowance, for each day necessarily spent in the discharge of
10 their duties.

11 J. A board member failing to attend three
12 consecutive meetings, either regular or special, shall
13 automatically be removed as a member of the board unless
14 excused for reasons established in board rules."

15 SECTION 6. Section 61-10-6 NMSA 1978 (being Laws 1933,
16 Chapter 117, Section 5, as amended) is repealed and a new
17 Section 61-10-6 NMSA 1978 is enacted to read:

18 "61-10-6. [NEW MATERIAL] LICENSURE--REQUIREMENTS.--

19 A. The board may consider for licensure an
20 individual who:

21 (1) is a graduate of a school of osteopathic
22 medicine accredited by the commission on osteopathic college
23 accreditation or recognized by the American osteopathic
24 association;

25 (2) has successfully passed all three levels

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1 of the comprehensive osteopathic medical licensing examination,
2 its predecessor examination or the United States medical
3 licensing examination; provided that the board shall not grant
4 a license to an applicant who has not passed the final level of
5 the respective examination within seven years of having
6 successfully passed the first level of that examination;

7 (3) provides evidence to the board of having
8 completed at least two years of a board-approved nationally
9 accredited post-graduate training program; and

10 (4) makes an application in accordance with
11 board rules and pays the fees required pursuant to Section
12 61-10-6.1 NMSA 1978.

13 B. An applicant who has not completed two years of
14 a board-approved nationally accredited post-graduate training
15 program, but who otherwise meets all other licensing
16 requirements, may present evidence to the board of the
17 applicant's other professional experience for consideration by
18 the board in lieu of the approved post-graduate program
19 required pursuant to Paragraph (3) of Subsection A of this
20 section.

21 C. As a condition of licensure, the board may
22 require an applicant for licensure to:

23 (1) appear personally before the board or its
24 designated agent for an interview; or

25 (2) be fingerprinted and supply any other

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1 information necessary to obtain a state or national criminal
2 background check; provided that an applicant shall pay any fees
3 for a criminal background check directly to the screening
4 entity that performs the check."

5 SECTION 7. Section 61-10-6.1 NMSA 1978 (being Laws 1989,
6 Chapter 371, Section 3) is repealed and a new Section 61-10-6.1
7 NMSA 1978 is enacted to read:

8 "61-10-6.1. [NEW MATERIAL] FEES.--The board may charge
9 the following fees; provided that all fees are nonrefundable
10 and shall be used by the board to carry out its duties:

11 A. pertaining to osteopathic physicians:

12 (1) an application fee not to exceed one
13 thousand dollars (\$1,000) for triennial licensure of an
14 osteopathic physician pursuant to Section 61-10-12 NMSA 1978;

15 (2) a triennial osteopathic physician
16 licensure renewal fee not to exceed one thousand dollars
17 (\$1,000);

18 (3) a fee not to exceed seventy-five dollars
19 (\$75.00) for placing an osteopathic physician license on
20 inactive status;

21 (4) a late fee not to exceed:

22 (a) two hundred dollars (\$200) for
23 osteopathic physicians who fail to renew their licenses on or
24 before July 1 of the year in which their triennial licenses are
25 due for renewal but who renew on or before September 29 of that

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1 year; and

2 (b) four hundred dollars (\$400) for
3 osteopathic physicians who renew their licenses after September
4 29;

5 (5) a reinstatement fee not to exceed five
6 hundred dollars (\$500) for reinstatement of a revoked,
7 suspended or inactive osteopathic physician license;

8 (6) a temporary license fee not to exceed one
9 hundred dollars (\$100);

10 (7) a post-graduate osteopathic physician
11 training license fee not to exceed fifty dollars (\$50.00);

12 (8) an osteopathic physician telemedicine
13 triennial license fee not to exceed four hundred dollars
14 (\$400); and

15 (9) an impaired physician fee not to exceed
16 one hundred dollars (\$100);

17 B. pertaining to osteopathic physician assistants:

18 (1) a biennial license fee not to exceed four
19 hundred fifty dollars (\$450);

20 (2) a registration of new supervision fee that
21 is equal to one-half of the biennial license fee for
22 osteopathic physician assistants;

23 (3) a late fee not to exceed twenty-five
24 dollars (\$25.00) for osteopathic physician assistants who fail
25 to renew their licenses on or before July 1 of the year in

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1 which their biennial licenses are due for renewal;

2 (4) an impaired osteopathic physician
3 assistant fee not to exceed one hundred dollars (\$100); and

4 (5) a fee for an osteopathic physician
5 assistant license on inactive status not to exceed seventy-five
6 dollars (\$75.00); and

7 C. pertaining to osteopathic physician and
8 osteopathic physician assistant licensees or applicants:

9 (1) a fee not to exceed five hundred dollars
10 (\$500) for reprocessing an application or renewal that includes
11 errors that would otherwise be subject to investigation and
12 possible disciplinary action; and

13 (2) a reasonable administrative fee that the
14 board establishes by rule for verification of license,
15 publications and copying charges."

16 SECTION 8. Section 61-10-7 NMSA 1978 (being Laws 1977,
17 Chapter 155, Section 1) is repealed and a new Section 61-10-7
18 NMSA 1978 is enacted to read:

19 "61-10-7. [NEW MATERIAL] TEMPORARY LICENSE--
20 QUALIFICATIONS.--

21 A. In the interim between regular board meetings,
22 the board's chair or an authorized representative of the board
23 shall issue a temporary license to practice as an osteopathic
24 physician or osteopathic physician assistant to a qualified
25 applicant who has filed a complete application for licensure in

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1 accordance with the Osteopathic Medicine Act and board rules.
2 The temporary license shall expire on the date of the next
3 regular meeting of the board, at which time the board shall
4 grant final approval.

5 B. Upon written application, accompanied by proof
6 of qualifications as specified by board rules, the board may
7 issue a temporary license to an applicant who seeks temporary
8 licensure to:

9 (1) provide services at an organized youth
10 camp or school; provided that the practice of osteopathic
11 medicine shall be confined to enrollees, leaders and employees
12 of the camp or school;

13 (2) assist in teaching;

14 (3) conduct research;

15 (4) perform a specialized diagnostic and
16 treatment procedure;

17 (5) implement new technology; or

18 (6) pursue an educational purpose.

19 C. The board shall grant a temporary license only
20 to an applicant who:

21 (1) submits a written application and
22 accompanies the application with proof of qualifications as
23 specified in board rules;

24 (2) pays a temporary license fee pursuant to
25 Section 61-10-6.1 NMSA 1978; and

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1 (3) is supervised by an osteopathic physician
2 who is licensed in New Mexico and who submits an affidavit
3 attesting to the qualifications of the applicant and the
4 activities that the applicant will perform.

5 D. The board shall issue a temporary license that
6 is valid for a period not to exceed three months from the date
7 of issuance. A temporary license may be renewed up to six
8 times for a period not to exceed eighteen months.

9 E. A temporary license shall:

10 (1) describe the activities to which the
11 licensee shall be limited; and

12 (2) identify the osteopathic physician who
13 will supervise the applicant during the time the applicant
14 practices osteopathic medicine in the state."

15 SECTION 9. Section 61-10-8 NMSA 1978 (being Laws 1933,
16 Chapter 117, Section 6, as amended) is amended to read:

17 "61-10-8. PROFESSIONAL EDUCATION.--~~[To be considered for~~
18 ~~licensure to practice as an osteopathic physician and surgeon,~~
19 ~~the applicant]~~

20 A. After July 1, 2016, a first-time applicant for
21 licensure to practice as an osteopathic physician shall:

22 ~~[A.]~~ (1) be a graduate of a college of
23 osteopathic medicine [and surgery] accredited by the commission
24 on osteopathic college accreditation or recognized by the
25 American osteopathic association; and

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1 ~~[B.]~~ (2) have completed ~~[an]~~ at least two
2 years of post-graduate training approved by the American
3 osteopathic association or ~~[American medical association~~
4 ~~approved post-graduate one-year residency program or rotating~~
5 ~~internship program]~~ the accreditation council for graduate
6 medical education.

7 B. An osteopathic physician who has been licensed
8 in this state or another state of the United States before July
9 1, 2016 shall have completed at least one year of post-graduate
10 training approved by the American osteopathic association or
11 the accreditation council for graduate medical education."

12 SECTION 10. Section 61-10-11 NMSA 1978 (being Laws 1933,
13 Chapter 117, Section 9, as amended) is amended to read:

14 "61-10-11. LICENSE ISSUED.--The board shall issue to each
15 applicant for a license to practice as provided in the
16 Osteopathic Medicine Act who ~~[successfully passes the~~
17 ~~examination shall be entitled to]~~ has the required education
18 qualifications and meets the requirements of that act a license
19 ~~[which]~~ that carries with it the title doctor of osteopathic
20 medicine and osteopathic physician with right to practice as
21 taught and practiced in the standard colleges of osteopathic
22 medicine ~~[and surgery]."~~

23 SECTION 11. Section 61-10-12 NMSA 1978 (being Laws 1933,
24 Chapter 117, Section 10, as amended) is amended to read:

25 "61-10-12. LICENSE WITHOUT EXAMINATION.--The board may,

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1 in its discretion, issue a license without examination to an
2 osteopathic physician who has been licensed in any country,
3 state, territory or province and who is a graduate of a
4 standard college of osteopathic medicine upon the following
5 conditions:

6 A. that the applicant is of good moral character;

7 B. that the requirements to practice in the
8 country, state, territory or province in which the applicant is
9 already licensed ~~[be]~~ are equal to those of this state; and

10 C. that the applicant shall be required to pay the
11 fee designated for such license in Section ~~[67-8-5 NMSA 1953]~~
12 61-10-6.1 NMSA 1978.

13 The board may also, in its discretion, issue a license
14 without examination to an osteopathic physician who is a
15 graduate of a standard college of osteopathic medicine and who
16 has passed an examination for admission into the medical corps
17 of any branch of the armed forces of the United States ~~[army,~~
18 ~~United States navy]~~ or the United States public health
19 service."

20 SECTION 12. Section 61-10-15 NMSA 1978 (being Laws 1933,
21 Chapter 117, Section 13, as amended) is repealed and a new
22 Section 61-10-15 NMSA 1978 is enacted to read:

23 "61-10-15. [NEW MATERIAL] REFUSAL AND REVOCATION OF
24 LICENSE.--

25 A. Upon satisfactory proof being made to the board

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1 that an applicant for or holder of a license to practice
2 osteopathic medicine has been guilty of unprofessional or
3 dishonorable conduct, the board may:

4 (1) refuse to issue a license to an applicant;

5 (2) revoke or suspend a license; or

6 (3) fine, censure or reprimand a licensee.

7 B. The board may, in its discretion and for good
8 cause shown, place a licensee on probation on the terms and
9 conditions it deems proper for protection of the public or for
10 the purpose of rehabilitation of the probationer, or both.
11 Upon expiration of the term of probation, if a term is set, the
12 board may abate further proceedings if the licensee furnishes
13 the board with evidence that the licensee is competent to
14 practice and has complied with the terms of probation.

15 C. If evidence fails to establish to the
16 satisfaction of the board that the licensee is competent or if
17 evidence shows that the licensee has not complied with the
18 terms of probation, the board may revoke or suspend the
19 licensee's license. If the board suspends a license, the
20 licensee shall not practice during the term of suspension. A
21 licensee whose license has been revoked or is in suspension and
22 who thereafter practices or attempts or offers to practice in
23 the state is guilty of a felony and shall be punished as
24 provided in Section 61-10-16 NMSA 1978 unless:

25 (1) the period of suspension has expired;

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1 (2) the board has modified the suspension to
2 permit the practice of osteopathic medicine; or

3 (3) the board has reinstated the license.

4 D. The board shall not refuse to issue or renew a
5 license nor shall it suspend or revoke a license for
6 unprofessional or dishonorable conduct unless the person
7 accused has been provided:

8 (1) at least twenty days' notice in writing of
9 the charge against that person; and

10 (2) a public hearing by the board, with right
11 of review of the board's decision by the district court of the
12 first judicial district by certiorari, on petition of the party
13 against whom the board's decision is rendered.

14 E. The board may compel the attendance of witnesses
15 and the production of relevant books and papers for the
16 investigation of matters that may come before it, and the
17 presiding officer of the board may administer the requisite
18 oaths. The board has the same authority to compel the giving
19 of testimony that is conferred on courts of justice.

20 F. As used in this section:

21 (1) "fee splitting" means offering,
22 delivering, receiving or accepting any unearned rebate, refund,
23 commission preference, patronage dividend, discount or other
24 unearned consideration, whether in the form of money or
25 otherwise, as compensation or inducement for referring

1 patients, clients or customers to a person or organization,
2 irrespective of any membership, proprietary interest or
3 co-ownership in or with a person to whom the patients, clients
4 or customers are referred; and

5 (2) "unprofessional or dishonorable conduct"
6 means conduct that the board has proscribed by rule and
7 includes the following conduct of a licensee:

8 (a) procuring, aiding or abetting a
9 criminal abortion;

10 (b) employing a person to solicit
11 patients for the licensee;

12 (c) representing to a patient that a
13 manifestly incurable condition of sickness, disease or injury
14 can be cured;

15 (d) obtaining a fee by fraud or
16 misrepresentation;

17 (e) willfully or negligently divulging a
18 professional confidence;

19 (f) conviction of an offense punishable
20 by incarceration in a state penitentiary or federal prison or
21 conviction of a misdemeanor associated with the practice of the
22 licensee. A copy of the record of conviction, certified by the
23 clerk of the court entering the conviction, is conclusive
24 evidence of conviction;

25 (g) habitual or excessive use of

1 intoxicants or drugs;

2 (h) fraud or misrepresentation in
3 applying for or procuring a license to practice in this state
4 or in connection with applying for or procuring renewal,
5 including cheating on or attempting to subvert a licensing
6 examination;

7 (i) making false or misleading
8 statements regarding the skill of the licensee or the efficacy
9 or value of the medicine, treatment or remedy prescribed or
10 administered by the licensee or at the direction of the
11 licensee in the treatment of a disease or other condition of
12 the human body or mind;

13 (j) impersonating another licensee,
14 permitting or allowing a person to use the license of the
15 licensee or practicing as a licensee under a false or assumed
16 name;

17 (k) aiding or abetting the practice of a
18 person not licensed by the board;

19 (l) gross negligence in the practice of
20 a licensee;

21 (m) manifest incapacity or incompetence
22 to practice as a licensee;

23 (n) discipline imposed on a licensee by
24 another state, including denial, probation, suspension or
25 revocation, based upon acts by the licensee similar to acts

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1 described in this section. A certified copy of the record of
2 suspension or revocation of the state making the suspension or
3 revocation is conclusive evidence;

4 (o) the use of a false, fraudulent or
5 deceptive statement in a document connected with the practice
6 of a licensee;

7 (p) fee splitting;

8 (q) the prescribing, administering or
9 dispensing of narcotic, stimulant or hypnotic drugs for other
10 than accepted therapeutic purposes;

11 (r) conduct likely to deceive, defraud
12 or harm the public;

13 (s) repeated similar negligent acts;

14 (t) employing abusive billing practices;

15 (u) failure to report to the board any
16 adverse action taken against the licensee by: 1) another
17 licensing jurisdiction; 2) a peer review body; 3) a health care
18 entity; 4) a professional or medical society or association; 5)
19 a governmental agency; 6) a law enforcement agency; or 7) a
20 court for acts or conduct similar to acts or conduct that would
21 constitute grounds for disciplinary action;

22 (v) failure to report to the board
23 surrender of a license or other authorization to practice in
24 another state or jurisdiction or surrender of membership on any
25 medical staff or in any medical or professional association or

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1 society following, in lieu of and while under disciplinary
2 investigation by any of those authorities or bodies for acts or
3 conduct similar to acts or conduct that would constitute
4 grounds for disciplinary action;

5 (w) failure to furnish the board, its
6 investigators or representatives with information requested by
7 the board;

8 (x) abandonment of a patient;

9 (y) being found mentally incompetent by
10 a court of competent jurisdiction;

11 (z) injudicious prescribing,
12 administering or dispensing of a drug or medicine;

13 (aa) failure to adequately supervise, as
14 provided by board rule, an osteopathic physician or osteopathic
15 physician assistant;

16 (bb) sexual contact with a patient or
17 person who has authority to make medical decisions for a
18 patient, other than the spouse of the licensee;

19 (cc) conduct unbecoming in a person
20 licensed to practice or detrimental to the best interests of
21 the public;

22 (dd) the surrender of a license or
23 withdrawal of an application for a license before another state
24 licensing board while an investigation or disciplinary action
25 is pending before that board for acts or conduct similar to

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1 acts or conduct that would constitute grounds for action
2 pursuant to this section;

3 (ee) sexual contact with a former
4 patient of the licensee, other than the spouse of the licensee,
5 within one year from the end of treatment;

6 (ff) sexual contact with a patient when
7 the licensee uses or exploits treatment, knowledge, emotions or
8 influence derived from the previous professional relationship;

9 (gg) improper management of medical
10 records, including failure to maintain timely, accurate,
11 legible and complete medical records;

12 (hh) failure to provide pertinent and
13 necessary medical records to another health care practitioner,
14 to the patient of the osteopathic physician or to any other
15 person in a timely manner when legally requested or authorized
16 to do so by the patient or by a legally designated
17 representative of the patient;

18 (ii) interaction with osteopathic
19 physicians, hospital personnel, patients, family members or
20 others that interferes with patient care or could reasonably be
21 expected to adversely impact the quality of care rendered to a
22 patient; or

23 (jj) willfully or negligently divulging
24 privileged information or a professional secret."

25 SECTION 13. Section 61-10-17 NMSA 1978 (being Laws 1933,

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1 Chapter 117, Section 15, as amended) is amended to read:

2 "61-10-17. RECORDS.--The board [~~of osteopathic medical~~
3 ~~examiners~~] shall keep a record, which shall be open to all
4 proper parties for inspection at all reasonable times, of its
5 proceedings relating to the issuance, refusal, renewal,
6 suspension or revocation of licenses to practice in accordance
7 with [~~this~~] the Osteopathic Medicine Act. This record shall
8 also contain the name, place of business and residence, the
9 date and the number of the license of every osteopathic
10 physician and osteopathic physician assistant licensed under
11 [~~this~~] the Osteopathic Medicine Act."

12 SECTION 14. Section 61-10-18 NMSA 1978 (being Laws 1933,
13 Chapter 117, Section 16) is amended to read:

14 "61-10-18. NO ADDITIONAL POWER CONFERRED ON PRIOR
15 LICENSEES.--Nothing [~~herein~~] contained in the Osteopathic
16 Medicine Act shall be construed as conferring any powers or
17 authority not [~~heretofore~~] previously vested in osteopathic
18 physicians or osteopathic physician assistants who hold
19 licenses to practice [~~osteopathy~~] osteopathic medicine under
20 any pre-existing law or regulation unless such licensees [~~be~~]
21 are likewise licensed under the provisions of [~~this~~] the
22 Osteopathic Medicine Act."

23 SECTION 15. Section 61-10-19 NMSA 1978 (being Laws 1971,
24 Chapter 140, Section 1, as amended) is amended to read:

25 "61-10-19. [~~ANNUAL~~] RENEWAL OF LICENSE--CERTIFICATE--

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1 FEE.--

2 A. All ~~[persons]~~ osteopathic physicians legally
3 licensed to practice osteopathic medicine ~~[and surgery]~~ in this
4 state shall, on or before July 1 of ~~[each]~~ the third year after
5 first-time licensure or the last licensure renewal, submit
6 proof of completion of continuing education requirements as
7 required by the board and pay to the secretary of the board ~~[an~~
8 ~~annual]~~ a triennial renewal fee as provided in Section
9 61-10-6.1 NMSA 1978 for the renewal of ~~[his]~~ a license to
10 practice osteopathic medicine ~~[and surgery]~~. Upon payment of
11 fees and proof of completion of continuing education
12 requirements, the board shall issue a certificate of ~~[annual]~~
13 triennial renewal of license.

14 B. All osteopathic physician assistants legally
15 licensed to practice osteopathic medicine in this state shall,
16 on or before July 1 of the second year after first-time
17 licensure or the last licensure renewal, submit proof of
18 completion of continuing education requirements as required by
19 the board and pay to the secretary of the board a biennial
20 renewal fee as provided in Section 61-10-6.1 NMSA 1978 for the
21 renewal of a license to practice osteopathic medicine. Upon
22 payment of fees and proof of completion of continuing education
23 requirements, the board shall issue a certificate of biennial
24 renewal of license.

25 ~~[B.]~~ C. The ~~[secretary]~~ chair of the board shall

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1 send a written notice to every [~~person~~] osteopathic physician
2 and osteopathic physician assistant holding a legal certificate
3 to practice osteopathic medicine in this state at least thirty
4 days prior to July 1 of [~~each~~] the year in which the
5 osteopathic physician or osteopathic physician assistant is due
6 for renewal of licensure. The notice shall be directed to the
7 last known address of the licensee, and notify [~~him~~] the
8 licensee that it will be necessary [~~for him~~] to pay the
9 [~~annual~~] license renewal fee. Proper forms shall accompany the
10 notice, and the licensee shall make application for the renewal
11 of [~~his~~] the licensee's certificate on these forms. The fact
12 that a [~~practitioner~~] licensee has not received [~~his~~] the
13 licensee's blank form from the board shall not, however,
14 relieve [~~him~~] the licensee of the duty to register on or before
15 July 1 of the year of renewal nor shall the board's failure to
16 mail the forms operate to exempt [~~him~~] the osteopathic
17 physician or osteopathic physician assistant from the penalties
18 provided in [~~Chapter 61, Article 10 NMSA 1978~~] the Osteopathic
19 Medicine Act."

20 SECTION 16. Section 61-10-20 NMSA 1978 (being Laws 1971,
21 Chapter 140, Section 2, as amended) is amended to read:

22 "61-10-20. POST-GRADUATE EDUCATIONAL REQUIREMENTS.--For
23 the purpose of protecting the health and well-being of the
24 citizens of this state and for maintaining and continuing
25 informed professional knowledge and awareness, the board shall

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1 establish mandatory continuing educational requirements for
2 osteopathic physicians and osteopathic physician assistants
3 licensed in this state. In establishing ~~[such]~~ these
4 requirements, the board shall recognize and give weight to
5 existing educational methods, procedures, devices and programs
6 in use among the various medical specialties and other
7 recognized medical groups and the consensus of the members of
8 the medical community. This section does not abrogate or
9 affect the status, force or operation of the Uniform Licensing
10 Act. The board shall not establish and enforce ~~[such]~~ these
11 requirements if they will reduce the availability of
12 osteopathic physicians or osteopathic physician assistants in a
13 community to an extent that adequate medical care is
14 jeopardized."

15 SECTION 17. Section 61-10-21 NMSA 1978 (being Laws 1945,
16 Chapter 79, Section 7, as amended) is amended to read:

17 "61-10-21. FAILURE TO COMPLY--CANCELLATION OF LICENSE--
18 REINSTATEMENT--TEMPORARY CANCELLATION AT LICENSEE'S REQUEST.--

19 A. In the event any ~~[licensee]~~ osteopathic
20 physician or osteopathic physician assistant licensed to
21 practice osteopathic medicine in New Mexico fails to comply
22 with the requirements of Section 61-10-19 NMSA 1978, ~~[he]~~ the
23 licensee shall, upon order of the board ~~[of osteopathic medical~~
24 ~~examiners]~~, forfeit ~~[his]~~ the licensee's right to practice
25 osteopathic medicine in this state and ~~[his]~~ the licensee's

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1 license and certificate shall be canceled; provided, however,
2 that the [~~secretary~~] chair of the board may reinstate [~~him~~] the
3 licensee upon the payment of all fees due and upon the
4 presentation of satisfactory evidence of the attendance at an
5 educational program as provided for in [~~Chapter 61, Article 10~~
6 ~~NMSA 1978~~] the Osteopathic Medicine Act.

7 B. It is further provided that any [~~person~~]
8 osteopathic physician or osteopathic physician assistant
9 licensed to practice osteopathic medicine in New Mexico
10 desiring to withdraw from the active practice of [~~his~~
11 ~~profession~~] osteopathic medicine in this state shall have the
12 right to apply to the [~~secretary~~] chair of the board [~~of~~
13 ~~osteopathic medical examiners~~] for a temporary suspension of
14 [~~his~~] the licensee's certificate to practice osteopathic
15 medicine in this state, with the right to renew and reinstate
16 [~~his~~] the certificate if [~~he~~] the licensee so desires, upon a
17 showing that [~~he~~] the licensee has paid the appropriate fees on
18 or before July 1 of [~~each~~] the year in which the license is due
19 for renewal."

20 SECTION 18. A new section of Chapter 61, Article 10 NMSA
21 1978 is enacted to read:

22 "[NEW MATERIAL] PRACTICING WITHOUT LICENSE--PENALTY.--

23 A. A person who practices osteopathic medicine or
24 who attempts to practice osteopathic medicine without first
25 complying with the provisions of the Osteopathic Medicine Act

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1 and without being the holder of a license entitling the person
2 to practice osteopathic medicine in New Mexico is guilty of a
3 fourth degree felony.

4 B. A person who practices osteopathic medicine
5 across state lines or who attempts to practice osteopathic
6 medicine across state lines without first complying with the
7 provisions of the Osteopathic Medicine Act and without being
8 the holder of a telemedicine license entitling the person to
9 practice osteopathic medicine across state lines is guilty of a
10 fourth degree felony.

11 C. A person convicted pursuant to Subsection A or B
12 of this section shall be sentenced under the provisions of the
13 Criminal Sentencing Act to imprisonment for a definite period
14 not to exceed eighteen months and, in the discretion of the
15 sentencing court, to a fine not to exceed five thousand dollars
16 (\$5,000), or both. Each occurrence of practicing osteopathic
17 medicine or attempting to practice osteopathic medicine without
18 complying with the Osteopathic Medicine Act shall be a separate
19 violation."

20 SECTION 19. A new section of Chapter 61, Article 10 NMSA
21 1978 is enacted to read:

22 "[NEW MATERIAL] TELEMEDICINE LICENSE.--

23 A. The board shall issue a telemedicine license to
24 allow the practice of osteopathic medicine across state lines
25 to an applicant who holds a full and unrestricted license to

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1 practice osteopathic medicine in another state or territory of
2 the United States. The board shall establish by rule the
3 requirements for licensure; provided the requirements shall not
4 be more restrictive than those required for licensure by
5 endorsement.

6 B. A telemedicine license shall be issued for a
7 period not to exceed three years and may be renewed upon
8 application, payment of fees as provided in the Osteopathic
9 Medicine Act and compliance with other requirements established
10 by rule of the board."

11 SECTION 20. A new section of Chapter 61, Article 10 NMSA
12 1978 is enacted to read:

13 "[NEW MATERIAL] LICENSURE--SUMMARY SUSPENSION--SUMMARY
14 RESTRICTION--GROUNDS.--

15 A. The board may suspend or restrict a license to
16 practice osteopathic medicine in New Mexico issued by the board
17 without a hearing, simultaneously or at any time after the
18 initiation of proceedings for a hearing provided pursuant to
19 the Uniform Licensing Act, if the board finds that evidence in
20 its possession indicates that the licensee:

21 (1) poses a clear and immediate danger to the
22 public health and safety if the licensee continues to practice;

23 (2) has been adjudged mentally incompetent by
24 a final order or adjudication by a court of competent
25 jurisdiction; or

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1 (3) has pled guilty to or has been found
2 guilty of any offense relating to the practice of osteopathic
3 medicine or any violent criminal offense in this state or a
4 substantially equivalent criminal offense in another
5 jurisdiction.

6 B. A licensee shall not be required to comply with
7 a summary suspension or restriction of a license until notice
8 has been served in accordance with procedures established in
9 board rules or the licensee has actual knowledge of an order of
10 suspension or restriction, whichever occurs first.

11 C. A licensee whose license is suspended or
12 restricted pursuant to this section shall be entitled to a
13 hearing before the board pursuant to the Uniform Licensing Act
14 within fifteen days from the date the licensee requests a
15 hearing."

16 SECTION 21. A new section of Chapter 61, Article 10 NMSA
17 1978 is enacted to read:

18 "[NEW MATERIAL] BOARD COMMUNICATION--PROTECTED ACTIONS.--

19 A. A report to the board regarding actual or
20 potential disciplinary action, including a complaint, shall be
21 a confidential communication and is not a public record for the
22 purposes of the Inspection of Public Records Act.

23 B. Any data, communication or information that the
24 board acquires, prepares or disseminates relating to actual or
25 potential disciplinary action or its investigation of a

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1 complaint shall not be disclosed except to the extent necessary
2 to:

- 3 (1) carry out the duties of the board;
- 4 (2) make a judicial appeal of a board action;

5 or

- 6 (3) refer a case to a law enforcement agency,
7 a national database clearinghouse or another licensing board.

8 C. Information contained in a complaint filed with
9 the board may be disclosed when the board or a court acts on a
10 complaint and:

- 11 (1) issues a notice of contemplated action; or
- 12 (2) reaches a settlement before issuing a
13 notice of contemplated action.

14 D. A person shall not be subject to any civil
15 damages or criminal prosecution for providing information to
16 the board, whether as a report, a complaint or as testimony."

17 SECTION 22. A new section of Chapter 61, Article 10 NMSA
18 1978 is enacted to read:

19 "[NEW MATERIAL] OSTEOPATHIC PHYSICIAN ASSISTANT--
20 LICENSURE--SCOPE OF AUTHORITY--REGISTRATION OF SUPERVISION--
21 CHANGE OF SUPERVISION.--

22 A. No person shall perform or attempt to perform as
23 an osteopathic physician assistant without first applying for
24 and obtaining a license from the board as an osteopathic
25 physician assistant and having the person's supervision

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1 registered in accordance with board regulations.

2 B. Osteopathic physician assistants may prescribe,
3 administer and distribute dangerous drugs other than controlled
4 substances in Schedule I of the Controlled Substances Act
5 pursuant to regulations adopted by the board after consultation
6 with the board of pharmacy if the prescribing, administering
7 and distributing are done under the direction of a supervising
8 physician; provided that such prescribing, administering and
9 distributing are within the parameters of a board-approved
10 formulary and guidelines established pursuant to Paragraph (3)
11 of Subsection D of Section 61-10-5 NMSA 1978. The distribution
12 process shall comply with state laws concerning prescription
13 packaging, labeling and recordkeeping requirements.

14 C. An osteopathic physician assistant shall perform
15 only those acts and duties assigned by a supervising physician
16 that are within the scope of practice of such physician.

17 D. An applicant for a license as an osteopathic
18 physician assistant shall complete application forms that the
19 board supplies and pay a fee as provided in Section 61-10-6.1
20 NMSA 1978. Upon licensing by the board, the applicant shall
21 have the applicant's name and address and other pertinent
22 information enrolled by the board on a roster of osteopathic
23 physician assistants.

24 E. Each osteopathic physician assistant shall
25 biennially submit proof of completion of continuing education

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1 as required by the board and register the osteopathic physician
2 assistant's name and current address, the name and office
3 address of the supervising physician and such additional
4 information as the board deems necessary.

5 F. In addition to the biennial requirements
6 regarding the osteopathic physician assistant's supervising
7 physician in Subsection E of this section, each osteopathic
8 physician assistant has an ongoing duty to notify the board of
9 a termination of supervision and to register the name and
10 office address of a new supervising physician and the date on
11 which supervision will commence. Each biennial registration or
12 registration of new supervision shall be accompanied by a fee
13 as provided in Section 61-10-6.1 NMSA 1978."

14 SECTION 23. A new section of Chapter 61, Article 10 NMSA
15 1978 is enacted to read:

16 "[NEW MATERIAL] OSTEOPATHIC PHYSICIAN ASSISTANTS--INACTIVE
17 LICENSE.--

18 A. An osteopathic physician assistant who notifies
19 the board in writing on forms prescribed by the board may elect
20 to place the osteopathic physician assistant's license on an
21 inactive status. An osteopathic physician assistant with an
22 inactive license shall be excused from payment of renewal fees
23 and shall not practice as an osteopathic physician assistant.

24 B. An osteopathic physician assistant who engages
25 in practice while the osteopathic physician assistant's license

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1 is lapsed or on inactive status is practicing without a license
2 and is subject to discipline pursuant to the Osteopathic
3 Medicine Act.

4 C. An osteopathic physician assistant requesting
5 restoration from inactive status shall pay the current renewal
6 fee and fulfill the requirement for renewal pursuant to the
7 Osteopathic Medicine Act."

8 SECTION 24. A new section of Chapter 61, Article 10 NMSA
9 1978 is enacted to read:

10 "[NEW MATERIAL] OSTEOPATHIC PHYSICIAN ASSISTANTS--
11 EXEMPTION FROM LICENSURE.--

12 A. An osteopathic physician assistant student
13 enrolled in a physician assistant or osteopathic physician
14 assistant educational program accredited by the commission on
15 accreditation of allied health education programs or by its
16 successor shall be exempt from licensure while functioning as
17 an osteopathic physician assistant student.

18 B. An osteopathic physician assistant employed by
19 the federal government while performing duties incident to that
20 employment is not required to be licensed as an osteopathic
21 physician assistant pursuant to the Osteopathic Medicine Act."

22 SECTION 25. A new section of Chapter 61, Article 10 NMSA
23 1978 is enacted to read:

24 "[NEW MATERIAL] RESPONSIBILITY.--Every osteopathic
25 physician using, supervising or employing a registered

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1 osteopathic physician assistant shall be individually
2 responsible and liable for the performance of the acts and
3 omissions delegated to the osteopathic physician assistant.
4 Nothing in the Osteopathic Medicine Act shall be construed to
5 relieve the osteopathic physician assistant of responsibility
6 and liability for any of the osteopathic physician assistant's
7 own acts and omissions. An osteopathic physician assistant
8 shall be supervised by an osteopathic physician in accordance
9 with board rules."

10 SECTION 26. Section 61-10-22 NMSA 1978 (being Laws 1979,
11 Chapter 36, Section 2, as amended) is amended to read:

12 "61-10-22. TERMINATION OF AGENCY LIFE--DELAYED
13 REPEAL.--The board of osteopathic ~~[medical examiners]~~ medicine
14 is terminated on July 1, 2021 pursuant to the Sunset Act. The
15 board shall continue to operate according to the provisions of
16 ~~[Chapter 61, Article 10 NMSA 1978]~~ the Osteopathic Medicine Act
17 until July 1, 2022. Effective July 1, 2022, ~~[Chapter 61,~~
18 ~~Article 10 NMSA 1978]~~ the Osteopathic Medicine Act is
19 repealed."

20 SECTION 27. Section 61-11B-3 NMSA 1978 (being Laws 1993,
21 Chapter 191, Section 3) is amended to read:

22 "61-11B-3. PHARMACIST CLINICIAN PRESCRIPTIVE
23 AUTHORITY.--

24 A. A pharmacist clinician planning to exercise
25 prescriptive authority in ~~[his]~~ practice shall have on file at

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1 [his] the place of practice written guidelines or protocol.
2 The guidelines or protocol shall authorize a pharmacist
3 clinician to exercise prescriptive authority and shall be
4 established and approved by a practitioner in accordance with
5 regulations adopted by the board. A copy of the written
6 guidelines or protocol shall be on file with the board. The
7 practitioner who is a party to the guidelines or protocol shall
8 be in active practice and the prescriptive authority that [he]
9 the practitioner grants to a pharmacist clinician shall be
10 within the scope of the practitioner's current practice.

11 B. The guidelines or protocol required by
12 Subsection A of this section shall include:

13 (1) a statement identifying the practitioner
14 authorized to prescribe dangerous drugs and the pharmacist
15 clinician who is a party to the guidelines or protocol;

16 (2) a statement of the types of prescriptive
17 authority decisions that the pharmacist clinician is authorized
18 to make, which may include:

19 (a) a statement of the types of
20 diseases, dangerous drugs or dangerous drug categories involved
21 and the type of prescriptive authority authorized in each case;
22 and

23 (b) a general statement of the
24 procedures, decision criteria or plan the pharmacist clinician
25 is to follow when exercising prescriptive authority;

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1 (3) a statement of the activities the
2 pharmacist clinician is to follow in the course of exercising
3 prescriptive authority, including documentation of decisions
4 made and a plan for communication or feedback to the
5 authorizing practitioner concerning specific decisions made.
6 Documentation may occur on the prescriptive record, patient
7 profile, patient medical chart or in a separate log book; and

8 (4) a statement that describes appropriate
9 mechanisms for reporting to the practitioner monitoring
10 activities and results.

11 C. The written guidelines or protocol shall be
12 reviewed and shall be revised every two years if necessary.

13 D. A pharmacist clinician planning to exercise
14 prescriptive authority in [~~his~~] practice shall be authorized to
15 monitor dangerous drug therapy.

16 E. The board shall adopt regulations to carry out
17 the provisions of the Pharmacist Prescriptive Authority Act.

18 F. For the purpose of the Pharmacist Prescriptive
19 Authority Act, the New Mexico medical board [~~of medical~~
20 ~~examiners~~] and the board of osteopathic medicine shall adopt
21 [~~regulations~~] rules concerning the guidelines and protocol for
22 their respective practitioners defined in Subsection [~~G~~] D of
23 Section [~~2 of that act~~] 61-11B-2 NMSA 1978."

24 SECTION 28. TEMPORARY PROVISION--BOARD OF OSTEOPATHIC
25 MEDICAL EXAMINERS--BOARD OF OSTEOPATHIC MEDICINE.--The name of

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1 the board of osteopathic medical examiners is changed to the
2 "board of osteopathic medicine". On the effective date of this
3 act, all references in law to the board of osteopathic medical
4 examiners shall be construed to be references to the board of
5 osteopathic medicine. All references in law to the chair or
6 members of the board of osteopathic medical examiners shall be
7 construed to be references to the chair or members of the board
8 of osteopathic medicine.

9 SECTION 29. REPEAL.--Sections 61-10-1, 61-10-13 and
10 61-10A-1 through 61-10A-7 NMSA 1978 (being Laws 1933, Chapter
11 117, Sections 1 and 11, Laws 1979, Chapter 26, Sections 1
12 through 4, Laws 1989, Chapter 9, Section 8, Laws 1997, Chapter
13 187, Sections 12 and 13 and Laws 1979, Chapter 26, Sections 5
14 through 7, as amended) are repealed.

15 SECTION 30. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2016.