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HOUSE BILL 600

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Gregg Schmedes and Rod Montoya and Rebecca Dow and
David M. Gallegos and Cathrynn N. Brown

AN ACT

RELATING TO ABORTION; CREATING THE WOMEN'S HEALTH AND SAFETY
ACT; EXEMPTING CERTAIN PERSONS AND INSTITUTIONS; PROVIDING
LICENSING REQUIREMENTS; REQUIRING INFORMED CONSENT AND PARENTAL
NOTIFICATION; PROVIDING JUDICIAL PROCESS FOR MINORS SEEKING
ABORTION; REQUIRING REPORTING OF ABORTION COMPLICATIONS;
PROHIBITING CERTAIN LATE-TERM ABORTIONS; PROVIDING AN EXCEPTION
FOR CERTAIN LATE-TERM ABORTIONS; REQUIRING USE OF HOSPITALS FOR
MEDICALLY NECESSARY ABORTIONS; PROHIBITING DISCRIMINATION;
PROVIDING CIVIL PENALTIES; PROVIDING CRIMINAL PENALTIES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 11 of this act may be cited as the "Women's Health and
Safety Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
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1 Women's Health and Safety Act:

2 A. "abortion" means the intentional termination of
3 the pregnancy of a woman at her request by a person who knows
4 the woman is pregnant;

5 B. "abortion facility" means a facility other than
6 an accredited hospital, in which five or more first-trimester
7 abortions or any second- or third-trimester abortions are
8 performed;

9 C. "fetus" means the biological offspring of human
10 parents;

11 D. "guardian" means a person appointed as a
12 guardian by a court or Indian tribal authority or a person
13 authorized to care for the child by a parental power of
14 attorney as permitted by law, pursuant to Section 32A-1-4 NMSA
15 1978;

16 E. "minor" means a person under eighteen years of
17 age;

18 F. "parent" means a person who has established a
19 parent-child relationship pursuant to Section 40-11A-201 NMSA
20 1978;

21 G. "physician" means a licensed physician as
22 defined in the Medical Practice Act or an osteopathic physician
23 pursuant to the Osteopathic Medicine Act;

24 H. "pregnancy" means the implantation of a
25 developing embryo in the uterus;

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1 I. "similar medical facility" means a facility,
2 doctor's office, ambulatory surgical center or abortion clinic
3 that provides continuous twenty-four-hour monitoring and
4 emergency surgical services and contains diagnostic and
5 emergency equipment and services similar to an inpatient
6 hospital; and

7 J. "viability" or "viable" means that stage of
8 fetal development when the life of the unborn child may be
9 continued indefinitely outside the womb by natural or
10 artificial life-support systems.

11 SECTION 3. [NEW MATERIAL] PERSONS AND INSTITUTIONS
12 EXEMPT.--

13 A. A hospital or similar medical facility shall not
14 be required to admit any patient for the purposes of performing
15 an abortion.

16 B. The following persons shall not be required to
17 participate in medical procedures, including the dispensing of
18 medication, that will result in the termination of the
19 pregnancy if they object to the abortion on moral, religious or
20 personal conviction grounds:

21 (1) a person who is a member of, or associated
22 with, the staff of a hospital or similar medical facility;

23 (2) any person under the direction of a
24 physician; or

25 (3) any employee of a hospital or similar

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1 medical facility in which an abortion may be performed.

2 C. The refusal of any person to participate in an
3 abortion shall not form the basis of any disciplinary or other
4 recriminatory action against the person.

5 SECTION 4. [NEW MATERIAL] LICENSING REQUIREMENTS.--

6 A. An abortion shall not be performed unless the
7 abortion is performed by a physician or person under the
8 direction of a physician, licensed by the New Mexico medical
9 board pursuant to the Medical Practice Act and the Osteopathic
10 Medicine Act.

11 B. A person who knowingly violates this section is
12 guilty of a fourth degree felony.

13 SECTION 5. [NEW MATERIAL] INFORMED CONSENT AND PARENTAL
14 NOTIFICATION.--

15 A. No physician or person under the direction of a
16 physician may perform an abortion on a pregnant woman without
17 first obtaining her written informed consent. Informed consent
18 shall at a minimum warn the patient of the following risks
19 associated with abortion:

- 20 (1) shock;
- 21 (2) uterine perforation;
- 22 (3) cervical laceration;
- 23 (4) hemorrhage;
- 24 (5) aspiration or allergic response;
- 25 (6) infection;

- 1 (7) sepsis;
- 2 (8) death of the patient;
- 3 (9) incomplete abortion;
- 4 (10) damage to the uterus;
- 5 (11) an infant born alive after the abortion;

6 or

- 7 (12) emotional distress or psychological harm
- 8 to the patient, including aggravation of a previously disclosed
- 9 emotional or psychological condition.

10 B. Only a physician may provide the information

11 specified in Subsection A of this section and obtain the

12 informed consent of the pregnant woman seeking the abortion.

13 An unlicensed physician or a person acting under the direction

14 of a physician may not provide the information specified in

15 Subsection A of this section and shall not obtain the consent

16 of the pregnant woman seeking the abortion.

17 C. Any informed consent shall be a fair and

18 accurate description of the risks and should not understate the

19 risks or contain false or misleading representations regarding

20 the possible risks stated in Subsection A of this section.

21 D. Any informed consent obtained shall not limit

22 the physician's civil liability for emotional, physical,

23 psychological or psychiatric damage due to the abortion

24 procedure or failure to fully disclose the risks of the

25 abortion procedure.

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1 E. If the pregnant individual is a minor and is not
2 emancipated, a physician or a person under the direction of a
3 physician shall not perform an abortion on the minor without:

4 (1) obtaining the minor's written informed
5 consent pursuant to Subsection A of this section; and

6 (2) delivery of written notice of the pending
7 abortion according to the following provisions and after a
8 forty-eight-hour waiting period:

9 (a) the written notice shall be
10 addressed to the parent or guardian of the pregnant minor at
11 the usual place of abode of the parent or guardian and
12 delivered personally to the parent or guardian by the
13 performing physician or person under the direction of a
14 physician; or

15 (b) notice shall be made by certified
16 mail addressed to the parent or guardian at the usual place of
17 abode of the parent or guardian with return receipt requested,
18 with delivery restricted to the parent or guardian, and
19 delivery shall be deemed to occur at noon on the next day on
20 which regular mail delivery takes place after mailing.

21 F. No notice shall be required under this section
22 if the physician or person under the direction of a physician
23 certifies that a medical emergency exists and performing an
24 abortion is essential to preserving the life of the minor.

25 G. A physician or a person under the direction of a

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1 physician who knowingly or with reckless disregard performs an
2 abortion in violation of this section is guilty of a
3 misdemeanor, except as otherwise authorized under Subsection F
4 of this section.

5 H. A person wrongfully denied the right and
6 opportunity to consent to an abortion pursuant to this section
7 may bring a civil action against the physician or person under
8 the direction of the physician responsible for the harm.

9 I. A physician or person under the direction of a
10 physician shall be immune from liability under this section if
11 the physician or person under the direction of the physician
12 reasonably relied on written representations from the pregnant
13 woman that the pregnant woman consented to an abortion.

14 J. Any person not authorized to provide consent
15 under this section but who attempts to provide consent is
16 guilty of a misdemeanor. This subsection shall not apply to a
17 minor who fails to comply with the requirements of this
18 section.

19 K. Any person who coerces a pregnant woman to have
20 an abortion is guilty of a misdemeanor.

21 SECTION 6. [NEW MATERIAL] JUDICIAL BYPASS STANDARD FOR
22 MINORS.--

23 A. A minor who is pregnant, unmarried and
24 unemancipated who wishes to have an abortion without notice to
25 a parent or guardian may file a petition in a district court

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1 requesting the issuance of an order authorizing the minor to
2 consent to the performance or inducement of an abortion without
3 notice to a parent or guardian.

4 B. The petition shall be made under oath and
5 include:

6 (1) a statement that the minor is pregnant;

7 (2) a statement that the minor is unmarried
8 and unemancipated;

9 (3) a statement that the minor wishes to have
10 an abortion without notice to a parent or guardian;

11 (4) an allegation of one or a combination of
12 the following:

13 (a) that the minor is sufficiently
14 mature and intelligent to decide whether to have an abortion
15 without notice to a parent or guardian;

16 (b) that a parent or guardian was
17 engaged in physical abuse, sexual abuse or a pattern of
18 emotional abuse against the minor; or

19 (c) that the consent of a parent or
20 guardian is not in the minor's best interest; and

21 (5) a statement as to whether the minor has
22 retained an attorney and, if an attorney has been retained, the
23 name, address and telephone number of the attorney.

24 C. The district court shall schedule a hearing
25 after receiving a petition pursuant to this section and shall

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1 keep a record of all testimony and documents provided by the
2 minor. The district court shall make every effort to hold a
3 hearing within five business days of the petition being filed,
4 and the minor may request that the district court hold a
5 telephonic hearing on the petition. The district court shall
6 enter judgment on the petition immediately after the hearing
7 ends. If the hearing is not held within five business days of
8 the filing of the petition, the petition shall be deemed
9 granted and the minor shall be considered constructively
10 authorized to consent to the performance or inducement of an
11 abortion without notice to the parent or guardian. The minor
12 shall seek a statement from the clerk of the district court
13 stating that it has been five days since the court received the
14 petition and the district court did not provide a hearing
15 within that time. The minor may use the clerk's statement as a
16 constructive order authorizing the minor to consent to the
17 performance or inducement of an abortion.

18 D. The district court may appoint an attorney to
19 serve as a guardian ad litem to represent the minor if the
20 minor has not retained an attorney or does not plan to retain
21 an attorney.

22 E. The minor may request that the district court
23 enter an order directing the minor's school to excuse the minor
24 from school to attend a hearing pursuant to this section or to
25 have an abortion. An order entered pursuant to this subsection

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1 shall not notify the minor's parent or guardian that the minor
2 is pregnant, seeking an abortion or absent for purposes of
3 obtaining an abortion.

4 F. If the minor makes only the allegation set out
5 in Subparagraph (a) of Paragraph (4) of Subsection B of this
6 section and the court finds that there is clear and convincing
7 evidence that the minor is sufficiently mature and intelligent
8 to decide whether to have an abortion, the court shall enter an
9 order authorizing the minor to consent to the performance or
10 inducement of an abortion without notifying the minor's parent
11 or guardian. If the court does not make the finding specified
12 in this subsection, it shall dismiss the petition without
13 prejudice.

14 G. If the minor makes only the allegation set out
15 in Subparagraph (b) of Paragraph (4) of Subsection B of this
16 section and the court finds that there is clear and convincing
17 evidence of physical abuse, sexual abuse or a pattern of
18 emotional abuse of the minor by one or both of the minor's
19 parents or guardians, the court shall enter an order
20 authorizing the minor to consent to the performance or
21 inducement of an abortion without notifying the minor's parent
22 or guardian. If the court does not make the finding specified
23 in this subsection, it shall dismiss the petition without
24 prejudice.

25 H. If the minor makes only the allegation set out

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1 in Subparagraph (c) of Paragraph (4) of Subsection B of this
2 section and the court finds that there is clear and convincing
3 evidence that notification of a parent or guardian is not in
4 the best interests of the minor, the court shall enter an order
5 authorizing the minor to consent to the performance or
6 inducement of an abortion without notifying the minor's parent
7 or guardian. If the court does not make the finding specified
8 in this subsection, it shall dismiss the petition without
9 prejudice.

10 I. If the minor makes more than one of the
11 allegations set forth in this section, the court shall proceed
12 as follows:

13 (1) the court shall first determine whether it
14 can make the finding pursuant to the procedure specified in
15 Subsection F of this section and, if the court can do so, it
16 shall enter an order pursuant to that subsection. If the court
17 cannot enter an order pursuant to Subsection F of this section,
18 it shall follow the procedure set forth in Paragraph (2) of
19 this subsection; or

20 (2) the court shall determine whether it can
21 make a finding pursuant to the procedures specified in
22 Subsection G or H of this section, and, if the court can do so,
23 it shall enter an order pursuant to either Subsection G or H of
24 this section. If the court cannot enter an order pursuant to
25 Subsection G or H of this section, it shall dismiss the

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1 petition without prejudice.

2 J. The court shall not notify a parent or guardian
3 of the minor that the minor is pregnant or seeks an abortion.

4 K. The minor shall have a direct appeal to the
5 supreme court of a decision denying the minor's petition, and
6 the appeal shall be expedited. The minor shall file a notice
7 of appeal with the district court clerk and the district court
8 clerk shall deliver a copy of the notice of appeal and record
9 in the district court to the supreme court clerk. The supreme
10 court shall make every effort to hear the appeal within five
11 business days of receiving notice of appeal and the record of
12 the district court. The minor shall be provided an opportunity
13 to present oral argument if the minor chooses, and the supreme
14 court shall endeavor to enter an order on the appeal as soon as
15 possible after oral argument. If the supreme court does not
16 issue a decision within five business days of the filing of the
17 petition, the petition shall be deemed granted and the minor
18 shall be considered constructively authorized to consent to the
19 performance or inducement of an abortion without notice to the
20 parent or guardian.

21 L. A hearing under this section shall not be open
22 to the public, and the court hearing the petition shall
23 preserve the anonymity of the minor. The petition and any
24 other documents in the record, including those filed in the
25 appeal, shall be kept confidential and are not public records.

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1 M. The supreme court shall prescribe rules
2 regarding the forms to be used pursuant to this section,
3 including rules allowing the minor to provide oral argument
4 before the supreme court. The clerk of the supreme court shall
5 provide the forms free of cost.

6 N. The court may waive filing fees and costs
7 associated with a petition in the district court or appeal of a
8 denial of the petition for a minor who cannot afford to pay
9 fees or costs.

10 O. Information on how to appeal a denied petition
11 and the procedure of appeal shall be posted in the district
12 court. The information posted shall state that:

13 (1) any filing fee for a petition or appeal
14 may be waived by the court;

15 (2) court costs may not be assessed against
16 the minor in pursuing a court order authorizing the minor to
17 consent to the performance or inducement of an abortion;

18 (3) an attorney shall be appointed to
19 represent the minor if the minor does not retain an attorney;

20 (4) the minor may request that the district
21 court hold a telephonic hearing on the petition; and

22 (5) the minor may request that the district
23 court issue an order directing the minor's school to excuse the
24 minor from school to attend a hearing pursuant to this section
25 or to have an abortion if one is authorized by the court, and

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1 an order pursuant to this paragraph shall not notify the
2 minor's parent or guardian that the minor is pregnant, seeking
3 an abortion or absent for purposes of obtaining an abortion."

4 SECTION 7. [NEW MATERIAL] ABORTION COMPLICATION REPORTING
5 REQUIREMENTS--CIVIL PENALTY.--

6 A. As used in this section, "abortion complication"
7 means any harmful event or adverse outcome to a patient related
8 to an abortion that is performed on the patient and diagnosed
9 or treated by a physician at an abortion facility or at a
10 health care facility and includes:

- 11 (1) shock;
- 12 (2) uterine perforation;
- 13 (3) cervical laceration;
- 14 (4) hemorrhage;
- 15 (5) aspiration or allergic response;
- 16 (6) infection;
- 17 (7) sepsis;
- 18 (8) death of the patient;
- 19 (9) incomplete abortion;
- 20 (10) damage to the uterus; and
- 21 (11) an infant born alive after the abortion.

22 B. The reporting requirements of this section apply
23 to:

- 24 (1) a physician who:
 - 25 (a) performs at an abortion facility an

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1 abortion that results in an abortion complication diagnosed or
2 treated by that physician; or

3 (b) diagnoses or treats at an abortion
4 facility an abortion complication that is the result of an
5 abortion performed by another physician at the facility; or

6 (2) a health care facility that is a hospital
7 or similar medical facility that provides emergency medical
8 care.

9 C. A physician described pursuant to Paragraph (1)
10 of Subsection B of this section shall electronically submit a
11 report to the department of health on each abortion
12 complication diagnosed or treated by the physician within three
13 business days of the complication. A health care facility
14 described pursuant to Paragraph (2) of Subsection B of this
15 section shall electronically submit to the department of health
16 a report on each abortion complication diagnosed or treated by
17 the physician within thirty days of the complication.

18 D. The department of health shall develop a form
19 for reporting abortion complications pursuant to Subsection C
20 of this section. The department of health shall promulgate
21 rules regarding the reporting of abortion complications.

22 E. A report pursuant to Subsection C of this
23 section shall not identify the patient on whom the abortion was
24 performed or the physician performing the abortion, other than
25 a physician described pursuant to Paragraph (1) of Subsection B

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1 of this section.

2 F. A report under this section shall identify the
3 name of the physician submitting the report or the name and
4 type of health care facility submitting the report and shall
5 include for each abortion complication, if known:

6 (1) the date of the abortion that caused or
7 may have caused the complication;

8 (2) the type of abortion that caused or may
9 have caused the complication;

10 (3) the gestational age of the fetus at the
11 time the abortion was performed;

12 (4) the name and type of the facility in which
13 the abortion was performed;

14 (5) the date the complication was diagnosed or
15 treated;

16 (6) the name and type of any facility other
17 than the reporting facility in which the complication was
18 diagnosed or treated;

19 (7) a description of the complication;

20 (8) the patient's year of birth, race, marital
21 status and state and county of residence;

22 (9) the date of the first day of the patient's
23 last menstrual period that occurred before the date of the
24 abortion that caused or may have caused the complication;

25 (10) the number of the patient's previous live

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1 births; and

2 (11) the number of previous induced abortions
3 of the patient.

4 G. All information and records held by the
5 department of health pursuant to this section are confidential
6 and are not public records. That information shall not be
7 released or made public on subpoena or otherwise, except
8 release may be made:

9 (1) for statistical purposes, but only if a
10 person, patient or health care facility is not identified;

11 (2) with the consent of each person, patient
12 and facility identified in the information released;

13 (3) to medical personnel, appropriate state
14 agencies or county and district court to enforce this section;
15 or

16 (4) to appropriate state licensing boards to
17 enforce state licensing laws.

18 H. A report submitted pursuant to this section
19 shall include specific, accurate and complete reporting.

20 I. The department of health shall develop and
21 publish on the its website an annual report that aggregates
22 statewide each abortion complication required to be reported
23 pursuant to Subsection F of this section for the previous
24 calendar year. The annual report shall not include duplicative
25 data.

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1 J. A physician described pursuant to Paragraph (1)
2 of Subsection B of this section or a health care facility that
3 violates this section is subject to a civil penalty of five
4 hundred dollars (\$500) for each violation. The attorney
5 general, at the request of the department of health or the
6 appropriate licensing agency, may file an action to recover a
7 civil penalty assessed under this subsection and may recover
8 attorney fees and costs incurred in litigating an action. Each
9 day of a continuing violation constitutes a separate ground of
10 recovery.

11 K. The third and separate violation of this section
12 shall be punished by revocation or suspension of a physician's
13 or health care facility's license, permit, registration,
14 certificate or other authority or for other disciplinary action
15 against the physician or facility by the appropriate licensing
16 agency.

17 L. The department of health shall notify the New
18 Mexico medical board or the board of osteopathic medicine of
19 any violations of this section by a physician.

20 SECTION 8. [NEW MATERIAL] PROHIBITION OF CERTAIN LATE-
21 TERM ABORTIONS--PROVIDING AN EXCEPTION FOR CERTAIN LATE-TERM
22 ABORTIONS.--

23 A. Late-term abortion consists of knowingly and
24 willfully administering to any pregnant woman any medicine,
25 drug or other substance or using any method or means whereby an

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1 untimely termination of the pregnancy is produced or attempted
2 to be produced, with the intent to destroy a viable fetus of
3 twenty or more weeks gestational age.

4 B. Only a licensed physician may perform an
5 abortion pursuant to this section.

6 C. For the purposes of this section, there shall be
7 a legal presumption that viability occurs at the twentieth week
8 of pregnancy. Before a physician performs an abortion on a
9 woman that the physician has reason to believe is carrying a
10 fetus of twenty or more weeks gestational age, the physician
11 shall first determine, in a manner consistent with accepted
12 obstetrical and neonatal practices and standards, if the fetus
13 is viable. In making this determination of viability, the
14 physician shall perform or cause to be performed such medical
15 examinations and tests as are necessary to make a finding of
16 the gestational age, weight and lung maturity of the fetus and
17 shall enter such findings and determination of viability in the
18 medical record of the woman.

19 D. If a physician determines that the fetus is
20 twenty or more weeks gestational age and viable, the physician
21 shall not perform or induce a late-term abortion unless the
22 abortion is necessary to preserve the life of a pregnant woman
23 whose life is endangered by a physical disorder, physical
24 illness or physical injury, including a life-endangering
25 physical condition caused by or arising from the pregnancy

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1 itself; provided, however, that the physician shall take all
2 reasonable steps to preserve the life and health of the fetus.

3 SECTION 9. [NEW MATERIAL] HOSPITAL REQUIREMENT OF
4 MEDICALLY NECESSARY ABORTIONS.--If the abortion is necessary or
5 performed pursuant to Section 8 of the Women's Health and
6 Safety Act, the abortion shall take place in a hospital or
7 similar medical facility with access to twenty-four-hour
8 monitoring, emergency treatment and surgical facilities.

9 SECTION 10. [NEW MATERIAL] NON-DISCRIMINATION.--A woman
10 electing to terminate a pregnancy shall be considered pregnant
11 and shall be provided the same diagnostic testing and
12 prophylactic screening as required by the joint commission
13 given to women electing to carry their fetuses to term.

14 SECTION 11. [NEW MATERIAL] CIVIL PENALTY.--

15 A. A physician found to have knowingly and
16 willfully violated, or acted with reckless disregard of,
17 Sections 2 through 10 of the Women's Health and Safety Act is
18 subject to:

19 (1) liability to the aggrieved individual for
20 damages of five thousand dollars (\$5,000) or actual damages
21 resulting from the violation and reasonable attorney fees; or

22 (2) revocation or suspension of the license to
23 practice medicine for at least one year.

24 B. The New Mexico medical board and the board of
25 osteopathic medicine shall enforce the provisions of this

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1 section with respect to any violation by a physician licensed
2 pursuant to the Medical Practice Act, and the board of
3 osteopathic medicine shall enforce the provisions of this
4 section with respect to any violation by a physician licensed
5 pursuant to the Osteopathic Medicine Act.

6 C. The damages provided in this section are in
7 addition to other types of relief available under a criminal or
8 civil remedy.

9 SECTION 12. Section 61-6-15 NMSA 1978 (being Laws 1969,
10 Chapter 46, Section 6, as amended) is amended to read:

11 "61-6-15. LICENSE MAY BE REFUSED, REVOKED OR
12 SUSPENDED--LICENSEE MAY BE FINED, CENSURED OR REPRIMANDED--
13 PROCEDURE--PRACTICE AFTER SUSPENSION OR REVOCATION--PENALTY--
14 UNPROFESSIONAL AND DISHONORABLE CONDUCT DEFINED--FEES AND
15 EXPENSES.--

16 A. The board may refuse to license and may revoke
17 or suspend a license that has been issued by the board or a
18 previous board and may fine, censure or reprimand a licensee
19 upon satisfactory proof being made to the board that the
20 applicant for or holder of the license has been guilty of
21 unprofessional or dishonorable conduct. The board may also
22 refuse to license an applicant who is unable to practice
23 medicine, practice as a physician assistant or an
24 anesthesiologist assistant, practice genetic counseling or
25 engage in the practice of polysomnography, pursuant to Section

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1 61-7-3 NMSA 1978. All proceedings shall be as required by the
2 Uniform Licensing Act or the Impaired Health Care Provider Act.

3 B. The board may, in its discretion and for good
4 cause shown, place the licensee on probation on the terms and
5 conditions it deems proper for protection of the public, for
6 the purpose of rehabilitation of the probationer or both. Upon
7 expiration of the term of probation, if a term is set, further
8 proceedings may be abated by the board if the holder of the
9 license furnishes the board with evidence that the licensee is
10 competent to practice, is of good moral character and has
11 complied with the terms of probation.

12 C. If evidence fails to establish to the
13 satisfaction of the board that the licensee is competent and is
14 of good moral character or if evidence shows that the licensee
15 has not complied with the terms of probation, the board may
16 revoke or suspend the license. If a license to practice in
17 this state is suspended, the holder of the license may not
18 practice during the term of suspension. A person whose license
19 has been revoked or suspended by the board and who thereafter
20 practices or attempts or offers to practice in New Mexico,
21 unless the period of suspension has expired or been modified by
22 the board or the license reinstated, is guilty of a felony and
23 shall be punished as provided in Section 61-6-20 NMSA 1978.

24 D. "Unprofessional or dishonorable conduct", as
25 used in this section, means, but is not limited to because of

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1 enumeration, conduct of a licensee that includes the following:

2 (1) procuring, aiding or abetting a criminal
3 abortion or failing to comply with the provisions of the
4 Women's Health and Safety Act;

5 (2) employing a person to solicit patients for
6 the licensee;

7 (3) representing to a patient that a
8 manifestly incurable condition of sickness, disease or injury
9 can be cured;

10 (4) obtaining a fee by fraud or
11 misrepresentation;

12 (5) willfully or negligently divulging a
13 professional confidence;

14 (6) conviction of an offense punishable by
15 incarceration in a state penitentiary or federal prison or
16 conviction of a misdemeanor associated with the practice of the
17 licensee. A copy of the record of conviction, certified by the
18 clerk of the court entering the conviction, is conclusive
19 evidence;

20 (7) habitual or excessive use of intoxicants
21 or drugs;

22 (8) fraud or misrepresentation in applying for
23 or procuring a license to practice in this state or in
24 connection with applying for or procuring renewal, including
25 cheating on or attempting to subvert the licensing

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1 examinations;

2 (9) making false or misleading statements
3 regarding the skill of the licensee or the efficacy or value of
4 the medicine, treatment or remedy prescribed or administered by
5 the licensee or at the direction of the licensee in the
6 treatment of a disease or other condition of the human body or
7 mind;

8 (10) impersonating another licensee,
9 permitting or allowing a person to use the license of the
10 licensee or practicing as a licensee under a false or assumed
11 name;

12 (11) aiding or abetting the practice of a
13 person not licensed by the board;

14 (12) gross negligence in the practice of a
15 licensee;

16 (13) manifest incapacity or incompetence to
17 practice as a licensee;

18 (14) discipline imposed on a licensee by
19 another state, including denial, probation, suspension or
20 revocation, based upon acts by the licensee similar to acts
21 described in this section. A certified copy of the record of
22 suspension or revocation of the state making the suspension or
23 revocation is conclusive evidence;

24 (15) the use of a false, fraudulent or
25 deceptive statement in a document connected with the practice

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1 of a licensee;

2 (16) fee splitting;

3 (17) the prescribing, administering or
4 dispensing of narcotic, stimulant or hypnotic drugs for other
5 than accepted therapeutic purposes;

6 (18) conduct likely to deceive, defraud or
7 harm the public;

8 (19) repeated similar negligent acts;

9 (20) employing abusive billing practices;

10 (21) failure to report to the board any
11 adverse action taken against the licensee by:

12 (a) another licensing jurisdiction;

13 (b) a peer review body;

14 (c) a health care entity;

15 (d) a professional or medical society or
16 association;

17 (e) a governmental agency;

18 (f) a law enforcement agency; or

19 (g) a court for acts or conduct similar
20 to acts or conduct that would constitute grounds for action as
21 defined in this section;

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

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1 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 action as defined in this section;

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

8 (24) abandonment of patients;

9 (25) being found mentally incompetent or
10 insane by a court of competent jurisdiction;

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

13 (27) failure to adequately supervise, as
14 provided by board rule, a medical or surgical assistant or
15 technician or professional licensee who renders health care;

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

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

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

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1 this section;

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

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

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

11 (34) failure to provide pertinent and
12 necessary medical records to a physician or patient of the
13 physician in a timely manner when legally requested to do so by
14 the patient or by a legally designated representative of the
15 patient;

16 (35) undertreatment of pain as provided by
17 board rule;

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

22 (37) soliciting or receiving compensation by a
23 physician assistant or anesthesiologist assistant from a person
24 who is not an employer of the assistant;

25 (38) willfully or negligently divulging

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1 privileged information or a professional secret; or

2 (39) the use of conversion therapy on a minor.

3 E. As used in this section:

4 (1) "conversion therapy" means any practice or
5 treatment that seeks to change a person's sexual orientation or
6 gender identity, including any effort to change behaviors or
7 gender expressions or to eliminate or reduce sexual or romantic
8 attractions or feelings toward persons of the same sex.

9 "Conversion therapy" does not mean:

10 (a) counseling or mental health services
11 that provide acceptance, support and understanding of a person
12 without seeking to change gender identity or sexual
13 orientation; or

14 (b) mental health services that
15 facilitate a person's coping, social support, sexual
16 orientation or gender identity exploration and development,
17 including an intervention to prevent or address unlawful
18 conduct or unsafe sexual practices, without seeking to change
19 gender identity or sexual orientation;

20 (2) "fee splitting" includes offering,
21 delivering, receiving or accepting any unearned rebate,
22 refunds, commission preference, patronage dividend, discount or
23 other unearned consideration, whether in the form of money or
24 otherwise, as compensation or inducement for referring
25 patients, clients or customers to a person, irrespective of any

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1 membership, proprietary interest or co-ownership in or with a
2 person to whom the patients, clients or customers are referred;

3 (3) "gender identity" means a person's self-
4 perception, or perception of that person by another, of the
5 person's identity as a male or female based upon the person's
6 appearance, behavior or physical characteristics that are in
7 accord with or opposed to the person's physical anatomy,
8 chromosomal sex or sex at birth;

9 (4) "minor" means a person under eighteen
10 years of age; and

11 (5) "sexual orientation" means
12 heterosexuality, homosexuality or bisexuality, whether actual
13 or perceived.

14 F. Licensees whose licenses are in a probationary
15 status shall pay reasonable expenses for maintaining
16 probationary status, including laboratory costs when laboratory
17 testing of biological fluids are included as a condition of
18 probation."

19 **SECTION 13.** Section 61-10-15 NMSA 1978 (being Laws 2016,
20 Chapter 90, Section 12) is amended to read:

21 "61-10-15. REFUSAL AND REVOCATION OF LICENSE.--

22 A. Upon satisfactory proof being made to the board
23 that an applicant for or holder of a license to practice
24 osteopathic medicine has been guilty of unprofessional or
25 dishonorable conduct, the board may:

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- 1 (1) refuse to issue a license to an applicant;
2 (2) revoke or suspend a license; or
3 (3) fine, censure or reprimand a licensee.

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

12 C. If evidence fails to establish to the
13 satisfaction of the board that the licensee is competent or if
14 evidence shows that the licensee has not complied with the
15 terms of probation, the board may revoke or suspend the
16 licensee's license. If the board suspends a license, the
17 licensee shall not practice during the term of suspension. A
18 licensee whose license has been revoked or is in suspension and
19 who thereafter practices or attempts or offers to practice in
20 the state is guilty of a fourth degree felony and shall be
21 sentenced under the provisions of the Criminal Sentencing Act
22 to imprisonment for a definite period not to exceed eighteen
23 months and, in the discretion of the sentencing court, to a
24 fine not to exceed five thousand dollars (\$5,000), or both,
25 unless:

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- 1 (1) the period of suspension has expired;
- 2 (2) the board has modified the suspension to
- 3 permit the practice of osteopathic medicine; or
- 4 (3) the board has reinstated the license.

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

- 9 (1) at least twenty days' notice in writing of
- 10 the charge against that person; and
- 11 (2) a public hearing by the board, with right
- 12 of review of the board's decision by the district court of the
- 13 first judicial district by certiorari, on petition of the party
- 14 against whom the board's decision is rendered.

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

21 F. As used in this section:

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

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

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

9 (a) procuring, aiding or abetting an
10 illegal procedure or failing to comply with the provisions of
11 the Women's Health and Safety Act;

12 (b) employing a person to solicit
13 patients for the licensee;

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

17 (d) obtaining a fee by fraud or
18 misrepresentation;

19 (e) willfully or negligently divulging a
20 professional confidence;

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

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1 evidence of conviction;

2 (g) habitual or excessive use of
3 intoxicants or drugs;

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

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

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

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

21 (l) gross negligence in the practice of
22 a licensee;

23 (m) manifest incapacity or incompetence
24 to practice as a licensee;

25 (n) discipline imposed on a licensee by

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1 another state, including denial, probation, suspension or
2 revocation, based upon acts by the licensee similar to acts
3 described in this section. A certified copy of the record of
4 suspension or revocation of the state making the suspension or
5 revocation is conclusive evidence;

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

9 (p) fee splitting;

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

13 (r) conduct likely to deceive, defraud
14 or harm the public;

15 (s) repeated similar negligent acts;

16 (t) employing abusive billing practices;

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

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

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

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

10 (x) abandonment of a patient;

11 (y) being found mentally incompetent by
12 a court of competent jurisdiction;

13 (z) injudicious prescribing,
14 administering or dispensing of a drug or medicine;

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

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

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

24 (dd) the surrender of a license or
25 withdrawal of an application for a license before another state

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1 licensing board while an investigation or disciplinary action
2 is pending before that board for acts or conduct similar to
3 acts or conduct that would constitute grounds for action
4 pursuant to this section;

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

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

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

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

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

25 (jj) willfully or negligently divulging

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1 privileged information or a professional secret."

2 SECTION 14. REPEAL.—Sections 30-5-1 through 30-5-3 NMSA
3 1978 (being Laws 1969, Chapter 67, Sections 1 through 3) are
4 repealed.

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