SENATE BILL 135

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

INTRODUCED BY

Gerald Ortiz y Pino

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO PROFESSIONAL LICENSURE; ENACTING THE NATUROPATHIC DOCTORS' PRACTICE ACT; PROVIDING FOR LICENSURE OF NATUROPATHIC DOCTORS; PROVIDING FOR SCOPE OF PRACTICE; CREATING A NATUROPATHIC DOCTORS' ADVISORY COUNCIL OF THE NEW MEXICO MEDICAL BOARD; AMENDING SECTIONS OF THE NEW MEXICO DRUG, DEVICE AND COSMETIC ACT, THE MEDICAL PRACTICE ACT AND THE UNLICENSED HEALTH CARE ACT.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 13 of this act may be cited as the "Naturopathic Doctors' Practice Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Naturopathic Doctors' Practice Act:

A. "approved naturopathic medical educational

program" means an educational program that the board has approved as meeting the requirements of Section 4 of the Naturopathic Doctors' Practice Act that prepares naturopathic doctors for the practice of naturopathic medicine;

B. "association" means an entity that is approved by the American association of naturopathic physicians, which entity represents the interests of naturopathic doctors in the state;

C. "biological product" means any of the following that is applicable to the prevention, treatment or cure of a disease or condition of human beings:

(1) a virus;

(2) a therapeutic serum;

(3) a toxin;

(4) an antitoxin;

(5) a vaccine;

(6) blood;

(7) a blood component or derivative;

(8) an allergenic product;

(9) a protein, except any chemically synthesized polypeptide;

(10) a product that is analogous to any of the products listed in Paragraphs (1) through (9) of this subsection; or

(11) arsphenamine, a derivative of

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arsphenamine or any other trivalent organic arsenic compound;

D. "board" means the New Mexico medical board established pursuant to the Medical Practice Act;

E. "clinical laboratory procedure" means the use of venipuncture consistent with naturopathic medical practice, commonly used diagnostic modalities consistent with naturopathic practice, the recording of a patient's health history, physical examination, ordering and interpretation of radiographic diagnostics and other standard imaging and examination of body orifices, excluding endoscopy and colonoscopy. "Clinical laboratory procedure" includes the practice of obtaining samples of human tissues, except surgical excision beyond surgical excision that is authorized as a minor office procedure;

F. "collaboration" means the process by which a licensed physician and a naturopathic doctor jointly contribute to the health care and medical treatment of patients; provided that:

(1) each collaborator performs actions that the collaborator is licensed or otherwise authorized to perform; and

(2) collaboration shall not be construed to require the physical presence of the licensed physician at the time and place services are rendered;

G. "controlled substance" means a drug, substance

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or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act;

H. "council" means the naturopathic doctors' advisory council;

I. "dangerous drug" means a drug, including a substance that appears in Schedules I through V of the Controlled Substances Act, that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription; that is restricted to use by licensed practitioners authorized to prescribe the drug under the New Mexico Drug, Device or Cosmetic Act; or that is required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

(1) "Caution: federal law prohibits dispensing without prescription.";

(2) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(3) "Rx only";

J. "drug" means a substance:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans and the biological products applicable to humans regulated under federal law;

(3) other than food, that affects the

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structure or any function of the human body or the bodies of other animals; and

(4) intended for use as a component of Paragraph (1), (2) or (3) of this subsection, but "drug" does not include devices or their component parts or accessories;

K. "homeopathic medicine" means a system of medicine based on the use of infinitesimal doses of substances capable of producing symptoms similar to those of the disease treated, as listed in the homeopathic pharmacopoeia of the United States;

L. "hygiene" means the use of preventive techniques, including personal hygiene, asepsis, public health and safety;

M. "laboratory examination" means:

(1) phlebotomy;

(2) a clinical laboratory procedure;

(3) an orificial examination;

(4) a physiological function test; or

(5) a screening or test that the board has authorized naturopathic doctors to perform, when indicated, which results are interpreted by the naturopathic doctor;

N. "legend drug" means a drug that is an unscheduled dangerous drug;

O. "license" means a license issued by the board to an individual pursuant to the Naturopathic Doctors' Practice

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Act and board rules authorizing that individual to practice naturopathic medicine in the state;

P. "licensee" means a naturopathic doctor licensed by the board to practice naturopathic medicine in the state;

Q. "minor office procedure" means minor surgical care and procedures, including:

(1) surgical care incidental to superficial laceration, lesion or abrasion, excluding surgical care to treat a lesion suspected of malignancy;

(2) the removal of foreign bodies located in superficial structures, excluding the globe of the eye;

(3) trigger point therapy;

(4) dermal stimulation;

(5) allergy testing and treatment; and

(6) the use of antiseptics and topical or local anesthetics;

R. "naturopathic doctor" means an individual licensed pursuant to the Naturopathic Doctors' Practice Act as a naturopathic doctor to practice naturopathic medicine in the state;

S. "naturopathic medicine" means:

(1) a system of health care for the prevention, diagnosis and treatment of human health conditions, injury and disease;

(2) the promotion or restoration of health;

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and

(3) the support and stimulation of a patient's inherent self-healing processes through patient education and the use of naturopathic therapies and therapeutic substances;

T. "naturopathic physical medicine" means the use of one or more of the following physical agents in a manner consistent with naturopathic medical practice on a part or the whole of the body, by hand or by mechanical means, in the resolution of a human ailment or conditions:

(1) air;

(2) water;

(3) heat;

(4) cold;

(5) sound;

(6) light;

(7) electromagnetism;

(8) colon hydrotherapy;

(9) soft tissue therapy;

(10) joint mobilization;

(11) therapeutic exercise; or

(12) naturopathic manipulation;

U. "naturopathic therapy" means the use of:

(1) naturopathic physical medicine;

(2) suggestion;

(3) hygiene;

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(4) a therapeutic substance;

(5) a dangerous drug;

(6) nutrition and food science;

(7) homeopathic medicine;

(8) a clinical laboratory procedure; or

(9) a minor office procedure;

V. "nutrition and food science" means the prevention and treatment of disease or other human conditions through the use of food, water, herbs, roots, bark or natural food elements;

W. "prescription" means an order given individually for the person for whom prescribed, either directly from a naturopathic doctor or the naturopathic doctor's agent to the pharmacist, including by means of electronic transmission, or indirectly by means of a written order signed by the naturopathic doctor, and bearing the name and address of the naturopathic doctor, the naturopathic doctor's license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue;

X. "professional examination" means a competency-based national naturopathic doctor licensing examination administered by the North American board of naturopathic examiners or its successor agency, which board has been nationally recognized to administer a naturopathic examination

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that represents federal standards of education and training;

Y. "suggestion" means a technique using:

(1) biofeedback;

(2) hypnosis;

(3) health education; or

(4) health counseling; and

Z. "therapeutic substance" means any of the following exemplified in a standard naturopathic medical text, journal or pharmacopeia:

(1) a vitamin;

(2) a mineral;

(3) a nutraceutical;

(4) a botanical medicine;

(5) oxygen;

(6) a homeopathic medicine;

(7) a hormone;

(8) a hormonal or pharmaceutical contraceptive device; or

(9) other physiologic substance.

SECTION 3. [NEW MATERIAL] QUALIFICATIONS FOR LICENSURE.--The board shall license an applicant who:

A. is of good moral character, in accordance with standards established by rules of the board;

B. submits, in accordance with rules of the board, the following items to the board:

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(1) an application for licensure designed and approved by the board and submitted in accordance with rules of the board;

(2) an application fee submitted in an amount and manner established by rules of the board;

(3) evidence that the applicant has graduated from an approved naturopathic medical educational program;

(4) evidence that the applicant has passed a professional examination; and

(5) evidence that the applicant has passed a state jurisprudence examination that meets standards established in rules of the board;

C. is determined by the board, upon recommendation by the council, to be physically and mentally capable of safely practicing naturopathic medicine with or without reasonable accommodation; and

D. has not had a license to practice naturopathic medicine or other health care license registration or certificate refused, revoked or suspended by any other jurisdiction for reasons that relate to the applicant's ability to skillfully and safely practice naturopathic medicine unless that license, registration or certification has been restored to good standing by that jurisdiction.

SECTION 4. [NEW MATERIAL] APPROVED NATUROPATHIC MEDICAL EDUCATIONAL PROGRAM.--With the advice and consent of the

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council, the board shall establish by rule guidelines for an approved naturopathic medical educational program, which guidelines shall meet the following requirements and the board's specifications for the education of naturopathic doctors. The approved naturopathic medical educational program shall:

A. offer graduate-level, full-time didactic and supervised clinical training;

B. be accredited, or shall have achieved candidacy status for accreditation, by the council on naturopathic medical education or an equivalent federally recognized accrediting body for naturopathic medical programs that is also recognized by the board; and

C. be conducted by an institution, or a division of an institution of higher education, that:

(1) is accredited or is a candidate for accreditation by a regional or national institutional accrediting agency recognized by the United States secretary of education or a diploma-granting, degree-equivalent college or university; or

(2) meets equivalent standards for recognition of accreditation established in rules of the board for medical education programs offered in Canada.

SECTION 5. [NEW MATERIAL] DISPLAY OF LICENSE.--A licensee shall display the licensee's license in the licensee's place of

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business in a location clearly visible to the licensee's patients and shall also display evidence of the licensee having completed an approved naturopathic medical educational program.

SECTION 6. [NEW MATERIAL] SCOPE OF PRACTICE.--A licensee may practice naturopathic medicine only to provide primary care, as "primary care" is defined in rules of the board, as follows:

A. in collaboration with a physician licensed pursuant to the Medical Practice Act or the Osteopathic Medicine Act; and

B. in alignment with naturopathic medical education to:

(1) perform physical examinations;

(2) order laboratory examinations;

(3) order diagnostic imaging studies;

(4) interpret the results of laboratory examinations for diagnostic purposes;

(5) order and, based on a radiologist's report, take action on diagnostic imaging studies in a manner consistent with naturopathic training;

(6) prescribe, administer, dispense and order the class of drugs that excludes the natural derivatives of opium, which are morphine and codeine, and related synthetic and semi-synthetic compounds that act upon opioid receptors;

(7) after passing a pharmacy examination

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authorized by rules of the board, prescribe, administer, dispense and order:

(a) all legend drugs; and

(b) testosterone products and all drugs within Schedules III, IV and V of the Controlled Substances Act, excluding all: 1) benzodiazapines; 2) opioids; and 3) opioid derivatives;

(8) administer intramuscular, intravenous, subcutaneous, intra-articular and intradermal injections of substances appropriate to naturopathic medicine;

(9) use routes of administration that include oral, nasal, auricular, ocular, rectal, vaginal, transdermal, intradermal, subcutaneous, intravenous, intra-articular and intramuscular consistent with the education and training of a naturopathic doctor;

(10) perform naturopathic physical medicine;

(11) employ the use of naturopathic therapy; and

(12) use therapeutic devices, barrier contraception, intrauterine devices, hormonal and pharmaceutical contraception and durable medical equipment.

SECTION 7. [NEW MATERIAL] REFERRAL REQUIREMENT.--A licensee shall refer to a physician authorized to practice in the state under the Medical Practice Act or the Osteopathic Medicine Act any patient whose medical condition should, at the

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time of evaluation or treatment, be determined to be beyond the scope of practice of the licensee.

SECTION 8. [NEW MATERIAL] PROHIBITIONS.--A licensee shall not:

A. provide care outside of the scope of primary care, as that term is defined in rules of the board;

B. perform surgery outside of the scope of minor office procedures permitted in the employment of naturopathic therapy;

C. use general or spinal anesthetics;

D. administer ionizing radioactive substances for therapeutic purposes;

E. perform a surgical procedure using a laser device;

F. perform a surgical procedure involving any of the following areas of the body that extend beyond superficial tissue:

(1) eye;

(2) ear;

(3) tendon;

(4) nerves;

(5) veins; or

(6) artery;

G. perform a surgical abortion;

H. treat any lesion suspected of malignancy or

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requiring surgical removal; or

I. perform acupuncture.

SECTION 9. [NEW MATERIAL] EXEMPTIONS.--Nothing in the Naturopathic Doctors' Practice Act shall be construed to prohibit or to restrict:

A. the practice of a health care profession by an individual who is licensed, certified or registered under other laws of this state and who is performing services within the individual's authorized scope of practice;

B. the practice of naturopathic medicine by a student enrolled in an approved naturopathic medical educational program; provided that the practice of naturopathic medicine by a student is performed pursuant to a course of instruction or an assignment from an instructor and under the supervision of the instructor who is a licensee or a duly licensed professional in the instructed field;

C. any individual from treating the individual's self or the individual's family member in accordance with the individual's or the individual's family member's religious or health beliefs;

D. any person that sells a vitamin or herb from providing information about the vitamin or herb;

E. the practice of naturopathic medicine by persons who are licensed to practice in any other state or district in the United States and who enter this state to consult with a

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naturopathic doctor of this state; provided that the consultation is limited to examination, recommendation or testimony in litigation; or

F. any person or practitioner who is not licensed as a naturopathic doctor from recommending ayurvedic medicine, herbal remedies, nutritional advice, homeopathy or other therapy that is within the scope of practice of the Unlicensed Health Care Practice Act; provided that the person or practitioner shall not:

(1) use a title protected pursuant to Section 10 of the Naturopathic Doctors' Practice Act;

(2) represent or assume the character or appearance of a licensee; or

(3) otherwise use a name, title or other designation that indicates or implies that the person is a licensee.

SECTION 10. [NEW MATERIAL] PROTECTED TITLES.--

A. A licensee shall use the title "naturopathic doctor" and the recognized abbreviation "N.D.".

B. A licensee has the exclusive right to use the following terms in reference to the licensee's self:

(1) "naturopathic doctor";

(2) "doctor of naturopathic medicine";

(3) "doctor of naturopathy";

(4) "N.D.";

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(5) "ND";

(6) "NMD"; and

(7) "N.M.D.".

C. An individual represents the individual's self to be a naturopathic doctor when the individual uses or adopts any of the following terms in reference to the individual's self:

(1) "naturopathic doctor";

(2) "doctor of naturopathic medicine";

(3) "doctor of naturopathy";

(4) "N.D.";

(5) "ND";

(6) "NMD"; and

(7) "N.M.D.".

D. An individual shall not represent the individual's self to the public as a naturopathic doctor, a doctor of naturopathic medicine or a doctor of naturopathy, or as being otherwise authorized to practice naturopathic medicine in the state, unless the individual is a licensee.

E. A licensee shall not represent the licensee's self as a "naturopathic physician"; provided that representing that the licensee is a member of an organization that uses the term "naturopathic physicians" in the organization's name shall not be construed to be a violation of the provisions of this subsection.

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SECTION 11. [NEW MATERIAL] NATUROPATHIC DOCTORS' ADVISORY COUNCIL CREATED.--

A. The "naturopathic doctors' advisory council" is created as a council to the board under the direction of the board. The council shall advise the board regarding:

(1) licensure of naturopathic doctors; and

(2) the board's approval of matters relating to the training and licensure of naturopathic doctors.

B. By July 1, 2019, the board shall appoint an initial council of one member for a term of four years and two members for terms of three years each. The initial council shall consist of three voting members as follows:

(1) either:

(a) two members of an association; or

(b) one member of an association and one member who is a physician licensed pursuant to the Medical Practice Act who has worked collaboratively with a member of an association for at least two years prior to being appointed to the council; and

(2) one member who is a resident of the state who is not, and never has been, a licensed health care practitioner and who does not have an interest in naturopathic education, naturopathic medicine or naturopathic business or practice.

C. As the terms of the initial council members

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expire, the board shall appoint successors for terms of four years each as follows:

(1) either:

(a) two licensees; or

(b) one licensee and one member who is a physician licensed pursuant to the Medical Practice Act who has worked collaboratively with a member of the association for at least two years prior to being appointed to the council; and

(2) one member who is a resident of the state who is not, and never has been, a licensed health care practitioner and who does not have an interest in naturopathic education, naturopathic medicine or naturopathic business or practice.

D. By August 1, 2019, the board shall call the first meeting of the council, at which meeting members shall elect a chair. By August 1, 2020 and at least once during each calendar quarter thereafter, the council shall hold a meeting at the call of the chair. The council may hold additional meetings at the call of the chair or at the written request of any two members of the council.

E. Vacancies on the council shall be filled by the board from a list of candidates provided by the council. The council shall make its list of candidates to fill vacancies on the council from a list of names that an association provides to the council.

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F. A majority of the council membership shall constitute a quorum.

G. At the discretion of the board, members of the council may receive per diem and mileage reimbursement pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

SECTION 12. [NEW MATERIAL] COUNCIL DUTIES.--The council shall develop guidelines for the board to consider for rulemaking with regard to:

A. regulating the licensure of naturopathic doctors and determining the hours of continuing education units required for maintaining licensure as a naturopathic doctor;

B. prescribing the manner in which records of examinations and treatments shall be kept and maintained;

C. establishing standards for professional responsibility and conduct;

D. identifying disciplinary actions and circumstances that require disciplinary action;

E. developing a means to provide information to all licensees in the state;

F. providing for the investigation of complaints against licensees or persons holding themselves out as naturopathic doctors in the state;

G. providing for the publication of information for the public about licensees and the practice of naturopathic

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medicine in the state;

H. providing for an orderly process for reinstatement of a license;

I. establishing criteria for advertising or promotional materials;

J. establishing by rule, in accordance with the Naturopathic Doctors' Practice Act:

(1) continuing education hours and content;

(2) standards for the state jurisprudence examination;

(3) schedules for providing licensing examinations and for the issuance of examination results;

(4) procedures and standards for reviewing licensing examination scores; and

(5) procedures for reviewing transcripts demonstrating completion of the approved naturopathic medical educational program;

K. the requirements for issuance and renewal of licenses; and

L. any other matter necessary to implement the Naturopathic Doctors' Practice Act.

SECTION 13. [NEW MATERIAL] LICENSE EXPIRATION--RENEWAL--DENIAL--REVOCATION--CONTINUING EDUCATION.--

A. A license issued or renewed pursuant to the Naturopathic Doctors' Practice Act shall expire three years

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following its issuance or last renewal.

B. The board may renew the license of any licensee who, upon the expiration of the licensee's license:

(1) has submitted an application for renewal;

(2) has paid the renewal fee established by rules of the board;

(3) meets the qualifications for licensure set forth in the Naturopathic Doctors' Practice Act and rules of the board; and

(4) meets the continuing education requirements established by the board.

C. The board shall grant applicants and licensees for whom the board intends to refuse to issue or renew a license, or whose license the board proposes to revoke or suspend, opportunity for a hearing in accordance with the procedures provided in the Uniform Licensing Act.

SECTION 14. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended) is amended to read:

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

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

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

C. "biological product" means any of the following

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that is applicable to the prevention, treatment or cure of a disease or condition of human beings:

(1) a virus;

(2) a therapeutic serum;

(3) a toxin;

(4) an antitoxin;

(5) a vaccine;

(6) blood;

(7) a blood component or derivative;

(8) an allergenic product;

(9) a protein, except any chemically synthesized polypeptide;

(10) a product that is analogous to any of the products listed in Paragraphs (1) through (9) of this subsection; or

(11) arsphenamine, a derivative of arsphenamine or any other trivalent organic arsenic compound;

D. "biosimilar" or "biosimilarity" means, in reference to a biological product that the federal food and drug administration has licensed, that:

(1) the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components; and

(2) there are no clinically meaningful differences between the biological product and the reference

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product in terms of the safety, purity and potency of the product;

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

F. "drug" means articles:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals and includes the domestic animal biological products regulated under the federal [~~Virus-Serum-Toxin~~] Animal Virus, Serum, Toxin, Antitoxin Act, 37 Stat 832-833, 21 U.S.C. 151-158, and the biological products applicable to humans regulated under Federal 58 Stat 690, as amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended, and 42 U.S.C. 262;

(3) other than food, that affect the structure or any function of the human body or the bodies of other animals; and

(4) intended for use as a component of Paragraph (1), (2) or (3) of this subsection, but "drug" does not include devices or their component parts or accessories;

G. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures

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necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the layperson can use a drug or device safely and for the purposes for which it is intended. A drug shall be dispensed only upon the prescription or drug order of a practitioner licensed by law to administer or prescribe the drug if it:

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

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

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

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

(5) bears the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed

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veterinarian."; or

(6) bears the legend "Rx only";

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

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

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

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

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

I. "device", except when used in Subsection R of this section and in Subsection G of Section 26-1-3, Subsection L and Paragraph (4) of Subsection A of Section 26-1-11 and Subsection C of Section 26-1-24 NMSA 1978, means an instrument, apparatus, implement, machine, contrivance, implant, in vitro

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reagent or other similar or related article, including any component, part or accessory, that is:

(1) recognized in an official compendium;

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

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

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

K. "practitioner" means a certified advanced practice chiropractic physician, physician, doctor of oriental

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medicine, dentist, veterinarian, euthanasia technician, certified nurse practitioner, clinical nurse specialist, pharmacist, pharmacist clinician, certified nurse-midwife, physician assistant, prescribing psychologist, dental hygienist, optometrist, naturopathic doctor or other person licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act;

L. "cosmetic" means:

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

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

M. "interchangeable biological product" means a biological product that the federal food and drug administration has licensed and:

(1) has determined that the biological product is biosimilar to the reference product and can be expected to produce the same clinical result as the reference product in any given patient;

(2) for a biological product that is administered more than once to an individual and:

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(a) has determined to have been administered more than once to the individual; or

(b) for which the risk in terms of safety or diminished efficacy of alternating or switching between use of the biological product and the reference product is not greater than the risk of using the reference product without alternation or switching; or

(3) has determined to be therapeutically equivalent as set forth in the latest edition or supplement to the federal food and drug administration's approved drug products with therapeutic equivalence evaluations;

N. "official compendium" means the official United States pharmacopoeia and national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them;

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

P. "immediate container" does not include package

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liners;

Q. "labeling" means all labels and other written, printed or graphic matter:

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

(2) accompanying an article;

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

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

T. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a

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drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder or such other use as involves prolonged contact with the body;

U. "new drug" means a drug:

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

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

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

W. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of

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any such article for sale and the sale and the supplying or applying of any such article in the conduct of a drug or cosmetic establishment;

X. "color additive" means a material that:

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

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

Y. "federal act" means the Federal Food, Drug, and Cosmetic Act;

Z. "restricted device" means a device for which the sale, distribution or use is lawful only upon the written or oral authorization of a practitioner licensed by law to administer, prescribe or use the device and for which the federal food and drug administration requires special training or skills of the practitioner to use or prescribe. This definition does not include custom devices defined in the federal act and exempt from performance standards or premarket

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approval requirements under Section 520(b) of the federal act;

AA. "prescription device" means a device that, because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but that bears the label: "Caution: federal law restricts this device to sale by or on the order of a _____", the blank to be filled with the word "physician", "physician assistant", "certified advanced practice chiropractic physician", "doctor of oriental medicine", "dentist", "veterinarian", "euthanasia technician", "certified nurse practitioner", "clinical nurse specialist", "pharmacist", "pharmacist clinician", "certified nurse-midwife", "dental hygienist", [~~or~~] "optometrist" or "naturopathic doctor" or with the descriptive designation of any other practitioner licensed in this state to use or order the use of the device;

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

CC. "pedigree" means the recorded history of a drug;

DD. "drug order" means an order either directly from a licensed practitioner or the practitioner's agent to the

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pharmacist, including by means of electronic transmission or indirectly by means of a written order signed by the licensed practitioner or the practitioner's agent, and bearing the name and address of the practitioner and the practitioner's license classification and the name and quantity of the drug or device ordered for use at an inpatient or outpatient facility; and

EE. "reference product" means the single biological product against which a biosimilar was evaluated in its marketing application to the federal food and drug administration."

SECTION 15. Section 61-6-5 NMSA 1978 (being Laws 1973, Chapter 361, Section 2, as amended) is amended to read:

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

A. enforce and administer the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Impaired Health Care Provider Act, the Polysomnography Practice Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act;

B. adopt, publish and file, in accordance with the Uniform Licensing Act and the State Rules Act, all rules for the implementation and enforcement of the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Impaired Health Care Provider Act, the Polysomnography

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Practice Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act;

C. adopt and use a seal;

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

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

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

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

H. grant, deny, review, suspend and revoke licenses to practice medicine and censure, reprimand, fine and place on probation and stipulation licensees and applicants in accordance with the Uniform Licensing Act for any cause stated in the Medical Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act;

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

J. have the authority to hire or contract with investigators to investigate possible violations of the Medical

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Practice Act;

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

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

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

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

O. establish and maintain rules related to the management of pain based on review of national standards for pain management; and

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

SECTION 16. Section 61-6-6 NMSA 1978 (being Laws 1973, Chapter 361, Section 1, as amended) is amended to read:

"61-6-6. DEFINITIONS.--As used in [~~Chapter 61, Article 6 NMSA 1978~~] the Medical Practice Act:

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A. "approved postgraduate training program" means a program approved by the accreditation council for graduate medical education;

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

C. "collaboration" means the process by which a licensed physician and a physician assistant jointly contribute to the health care and medical treatment of patients; provided that:

(1) each collaborator performs actions that the collaborator is licensed or otherwise authorized to perform; and

(2) collaboration shall not be construed to require the physical presence of the licensed physician at the time and place services are rendered;

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

E. "licensee" means a medical doctor, physician assistant, polysomnographic technologist, anesthesiologist assistant, naturopathic doctor or naprapath licensed by the board to practice in New Mexico;

F. "medical college or school in good standing" means a board-approved medical college or school that has as high a standard as that required by the association of American medical colleges and the council on medical education of the

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American medical association;

G. "medical student" means a student enrolled in a board-approved medical college or school in good standing;

H. "physician assistant" means a health professional who is licensed by the board to practice as a physician assistant and who provides services to patients with the supervision of or in collaboration with a licensed physician as set forth in rules promulgated by the board;

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

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

K. "the practice of medicine" consists of:

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

(2) offering or undertaking to administer, dispense or prescribe a drug or medicine for the use of another person, except as authorized pursuant to a professional or

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occupational licensing statute set forth in Chapter 61 NMSA 1978;

(3) offering or undertaking to give or administer, dispense or prescribe a drug or medicine for the use of another person, except as directed by a licensed physician;

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

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

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

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

L. "the practice of medicine across state lines" means:

(1) the rendering of a written or otherwise documented medical opinion concerning diagnosis or treatment of a patient within this state by a physician located outside this

state as a result of transmission of individual patient data by electronic, telephonic or other means from within this state to the physician or the physician's agent; or

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

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

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

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

SECTION 17. Section 61-6-31 NMSA 1978 (being Laws 1989, Chapter 269, Section 27, as amended) is amended to read:

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

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

B. All funds received by the board and money collected under the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act shall be deposited with the state treasurer, who shall place the same to the credit of the New Mexico medical board fund.

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

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

(1) the performance of the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act and the duties and powers imposed by those acts;

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

(3) efforts to recruit and retain medical doctors for practice in New Mexico.

E. All funds that may have accumulated to the credit of the board under any previous law shall be transferred to the New Mexico medical board fund and shall continue to be available for use by the board in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act. All money unused at the end of the fiscal year shall not revert, but shall remain in the fund for use in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act."

SECTION 18. Section 61-35-2 NMSA 1978 (being Laws 2009, Chapter 141, Section 2) is amended to read:

"61-35-2. DEFINITIONS.--As used in the Unlicensed Health Care Practice Act:

A. "complementary and alternative health care

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practitioner" means an individual who provides complementary and alternative health care services;

B. "complementary and alternative health care service" means the broad domain of complementary and alternative healing methods and treatments including the following practices and excluding the practice of naturopathic medicine by an individual licensed as a naturopathic doctor pursuant to the Naturopathic Doctors' Practice Act:

(1) anthroposophy;

(2) aromatherapy;

(3) ayurveda;

(4) culturally traditional healing practices, including practices by a curandera, sobadora, partera, medica and arbolaira, and healing traditions, including plant medicines and foods, prayer, ceremony and song;

(5) detoxification practices and therapies;

(6) energetic healing;

(7) folk practices;

(8) Gerson therapy and colostrum therapy;

(9) healing practices utilizing food, dietary supplements, nutrients and the physical forces of heat, cold, water, touch and light;

(10) healing touch;

(11) herbology or herbalism;

(12) homeopathy;

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(13) meditation;

(14) mind-body healing practices;

(15) naturopathy; provided that "naturopathy" does not include the practice of naturopathic medicine by an individual licensed as a naturopathic doctor pursuant to the Naturopathic Doctors' Practice Act;

(16) nondiagnostic iridology;

(17) noninvasive instrumentalities;

(18) polarity therapy; and

(19) holistic kinesiology and other muscle testing techniques;

C. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or rules adopted pursuant to that act;

D. "conventional medical diagnosis" means a medical term that is commonly used and understood in conventional western medicine;

E. "dangerous drug" means a drug that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription; that is restricted to use by licensed practitioners; or that is required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

(1) "Caution: federal law prohibits dispensing without prescription.";

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(2) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(3) "Rx only";

F. "department" means the regulation and licensing department;

G. "health care practitioner" means an individual who provides health care services;

H. "health care service" means any service relating to the physical and mental health and wellness of an individual; and

I. "sexual contact" means touching the primary genital area, groin, anus, buttocks or breast of a patient or allowing a patient to touch another's primary genital area, groin, anus, buttocks or breast and includes sexual intercourse, cunnilingus, fellatio or anal intercourse, whether or not there is any emission, or introducing any object into the genital or anal openings of another."

SECTION 19. TEMPORARY PROVISION--ISSUANCE OF FIRST LICENSES.--By September 1, 2019, the New Mexico medical board shall issue licenses to those applicants who have met the requirements of Section 3 of the Naturopathic Doctors' Practice Act and board rules promulgated in accordance with that act.

SECTION 20. SEVERABILITY.--If any part or application of the Naturopathic Doctors' Practice Act is held invalid, the remainder of the act or the application of the provision to

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other persons or circumstances is not affected.