

AN ACT

RELATING TO LICENSURE; AMENDING THE PODIATRY ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1. Section 61-8-1 NMSA 1978 (being Laws 1977, Chapter 221, Section 1) is amended to read:

"61-8-1. SHORT TITLE. --Chapter 61, Article 8 NMSA 1978 may be cited as the "Podiatry Act". "

Section 2. Section 61-8-2 NMSA 1978 (being Laws 1977, Chapter 221, Section 2) is amended to read:

"61-8-2. DEFINITIONS. --As used in the Podiatry Act:

A. "board" means the board of podiatry;

B. "foot and ankle radiation technologist" means a person who takes x-rays of the foot and ankle under the supervision of a podiatrist; and

C. "practice of podiatry" means engaging in that primary health care profession, the members of which examine, diagnose, treat and prevent by medical, surgical and biomechanical means ailments affecting the human foot and ankle and the structures governing their functions, but does not include amputation of the foot or the personal administration of a general anesthetic. A podiatrist, pursuant to the laws of this state, is defined as a physician

and surgeon within the scope of his license. "

Section 3. Section 61-8-3 NMSA 1978 (being Laws 1977, Chapter 221, Section 3) is amended to read:

"61-8-3. LICENSE REQUIRED. -- Unless licensed as a podiatrist pursuant to the provisions of the Podiatry Act or exempted from that act pursuant to Section 61-8-4 NMSA 1978, no person shall practice podiatry. "

Section 4. Section 61-8-4 NMSA 1978 (being Laws 1977, Chapter 221, Section 4) is amended to read:

"61-8-4. PERSONS EXEMPTED. -- The Podiatry Act shall not apply to:

- A. gratuitous services rendered in cases of emergency;
- B. the domestic administration of family remedies not involving remuneration;
- C. medical officers of the United States service in the actual performance of their official duties. The provisions of the Podiatry Act do not conflict with existing laws regulating the practice of the healing arts in this state; and
- D. the fitting, recommending or sale of corrective shoes, arch supports or similar mechanical devices by retail dealers or manufacturers, provided that the representatives, agents or employees of such dealers or manufacturers do not diagnose, treat or prescribe

mechanically or otherwise for any ailment, disease or deformity of the foot or leg."

Section 5. Section 61-8-5 NMSA 1978 (being Laws 1977, Chapter 221, Section 5, as amended) is amended to read:

"61-8-5. BOARD CREATED--MEMBERS--QUALIFICATIONS--TERMS--VACANCIES--REMOVAL.--

A. There is created a "board of podiatry". The board shall consist of five members, three of whom shall be podiatrists licensed to practice in New Mexico who have been actively engaged in the practice of podiatry for at least three consecutive years immediately prior to their appointments and two members who shall represent the public and who shall not have been licensed as podiatrists, nor shall the public members have any significant financial interest, whether direct or indirect, in the occupation regulated.

B. Members of the board required to be licensed podiatrists shall be appointed by the governor. Board members shall be appointed for staggered terms of five years each, made in such a manner that the terms of not more than two board members end on December 31 of each year commencing with 1978. Board members shall serve until their successors have been appointed and qualified. A vacancy shall be filled for the unexpired term by appointment by the governor. All members of the state board of podiatry in office on the

effective date of the Podiatry Act shall serve out their unexpired terms.

C. The governor may remove any member from the board for neglect of any duty required by law, for incompetence, for improper or unprofessional conduct as defined by board rule or for any reason that would justify the suspension or revocation of his license to practice podiatry.

D. No board member shall serve more than two consecutive full terms, and any member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member unless excused for reasons set forth in board rules.

E. In the event of a vacancy for any reason, the secretary of the board shall immediately notify the governor and the board members of the vacancy, the reason for its occurrence and the action taken by the board, so as to expedite the appointment of a new board member."

Section 6. Section 61-8-6 NMSA 1978 (being Laws 1977, Chapter 221, Section 6) is amended to read:

"61-8-6. BOARD ORGANIZATION--MEETINGS--COMPENSATION--POWERS AND DUTIES.--

A. The board shall hold a regular meeting at least annually and shall elect annually a chairman, vice chairman and secretary-treasurer from its membership, each of

whom shall serve until his successor is selected and qualified.

B. The board shall hold a minimum of one examination for licensure each year in the month of June or July at a place and at a time designated by the board. Notice of the examination shall be given to all applicants at least thirty days prior to the date of the examination.

C. Special meetings may be called by the chairman and shall be called upon the written request of any three board members. Notice of all meetings shall be made in conformance with the Open Meetings Act.

D. Members of the board may be reimbursed as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance.

E. The board shall:

(1) administer and enforce the provisions of the Podiatry Act;

(2) 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 Podiatry Act;

(3) adopt and use a seal;

(4) conduct hearings, administer oaths and take testimony on any matters within the board's jurisdiction;

(5) keep an accurate record of all its meetings, receipts and disbursements;

(6) keep a record of all licensure examinations held, together with the names and addresses of all persons taking the examinations and the examination results. Within forty-five days after any examination, the board shall give written notice to each applicant examined of the results of the examination as to the respective applicant;

(7) certify as passing each applicant who obtains a passing score, as defined by board rule, on examinations administered or approved by the board;

(8) keep records of registration in which the name, address and license number of all licensed podiatrists are recorded, together with a record of all license renewals, suspensions and revocations;

(9) grant, deny, renew, suspend or revoke licenses to practice podiatry or take other actions provided in Section 61-1-3 NMSA 1978 in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Podiatry Act;

(10) adopt and promulgate rules setting standards of preliminary and professional qualifications for the practice of podiatry;

(11) adopt and promulgate rules and prepare

and administer examinations for the licensure and regulation of podiatric assistants as are necessary to protect the public. The rules shall include definitions and limitations on the practice of podiatric assistants; qualifications for applicants for licensure; an initial license fee in an amount not to exceed two hundred fifty dollars (\$250); and a renewal fee not to exceed one hundred dollars (\$100) per year; provisions for the regulation of podiatric assistants and the suspension or revocation of licenses;

(12) determine by rule all qualifications and requirements for applicants seeking licensure as podiatrists or podiatric assistants;

(13) adopt rules and prepare and administer examinations for applicants seeking licensure as foot and ankle radiation technologists; and

(14) have the power to employ agents or attorneys. "

Section 7. Section 61-8-7 NMSA 1978 (being Laws 1977, Chapter 221, Section 7) is amended to read:

"61-8-7. DISPOSITION OF FUNDS--PODIATRY FUND CREATED--METHOD OF PAYMENTS--BONDS. --

A. There is created the "podiatry fund".

B. All funds received by the board and money collected under the Podiatry Act shall be deposited with the state treasurer, who shall place the same to the credit of

the podiatry fund.

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

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

(1) the performance of the provisions of the Podiatry Act and the powers and duties imposed by that act; and

(2) the promotion of education and standards of practice in the field of podiatry in New Mexico within the budgetary limits.

E. All money that has accumulated to the credit of the board under any previous law shall be transferred to the podiatry fund and shall continue to be available for use by the board in accordance with the provisions of the Podiatry Act. Balances at the end of the fiscal year shall not revert, but shall remain in the podiatry fund for use in accordance with the provisions of the Podiatry Act. "

Section 8. Section 61-8-8 NMSA 1978 (being Laws 1977, Chapter 221, Section 8) is amended to read:

"61-8-8. QUALIFICATIONS FOR LICENSURE AS A

PODIATRIST. --

A. Each applicant for licensure as a podiatrist shall furnish evidence satisfactory to the board that the applicant:

(1) has reached the age of majority;

(2) is of good moral character;

(3) has graduated and been awarded a doctor of podiatric medicine degree from a college of podiatric medicine accredited by the American podiatric medical association council on education; and

(4) has completed, at a minimum, a one-year residency program at a hospital accredited by the American podiatric medical association council on education.

B. Each applicant shall file his application under oath on forms supplied by the board and shall pay the required fees.

C. An applicant for licensure by examination shall submit evidence to the board that he has successfully passed the examinations administered by the national board of podiatry examiners for students graduating from colleges of podiatry and shall furnish the board an official transcript and take such clinical and written examinations as the board deems necessary. The examinations shall be in English, and the subjects covered by the examinations shall be determined by the board and taken from subjects taught in accredited

colleges of podiatric medicine. No applicant for licensure by examination shall be licensed who has not received a passing score on all board-approved or board-administered examinations.

D. A podiatrist duly licensed in another state may, on a temporary basis, consult, advise or cooperate in patient treatment with a podiatrist licensed in New Mexico, subject to rules adopted and promulgated by the board."

Section 9. Section 61-8-9 NMSA 1978 (being Laws 1977, Chapter 221, Section 9) is amended to read:

"61-8-9. LICENSURE BY RECIPROCITY.--An applicant for licensure by reciprocity shall meet the qualifications set forth in Section 61-8-8 NMSA 1978, shall file his application under oath on forms supplied by the board that conform to board rules on reciprocity and shall furnish proof satisfactory to the board of his having been licensed by examination in another state that had qualifications equal to or exceeding those of this state on the date of his original licensure. In addition, each applicant for registration pursuant to the provisions for licensure by reciprocity shall furnish the board an affidavit from his state board showing current registration and the fact that he has been licensed to practice podiatry and that he has practiced podiatry for at least five consecutive years immediately preceding the filing of his application for reciprocal privilege. The

applicant shall also complete and pass those supplemental examinations as the board deems necessary if required by board rule. "

Section 10. Section 61-8-10 NMSA 1978 (being Laws 1977, Chapter 221, Section 10, as amended) is amended to read:

"61-8-10. LICENSE FEES--LICENSURE UNDER PRIOR LAW--RENEWAL.--

A. An applicant for licensure as a podiatrist shall pay the following fees:

(1) for licensure by examination:

(a) an examination fee equal to the cost of purchasing the examination, plus an administration fee not to exceed fifty percent of the examination fee; and

(b) an application fee not to exceed five hundred dollars (\$500);

(2) for licensure on the basis of reciprocity, a fee set by the board in an amount not to exceed six hundred dollars (\$600);

(3) for the annual renewal of license on or before January 1 of each year, a renewal fee set by the board in an amount not to exceed three hundred dollars (\$300);

(4) for the late renewal after January 1 of each year, a late charge not to exceed fifty dollars (\$50.00) per month or part thereof commencing on January 2;

(5) in addition to the renewal fees and late charges, the applicant for the renewal of a license shall pay a reinstatement fee not to exceed two hundred fifty dollars (\$250) for the first twelve months of delinquency and a reinstatement fee of five hundred dollars (\$500) for a license that has lapsed more than one year but not more than three years; and

(6) for the issuance of a temporary license, a fee not to exceed one hundred dollars (\$100).

B. If any licensee permits his license to lapse for a period of three full years, the license shall automatically be canceled and shall not be reinstated.

C. The provisions of Paragraphs (3), (4) and (5) of Subsection A of this section shall not apply to licensees who practice in the service of the United States whose licenses shall be renewed upon application for such renewal within three months after the termination of such service.

D. Current renewal certificates issued by the board shall be displayed in the office of the licensee, and, in the case of the suspension or revocation of a license, no portion of a fee or penalty shall be returned.

E. Any person licensed as a podiatrist under the provisions of any prior laws of New Mexico, whose license is valid on the effective date of the Podiatry Act, shall be held to be licensed under the provisions of the Podiatry Act

and shall be entitled to the renewal of his current license."

Section 11. Section 61-8-10.1 NMSA 1978 (being Laws 1989, Chapter 185, Section 2) is amended to read:

"61-8-10.1. LICENSE RENEWAL--CONTINUING EDUCATION--
PENALTY FOR FAILURE TO RENEW.--

A. All licensees shall renew their licenses on or before January 1 of each year. Upon application for renewal, each licensee shall furnish evidence that he holds a registration number with the taxation and revenue department and has completed continuing education requirements as set forth in Subsection B of this section.

B. As a condition of renewal, all applicants shall furnish the board with evidence of completion of post-graduate study as required by board rule. Post-graduate study may be obtained from a college of podiatric medicine accredited by the American podiatry association, one of its constituent societies or affiliate organizations or other such courses approved by the board. This requirement may only be waived for reasons of prolonged illness or other incapacity.

C. The board may summarily suspend the license of any podiatrist who fails to renew his license or submit proof of completion of continuing education requirements within sixty days of January 1 as provided in Subsection A of this section. The board may reinstate licenses suspended upon

payment of all applicable late fees, delinquent renewal fees and reinstatement fees."

Section 12. Section 61-8-11 NMSA 1978 (being Laws 1977, Chapter 221, Section 11) is amended to read:

"61-8-11. SUSPENSION, REVOCATION OR REFUSAL OF LICENSE.--The board may refuse to issue or may suspend or revoke any license in accordance with the provisions of the Uniform Licensing Act for any one or more of the following reasons:

A. making a false statement in any part of an application for licensure, examination or registration pursuant to the provisions of the Podiatry Act;

B. conviction of a crime involving moral turpitude, as shown by a certified copy of the record of the court of conviction;

C. the habitual indulgence in the use of narcotics, alcohol or other substances that impair intellect and judgment to an extent as will, in the opinion of the board, incapacitate a podiatrist from the proper performance of his professional duties;

D. lending the use of one's name to an unlicensed podiatrist;

E. selling, giving or prescribing any compound or substance containing narcotic drugs or other controlled substances for illegal purposes;

F. the willful violation of a patient's right to confidentiality;

G. gross malpractice or incompetency as defined by board rule; or

H. any dishonest or unprofessional conduct as defined by the Podiatry Act or rules adopted pursuant to that act. "

Section 13. Section 61-8-12 NMSA 1978 (being Laws 1977, Chapter 221, Section 12) is amended to read:

"61-8-12. OFFENSES--PENALTIES.--Each of the following acts committed by any person constitutes a misdemeanor punishable upon conviction by a fine of not less than one hundred dollars (\$100) or more than ten thousand dollars (\$10,000) or by imprisonment not to exceed one year, or both:

A. practicing or attempting to practice podiatry without a current valid license issued by the board;

B. obtaining registration under the Podiatry Act by false or untrue statements to the board or by presenting a fraudulent diploma or license to the board;

C. swearing falsely or giving a false affidavit in any proceeding before the board;

D. advertising or using any designation, diploma or certificate tending to imply that one is a practitioner of podiatry, including the use of the words "chiroprapist", "podiatrist", "M Cp. ", "D. S. C. ", "D. P. M ", "foot specialist",

"foot correctionist", "foot culturist", "foot practipedist", "foot doctor" or words of similar import, unless one holds a license or is exempted under the provisions of the Podiatry Act; or

E. practicing podiatry during any period of time in which one's license has been revoked or suspended as provided in the Podiatry Act."

Section 14. Section 61-8-13 NMSA 1978 (being Laws 1977, Chapter 221, Section 13) is amended to read:

"61-8-13. UNPROFESSIONAL CONDUCT--EXCEPTIONS.--

A. Unprofessional conduct pursuant to Subsection H of Section 61-8-11 NMSA 1978 for any podiatrist licensed under the Podiatry Act includes using any false or misleading advertising or making any false or misleading statement in communications with patients or potential patients or using any misleading or deceptive title or designation in a name or title of a podiatric practice.

B. Nothing in Subsection A of this section shall be construed to prohibit the following acts:

(1) publishing in type of ordinary size and style, as opposed to bold or display type, the name, location, office hours and telephone number of any licensed practicing podiatrist in any telephone directory;

(2) publishing for a period of not more than ten consecutive days an announcement that the practitioner is

opening a new office or practice, providing that the announcement shall be published within thirty days after the opening and shall state only the practitioner's name, location, office hours, telephone number, occupation and the fact of the opening and shall be of a size not to exceed two inches in length and four inches in width and of a type size not heavier nor larger than twelve point gothic with a border not larger than four points;

(3) mailing one notice of the opening of a new practice or a notice of the assumption of an established practice consisting of a printed announcement which shall be in an envelope and shall state only the practitioner's name, location, telephone number, office hours and the designation "podiatrist", "foot specialist" or "practice limited to care of feet" and the usual language announcing the opening of an office;

(4) maintaining exterior signs about the office of the practitioner, in keeping with the medical and dental community, giving his name, address and occupation. The letters shall be no larger than six inches in height, but neon lights, flashing lights or similar devices shall not be used; and

(5) conducting, in conjunction with a majority of the practicing podiatrists of the state or of a given city, a public educational program or informational

campaign. "

Section 15. Section 61-8-14 NMSA 1978 (being Laws 1977, Chapter 221, Section 14) is amended to read:

"61-8-14. LIMITATION ON LICENSURE--TEMPORARY LICENSE. -

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A. No license to practice podiatry shall be issued to a corporation, partnership or association; provided, however, that this subsection shall not prohibit licensed podiatrists from associating themselves as otherwise allowed by law in a professional corporation, professional limited liability company, partnership or association for the purpose of practicing podiatry.

B. In cases of emergency, as defined by board rule, the board may grant a temporary license to practice podiatry to a person who meets the requirements of Subsections A and B of Section 61-8-8 NMSA 1978. The temporary license shall automatically expire on the date of the next board meeting at which applications for licensure by examination or reciprocity are approved. No person may be issued more than one temporary license pursuant to this provision.

C. To facilitate educational programs, subject to conditions and terms set forth in board rules, the board may grant a temporary license to practice podiatry to a person enrolled and participating in such program. "

Section 16. Section 61-8-15 NMSA 1978 (being Laws 1977, Chapter 221, Section 15) is repealed and a new Section 61-8-15 NMSA 1978 is enacted to read:

"61-8-15. PRIVILEGED COMMUNICATIONS. -- Medical and other health care-related information concerning a patient obtained by a podiatrist or by an employee of a podiatrist during the course of examination, diagnosis or treatment; and advice, diagnosis, orders, prescriptions and other health care-related communications from a podiatrist or an employee of a podiatrist are confidential communications protected in courts of law and administrative proceedings by the physician-patient privilege."

Section 17. Section 61-8-16 NMSA 1978 (being Laws 1977, Chapter 221, Section 16) is amended to read:

"61-8-16. POWER TO ENJOIN VIOLATIONS. -- Upon final determination that a person has violated a provision of the Podiatry Act, the board or any interested person may, in addition to other remedies provided in that act, petition the district court for an order restraining and enjoining such person from further or continued violation of the Podiatry Act."

Section 18. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1998. _____