SENATE BILL 285

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO ORIENTAL MEDICINE; EXPANDING THE PRACTICE OF DOCTORS OF ORIENTAL MEDICINE; PROVIDING FOR APPROVAL OF EDUCATION PROGRAMS; ALLOWING FOR INTERNS; ALLOWING FOR EXPANDED PRESCRIPTIVE AUTHORITY; INCREASING FEES; ADDING FEES; AMENDING 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 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended by Laws 1997, Chapter 240, Section 1 and by Laws 1997, Chapter 244, Section 1 and also by Laws 1997, Chapter 253, Section 2) 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

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authorized agent;

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

C. "biological product" means any virus, therapeutic serum, toxin, antitoxin or analogous product applicable to the prevention, treatment or cure of diseases or injuries of man and domestic animals and, as used within the meaning of this definition:

(1) a "virus" is interpreted to be a product containing the minute living cause of an infectious disease and includes [~~but is not limited to~~] filterable viruses, bacteria, rickettsia, fungi and protozoa;

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

(3) a "toxin" is a product containing a soluble substance poisonous to laboratory animals or man in doses of one milliliter or less of the product and having the property, following the injection of nonfatal doses into an animal, or causing to be produced therein another soluble substance [~~which~~] that specifically neutralizes the poisonous substance and [~~which~~] that is demonstrable in the serum of the animal thus immunized; and

(4) an "antitoxin" is a product containing the soluble substance in serum or other body fluid of an

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immunized animal [~~which~~] that specifically neutralizes the toxin against which the animal is immune;

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

E. "drug" means:

(1) articles recognized in an official compendium;

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

(3) articles other than food [~~which~~] that affect the structure or any function of the body of man or other animals; and

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

F. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, [~~which~~] that because of [~~any~~] a

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potentiality for harmful effect or the method of its use or the collateral measures 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 layman 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 of a practitioner licensed by law to administer or prescribe such drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance or [~~any~~] a chemical derivative of such substance [~~which~~] 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 [~~such~~] 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 [~~such~~] the drug;

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

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

G. "counterfeit drug" means a drug other than a controlled substance [~~which~~] that, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint or device or any likeness of a drug manufacturer, processor, packer or distributor other than the person who [~~in fact~~] manufactured, processed, packed or distributed [~~such~~] the drug and [~~which~~] that falsely purports or is represented to be the product of or to have been packed or distributed by such other drug manufacturer, processor, packer or distributor;

H. "device", except when used in Subsection P 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 reagent or other similar or related article, including any component, part or accessory, [~~which~~] 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 man or other animals; or

(3) intended to affect the structure or [~~any~~]

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a function of the body of man or other animals and [~~which~~] that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and [~~which~~] that is not dependent [~~upon~~] on being metabolized for achievement of any of its principal intended purposes;

I. "prescription" means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, his 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. No person other than a practitioner shall prescribe or write a prescription;

J. "practitioner" means a doctor of oriental medicine, physician, dentist, veterinarian, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife or other person licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act;

K. "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,

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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;

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

M. "label" means a display of written, printed or graphic matter upon the immediate container of [~~any~~] 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;

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

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

(1) [~~upon any~~] on an article or [~~any of~~] its containers or wrappers; or

(2) accompanying [~~any~~] an article;

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P. "misbranded" means a label to an article [~~which~~] 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 [~~which~~] 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;

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

R. "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 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;

S. "new drug" means any drug:

(1) [~~any drug~~] the composition of which is such that the drug is not generally recognized, among experts

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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) [~~any drug~~] 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 [~~which~~] that has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

T. "contaminated with filth" applies to [~~any~~] 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 [~~any~~] a drug, device or cosmetic found to contain [~~any~~] dirt, dust, foreign or injurious contamination or infestation;

U. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the supplying or applying of any such article in the conduct of [~~any~~] a drug or cosmetic establishment;

V. "color additive" means a material [~~which~~] that:

(1) is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted,

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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 [~~any~~] 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 [~~which~~] that has been or hereafter is exempted under the federal act;

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

X. "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 approval requirements under Section 520(b) of the federal act; and

Y. "prescription device" means a device [~~which~~] 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

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this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but [~~which~~] 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 "doctor of oriental medicine", "physician", "dentist", "veterinarian", "certified nurse practitioner", "clinical nurse specialist", "certified nurse-midwife" or with the descriptive designation of any other practitioner licensed in this state to use or order the use of the device."

Section 2. Section 30-31-2 NMSA 1978 (being Laws 1972, Chapter 84, Section 2, as amended by Laws 1997, Chapter 244, Section 2 and also by Laws 1997, Chapter 253, Section 3) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled Substances Act:

A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or his agent;

B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman;

C. "board" means the board of pharmacy;

D. "bureau" means the bureau of narcotics and

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dangerous drugs, United States department of justice, or its successor agency;

E. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or [~~regulations~~] rules adopted thereto;

F. "counterfeit substance" means a controlled substance that bears the unauthorized trademark, trade name, imprint, number, device or other identifying mark or likeness of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the controlled substance;

G. "deliver" means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;

H. "dispense" means to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery;

I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

J. "distribute" means to deliver other than by

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administering or dispensing a controlled substance or controlled substance analog;

K. "drug" or "substance" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories;

L. "hashish" means the resin extracted from any part of marijuana, whether growing or not, and every compound, manufacture, salt, derivative, mixture or preparation of such resins;

M. "manufacture" means the production, preparation, compounding, conversion or processing of a controlled substance or controlled substance analog by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

(1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(2) by a practitioner, or by his agent under

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his supervision, for the purpose of or as an incident to research, teaching or chemical analysis and not for sale;

N. "marijuana" means all parts of the plant Cannabis, including any and all varieties, species and subspecies of the genus Cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination;

O. "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of the substances referred to in Paragraph (1) of this subsection, except the isoquinoline alkaloids of opium;

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(3) opium poppy and poppy straw, including all parts of the plant of the species Papaver somniferum L. except its seeds; or

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of these substances except decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine;

P. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). "Opiate" does include its racemic and levorotatory forms;

Q. "person" [~~includes a~~] means a person, partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

R. "practitioner" means a doctor of oriental medicine, physician, dentist, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, veterinarian or other person licensed or certified to prescribe and administer drugs that are subject to the

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Controlled Substances Act;

S. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, in accordance with the Controlled Substances Act or regulations adopted thereto;

T. "scientific investigator" means a person registered to conduct research with controlled substances in the course of his professional practice or research and includes analytical laboratories;

U. "ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal under the care, custody and control of the person or by a member of his household;

V. "drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of the Controlled Substances Act. It

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includes:

(1) kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled substance or controlled substance analog or from which a controlled substance can be derived;

(2) kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs;

(3) isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance;

(4) testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs;

(5) scales or balances used, intended for use or designed for use in weighing or measuring controlled substances or controlled substance analogs;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannite dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or controlled substance analogs;

(7) separation gins and sifters used,

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intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning and refining, marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs;

(9) capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances or controlled substance analogs;

(10) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs;

(11) hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or controlled substance analogs into the human body;

(12) objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(a) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(b) water pipes;

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(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

(e) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small to hold in the hand;

(f) miniature cocaine spoons and cocaine vials;

(g) chamber pipes;

(h) carburetor pipes;

(i) electric pipes;

(j) air-driven pipes;

(k) chilams;

(l) bongs; or

(m) ice pipes or chillers; and

(13) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) statements by the owner or by anyone in control of the object concerning its use;

(b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;

(c) the proximity of the object to

controlled substances or controlled substance analogs;

(d) the existence of any residue of a controlled substance or controlled substance analog on the object;

(e) instructions, written or oral, provided with the object concerning its use;

(f) descriptive materials accompanying the object that explain or depict its use;

(g) the manner in which the object is displayed for sale; and

(h) expert testimony concerning its use;

W. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include the following:

(1) phenethylamines;

(2) N-substituted piperidines;

(3) morphinans;

(4) ecgonines;

(5) quinazolinones;

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(6) substituted indoles; and

(7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled substance analog" are those substances that are generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act;

X. "human consumption" includes application, injection, inhalation, ingestion or any other manner of introduction [~~whatsoever~~]; and

Y. "drug-free school zone" means [~~any~~] a public school or property that is used for public school purposes and the area within one thousand feet of the school property line, but it does not mean any post-secondary school."

Section 3. Section 61-14A-3 NMSA 1978 (being Laws 1993, Chapter 158, Section 11, as amended) is amended to read:

"61-14A-3. DEFINITIONS.--As used in the Acupuncture and Oriental Medicine Practice Act:

A. "acupuncture" means the surgical use of needles inserted into and removed from the [~~human~~] body and the use of other devices, modalities and procedures at specific locations on the body for the prevention, cure or correction of any

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disease, illness, injury, pain or other condition by controlling and regulating the flow and balance of energy and [~~functioning of the person~~] function to restore and maintain health;

B. "board" means the board of acupuncture and oriental medicine;

[~~C. "department" means the regulation and licensing department;~~

~~D.~~] C. "doctor of oriental medicine" means a person licensed as a physician to practice acupuncture and oriental medicine with the ability to practice independently, serve as a primary care provider and as necessary collaborate with other health care providers;

[~~E.~~] D. "moxibustion" means the use of heat on or above specific locations or on acupuncture needles at specific locations on the body for the prevention, cure or correction of any disease, illness, injury, pain or other condition;

[~~F.~~] E. "oriental medicine" means the distinct system of primary health care that uses all allied techniques of oriental medicine, both traditional and modern, to diagnose, treat and prescribe for the prevention, cure or correction of any disease, illness, injury, pain or other physical or mental condition by controlling and regulating the flow and balance of energy and [~~functioning of the person~~] function to restore and maintain health;

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[~~G.~~] F. "primary care provider" means a health care professional acting within the scope of his license who provides the first level of basic or general health care for [~~an individual's~~] a person's health needs, including diagnostic and treatment services; [~~and~~

[~~H.~~] G. "techniques of oriental medicine" means:

(1) the diagnostic and treatment techniques used in oriental medicine that include diagnostic procedures; acupuncture; moxibustion; manual therapy, also known as tui na; other physical medicine modalities and therapeutic procedures; breathing and exercise techniques; and dietary, nutritional and lifestyle counseling;

(2) the prescription or administration of any natural substances, herbal medicine, homeopathic medicine, vitamins, minerals, enzymes, glandular products, protomorphogens, live cell products, gerovital, amino acids, and dietary and nutritional supplements;

(3) the prescription or administration of devices, restricted devices and prescription devices, as those devices are defined in the New Mexico Drug, Device and Cosmetic Act, if the board determines by rule that such devices are necessary in the practice of oriental medicine and if the prescribing doctor of oriental medicine has fulfilled requirements for prescriptive authority in accordance with rules promulgated by the board for the devices enumerated in

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this paragraph;

(4) the prescription or administration of cosmetics, biological products, including therapeutic serum, and over-the-counter drugs, other than those enumerated in Paragraph (2) of this subsection, as those are defined in the New Mexico Drug, Device and Cosmetic Act, if the prescribing doctor of oriental medicine has fulfilled the requirements for expanded prescriptive authority in accordance with rules promulgated by the board for the substances enumerated in this paragraph; and

(5) the prescription or administration of the following dangerous drugs or controlled substances as they are defined in the New Mexico Drug, Device and Cosmetic Act or the Controlled Substances Act, if the prescribing doctor of oriental medicine has fulfilled the requirements for expanded prescriptive authority in accordance with rules promulgated by the board for the substances enumerated in this paragraph:

(a) sterile water;

(b) sterile saline;

(c) sarapin or its generic;

(d) procaine;

(e) lidocaine;

(f) oxygen;

(g) epinephrine;

[~~(d)~~] (h) vapocoolants;

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[~~(e) topical application of naturally occurring~~]

(i) naturally derived hormones; and

[~~(f)~~] (j) any of the drugs or substances enumerated in Paragraphs (2) and (4) of this subsection if at any time these substances or drugs are classified as dangerous drugs or controlled substances; and

H. "tutor" means a doctor of oriental medicine who is a teacher of acupuncture and oriental medicine with at least ten years of clinical experience."

Section 4. Section 61-14A-6 NMSA 1978 (being Laws 1993, Chapter 158, Section 14, as amended) is amended to read:

"61-14A-6. EXEMPTIONS.--

A. Nothing in the Acupuncture and Oriental Medicine Practice Act is intended to limit, interfere with or prevent any other class of licensed health care professionals from practicing within the scope of their [~~license as defined by each profession's New Mexico licensing statutes~~] licenses but they shall not hold themselves out to the public or any private group or business by using any title or description of services that includes the terms acupuncture, acupuncturist or oriental medicine unless they are licensed under the Acupuncture and Oriental Medicine Practice Act.

[~~B. Students enrolled in an educational program in acupuncture and oriental medicine approved by the board may~~

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~~practice acupuncture and oriental medicine under the direct supervision of a teacher at an institute or with a private tutor as part of the educational program in which they are enrolled.~~

~~C.~~] B. The Acupuncture and Oriental Medicine Practice Act shall not apply to or affect the following practices if the [~~individual~~] person does not hold himself out as a doctor of oriental medicine or as practicing acupuncture or oriental medicine:

(1) the administering of gratuitous services in cases of emergency;

(2) the domestic administering of family remedies;

(3) the counseling about or the teaching and demonstration of breathing and exercise techniques;

(4) the counseling or teaching about diet and nutrition;

(5) the spiritual or lifestyle counseling of [~~any individual~~] a person or spiritual group or the practice of the religious tenets of [~~any~~] a church;

(6) the providing of information about the general usage of herbal medicines, homeopathic medicines, vitamins, minerals, enzymes or glandular or nutritional supplements; or

(7) the use of needles for diagnostic

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purposes and the use of needles for the administration of diagnostic or therapeutic substances by licensed health care professionals."

Section 5. Section 61-14A-7 NMSA 1978 (being Laws 1993, Chapter 158, Section 15) is amended to read:

"61-14A-7. BOARD CREATED--APPOINTMENT--OFFICERS--COMPENSATION.--

A. [~~There is created~~] The "board of acupuncture and oriental medicine" is created.

B. The board shall be administratively attached to the regulation and licensing department.

C. The board shall consist of seven members appointed by the governor for terms of three years each. Four members of the board shall be doctors of oriental medicine who [~~have been licensed to practice acupuncture and oriental medicine in New Mexico for at least five years and~~] have been residents of and practiced acupuncture and oriental medicine in New Mexico for at least [~~two~~] five years next preceding the date of their appointment. Three members shall be appointed to represent the public and shall not have practiced acupuncture and oriental medicine in this or any other jurisdiction or have any financial interest in the profession regulated. No board member shall be the owner of an institute offering educational programs in acupuncture and oriental medicine. No more than [~~two board members shall~~] one board

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member may be from each of the following categories:

[~~(1) owners of institutes offering educational programs in acupuncture and oriental medicine;~~

~~(2)~~] a faculty [~~members~~] member at [~~institutes~~] an institute offering educational programs in acupuncture and oriental medicine;

[~~(3) private tutors offering educational programs~~] a tutor in acupuncture and oriental medicine; or

[~~(4) officers~~] an officer or director in a professional association of acupuncture and oriental medicine.

D. Members of the board shall be appointed by the governor for staggered terms of three years that shall be made in such a manner that the terms of board members [~~will~~] expire on July 1. [~~When~~] A board [~~member's term has expired, he~~] member shall serve until his successor has been appointed and qualified. Vacancies [~~from an unexpired term~~] shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

E. [~~No~~] A board member shall not serve more than two consecutive full terms, and [~~any~~] a board member [~~failing~~] who fails to attend, after he has received proper notice, three consecutive meetings shall be recommended for removal as a board member unless excused for reasons [~~set forth by rule~~] established by the board.

F. The board shall elect annually from its

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membership a chairman and other officers as necessary to carry out its duties.

G. The board shall meet at least once each year and at other times deemed necessary. Other meetings may be called by the chairman, a majority of board members or the governor. A simple majority of the board members serving constitutes a quorum of the board.

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

Section 6. Section 61-14A-8 NMSA 1978 (being Laws 1993, Chapter 158, Section 16) is amended to read:

"61-14A-8. BOARD--POWERS.--In addition to any other authority provided by law, the board shall have the power to:

A. enforce the provisions of the Acupuncture and Oriental Medicine Practice Act;

B. adopt, publish and file, in accordance with the Uniform Licensing Act and the State Rules Act, all rules [~~and regulations~~] necessary for the implementation and enforcement of the provisions of the Acupuncture and Oriental Medicine Practice Act;

C. adopt a code of ethics;

D. adopt and use a seal;

E. inspect [~~institutes, tutorships~~] facilities of approved educational programs, intern programs and the offices

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of licensees;

F. adopt rules implementing continuing education requirements for the purpose of protecting the health and well-being of the citizens of this state and maintaining and continuing informed professional knowledge and awareness;

G. employ [~~agents or attorneys~~] such professional and clerical assistance as necessary to carry out the powers and duties of the board;

H. issue investigative subpoenas for the purpose of investigating complaints against licensees prior to the issuance of a notice of contemplated action;

I. administer oaths and take testimony on any matters within the board's jurisdiction;

J. conduct hearings upon charges relating to the discipline of licensees, including the denial, suspension or revocation of a license in accordance with the Uniform Licensing Act; and

K. grant, deny, renew, suspend or revoke licenses to practice acupuncture and oriental medicine or grant, deny, renew, suspend or revoke approvals of educational programs and intern programs in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Acupuncture and Oriental Medicine Practice Act or the rules [~~and regulations~~] of the board."

Section 7. Section 61-14A-10 NMSA 1978 (being Laws 1993,

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Chapter 158, Section 18, as amended) is amended to read:

"61-14A-10. REQUIREMENTS FOR LICENSING.--The board shall grant a license to practice acupuncture and oriental medicine to [~~any~~] a person who has:

A. submitted to the board:

[~~A.~~] (1) the completed application for licensing on the form provided by the board;

[~~B.~~] (2) the required documentation as determined by the board;

[~~C.~~] (3) the required fees;

[~~D.~~] (4) an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency;

[~~E.~~] (5) proof, as determined by the board, that the applicant has completed a board-approved educational program in acupuncture and oriental medicine as provided for in the Acupuncture and Oriental Medicine Practice Act and the rules of the board; and

[~~F.~~] (6) proof that he has passed the examinations approved by the board; and

B. complied with any other requirements of the board."

Section 8. Section 61-14A-11 NMSA 1978 (being Laws 1993, Chapter 158, Section 19, as amended) is amended to read:

"61-14A-11. EXAMINATIONS.--

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A. The board shall establish procedures to ensure that examinations for licensing are offered at least once a year.

B. The board shall establish [~~by rule~~] the deadline for receipt of the application for licensing examination and other rules relating to the taking and retaking of licensing examinations.

C. The board shall establish [~~by rule~~] the passing grades for its approved examinations.

D. The board may approve [~~by rule~~] examinations that are used for national certification or other examinations.

E. The board shall require each qualified applicant to pass a written examination that includes, as a minimum, the following subjects:

(1) anatomy and physiology;

(2) pathology;

(3) diagnosis;

(4) pharmacology; and

(5) principles, practices and treatment techniques of acupuncture and oriental medicine.

F. The board may require each qualified applicant to pass a practical examination that demonstrates his knowledge of and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine.

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G. The board shall require each qualified applicant to pass a written or a practical examination or both in the following subjects:

(1) hygiene, sanitation and clean-needle technique; and

(2) needle and instrument sterilization techniques.

H. The board may require each qualified applicant to pass a written examination on the state laws and rules that pertain to the practice of acupuncture and oriental medicine.

I. The board shall require applicants to demonstrate their proficiency in English by passing a national English proficiency examination or by other means approved by the board."

Section 9. Section 61-14A-12 NMSA 1978 (being Laws 1993, Chapter 158, Section 20) is amended to read:

"61-14A-12. REQUIREMENTS FOR TEMPORARY LICENSING.--

A. The board shall establish by rule the criteria for temporary licensing of out-of-state doctors of oriental medicine.

B. The board may grant a temporary license to [~~any~~] a person who:

(1) is [~~licensed, certified, registered or~~] legally recognized to practice acupuncture and oriental medicine in another state [~~district or territory of the United~~

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~~States~~] or a foreign country or is legally recognized in another state or a foreign country to practice another health care profession and who possesses knowledge and skills that are included in the scope of practice of doctors of oriental medicine;

(2) is under the sponsorship of and in association with a licensed New Mexico doctor of oriental medicine or New Mexico institute offering an educational program approved by the board;

(3) submits the completed application for temporary licensing on the form provided by the board;

(4) submits the required documentation, including proof of adequate education and training, as determined by the board;

(5) submits the required fee for application for temporary licensing;

(6) submits an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency; and

(7) submits an affidavit from the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico institute attesting to the qualifications of the applicant and the activities the applicant will perform.

C. The board may grant a temporary license to allow the temporary licensee to:

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(1) teach acupuncture and oriental medicine;

(2) consult, in association with the sponsoring doctor of oriental medicine, regarding the sponsoring doctor's patients;

(3) perform specialized diagnostic or treatment techniques in association with the sponsoring doctor of oriental medicine regarding the sponsoring doctor's patients;

(4) assist in the conducting of research in acupuncture and oriental medicine; and

(5) assist in the implementation of new techniques and technology related to acupuncture and oriental medicine.

D. Temporary licensees may engage in only those activities authorized on the temporary license.

E. The temporary license shall identify the sponsoring and associating New Mexico doctor of oriental medicine or institute.

F. The temporary license shall be issued for a period of time established by rule; provided that temporary licenses may not be issued for a period of time to exceed eighteen months, including renewals.

G. The temporary license may be renewed upon submission of:

(1) the completed application for temporary

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license renewal on the form provided by the board; and

(2) the required fee for temporary license renewal.

H. In the interim between regular board meetings, whenever a qualified applicant has filed his application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary license that will suffice until the next regular licensing meeting of the board."

Section 10. Section 61-14A-14 NMSA 1978 (being Laws 1993, Chapter 158, Section 22, as amended) is amended to read:

"61-14A-14. APPROVAL OF EDUCATIONAL PROGRAMS.--

A. The board shall establish by rule the criteria for board approval of educational programs in acupuncture and oriental medicine. For an educational program [~~in acupuncture and oriental medicine~~] to meet board approval, proof shall be submitted to the board demonstrating that the educational program as a minimum:

(1) was for a period of not less than four academic years;

(2) included a minimum of seven hundred fifty hours of supervised clinical practice;

(3) was taught by qualified teachers or [~~a qualified private tutor~~] tutors;

(4) required as a prerequisite to graduation

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personal attendance in all classes and clinics and, as a minimum, the completion of the following subjects:

(a) anatomy and physiology;

(b) pathology;

(c) diagnosis;

(d) pharmacology;

(e) oriental principles of life therapy, including diet, nutrition and counseling;

(f) theory and techniques of traditional and modern acupuncture and oriental medicine;

(g) precautions and contraindications for acupuncture treatment;

(h) theory and application of meridian pulse evaluation and meridian point location;

(i) traditional and modern methods of qi or life-energy evaluation;

(j) the prescription of herbal medicine and precautions and contraindications for its use;

(k) hygiene, sanitation and clean-needle technique;

(l) care and management of needling devices; and

(m) needle and instrument sterilization techniques; and

(5) resulted in the presentation of a

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certificate or diploma after completion of all the educational program requirements.

B. All [~~institutes and private tutors in New Mexico that offer~~] in-state educational programs [~~in acupuncture and oriental medicine with the intent to graduate students qualified to be applicants for licensing examination by the board~~] shall [~~have their educational programs annually~~] be approved annually by the board. [~~For the educational program in acupuncture and oriental medicine to be approved by the board, the institute or private tutor~~] The applicant shall submit the following:

(1) the completed application for approval of an educational program;

(2) the required documentation as determined by the board;

(3) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met; and

(4) the required fee for application for approval of an educational program.

C. [~~Institutes and private tutors outside New Mexico that offer~~] Out-of-state educational programs [~~in acupuncture and oriental medicine with the intent to graduate students qualified to be applicants for licensing examination by the board may have their educational programs annually~~

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~~approved~~] may apply for approval by the board. [~~For the educational program in acupuncture and oriental medicine to be approved by the board, the institute or private tutor~~] The applicant shall submit the following:

(1) the completed application for approval of an educational program;

(2) the required documentation as determined by the board;

(3) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met; and

(4) the required fee for application for approval of an educational program.

D. Each [~~institute and private tutor in New Mexico that offers an~~] in-state approved educational program [~~in acupuncture and oriental medicine as referred to in Subsection B of this section~~] shall renew [~~their~~] its approval annually by submitting prior to the date established by the board:

(1) the completed application for renewal of approval of an educational program on the form provided by the board;

(2) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met; and

(3) the required fee for application for

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renewal of approval of an educational program.

E. Each [~~institute and private tutor outside New Mexico that offers an~~] out-of-state approved educational program [~~in acupuncture and oriental medicine as referred to in Subsection C of this section~~] may renew [~~their~~] its approval annually by submitting prior to the date established by the board:

(1) the completed application for renewal of approval of an educational program on the form provided by the board;

(2) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met; and

(3) the required fee for application for renewal of approval of an educational program.

F. A sixty-day grace period shall be allowed each [~~institute or private tutor~~] educational program after the end of the approval period, during which time the approval may be renewed by submitting:

(1) the completed application for renewal of approval of an educational program on the form provided by the board;

(2) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met;

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(3) the required fee for application for renewal of approval of an educational program; and

(4) the required fee for late renewal of approval.

G. [~~Any~~] An approval that is not renewed [~~at~~] by the end of the grace period shall be considered expired [~~For renewal of an expired approval, the board shall establish by rule any requirements or fees that are in addition to the fee for annual renewal of approval and may require the institute or private tutor to reapply as a new applicant~~], and the educational program must apply for approval to continue offering the program."

Section 11. Section 61-14A-15 NMSA 1978 (being Laws 1993, Chapter 158, Section 23) is amended to read:

"61-14A-15. LICENSE RENEWAL.--

A. Each licensee shall renew his license [~~biennially~~] annually by submitting prior to the date established by the board:

(1) the completed application for license renewal on the form provided by the board; and

(2) the required fee for [~~biennial~~] annual license renewal.

B. The board may require proof of continuing education or other proof of competency as a requirement for renewal.

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C. A sixty-day grace period shall be allowed each licensee after the end of the licensing period, during which time the license may be renewed by submitting:

(1) the completed application for license renewal on the form provided by the board;

(2) the required fee for [~~biennial~~] annual license renewal; and

(3) the [~~required~~] late fee [~~for late license renewal~~].

D. Any license not renewed at the end of the grace period shall be considered expired and the licensee shall not be eligible to practice within the state. For [~~renewal~~] reinstatement of an expired license within one year of the date of renewal, the board shall establish [~~by rule~~] any requirements or fees that are in addition to the fee for [~~biennial~~] annual license renewal and may require the former licensee to reapply as a new applicant."

Section 12. Section 61-14A-16 NMSA 1978 (being Laws 1993, Chapter 158, Section 24) is amended to read:

"61-14A-16. FEES.--The board shall establish a schedule of reasonable nonrefundable fees not to exceed the following amounts:

A. application for licensing . . . . $[~~500~~] 1,000;

B. application for reciprocal licensing . . . . . [~~750~~] 1,000;

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C. application for temporary licensing . [~~300~~] 600;

D. examination, not including the cost of any nationally recognized examination . . . . . [~~350~~] 1000;

E. [~~biennial~~] annual license renewal 400;

F. late [~~license renewal~~] fee . . . . . [~~200~~] 400;

G. reinstatement of expired license [~~renewal~~]. . . . . [~~400~~] 800;

H. temporary license renewal . . . . . [~~100~~] 200;

I. application for approval or renewal of approval of an educational program . . . . . [~~400~~] 800;

J. late renewal of approval of an educational program . . . . . [~~200~~] 400;

K. [~~expired renewal of~~] application for approval or renewal of approval of an [~~educational~~] intern program . . . . . [~~400~~] 800;

L. annual continuing education provider registration . . . . . [~~200~~] 400;

[~~and~~]

M. application for certification of expanded prescriptive authority 400;

N. duplicate license . . . . . 100; and

[~~M.~~] O. any and all fees to cover reasonable and necessary administrative expenses."

Section 13. A new section of the Acupuncture and Oriental

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Medicine Practice Act is enacted to read:

"[NEW MATERIAL] STUDENTS AND INTERNS--SUPERVISED PRACTICE.--

A. A student enrolled in an approved educational program may practice acupuncture and oriental medicine under the direct supervision of a teacher or tutor as a part of the approved educational program.

B. The board may promulgate rules to govern the post-graduate training requirements and practice of acupuncture and oriental medicine by interns. The rules shall include qualifications for interns and supervising doctors of oriental medicine or other supervising health care professionals and the allowable scope of practice of interns. The board may charge a fee for approval and renewal of approval of intern programs."

Section 14. A new section of the Acupuncture and Oriental Medicine Practice Act is enacted to read:

"[NEW MATERIAL] EXPANDED PRESCRIPTIVE AUTHORITY.--The board shall issue certification for expanded prescriptive authority to a doctor of oriental medicine who has completed appropriate forms issued by the board, submitted proof of successful completion of the educational requirements for certification and paid the application fee for certification."

Section 15. Section 61-14A-22 NMSA 1978 (being Laws 1993, Chapter 158, Section 30) is amended to read:

"61-14A-22. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--

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The board of acupuncture and oriental medicine is terminated on July 1, [~~1999~~] 2005 pursuant to the Sunset Act. The board shall continue to operate according to [~~Sections 61-14A-1 through 61-14A-21~~] Chapter 61, Article 14A NMSA 1978 until July 1, [~~2000~~] 2006. Effective July 1, [~~2000, Sections 61-14A-1 through 61-14A-21 NMSA 1978 are~~] 2006, Chapter 61, Article 14A NMSA 1978 is repealed."

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

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FORTY-FOURTH LEGISLATURE SB 285/a

FIRST SESSION, 1999

February 17, 1999

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

SENATE BILL 285

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. On page 24, between lines 20 and 21, insert:

"(d) caffeine;".

2. Releter the succeeding subparagraphs accordingly.

3. On page 44, line 20, after the comma strike the remainder of the line and strike all of line 21.

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4. On page 44, line 22, after "certification" insert:

"and submitted proof of successful completion of the additional training required by rule of the board. The board shall adopt rules in consultation with the board of pharmacy for the additional training required for the prescription or administration of caffeine, procaine, lidocaine, oxygen, epinephrine and naturally derived hormones, other than those administered topically".,

and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

_____

Shannon Robinson, Chairman

Adopted_____ Not Adopted_____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Feldman, Garcia, Stockard, Smith

Absent: None

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FORTY-FOURTH LEGISLATURE

FIRST SESSION, 1999 SB 285/a

March 4, 1999

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

SENATE BILL 285, as amended

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. Strike Senate Public Affairs Committee Amendment 4.

2. On page 33, strike lines 11 through 14 and insert in lieu thereof:

"I. If English is not the primary language of the applicant, the board may require that the applicant pass an English proficiency examination prescribed by the board."".

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3. On page 44, line 18, strike "shall" and insert in lieu thereof "may".

4. On page 44, line 18, after "authority" insert "only for the substances listed in this section".

5. On page 44, line 22, after "certification" insert:

"and submitted proof of successful completion of additional training required by rule of the board. The board shall adopt the rules determined by the board of pharmacy for additional training required for the prescription or administration of caffeine, procaine, lidocaine, oxygen, epinephrine and naturally derived hormones, other than those administered topically. The boards shall consult as appropriate.".

Respectfully submitted,

_____
Michael S. Sanchez, Chairman

Adopted_____ Not Adopted_____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 4 For 2 Against

Yes: 4

No: Davis, Lopez

Excused: Aragon, Payne

Absent: None

FORTY-FOURTH LEGISLATURE

FIRST SESSION

March 6, 1999

SENATE FLOOR AMENDMENT number _____ to SENATE BILL 285, as amended

Amendment sponsored by Senator Michael S. Sanchez

1. On page 1, line 14, after "AUTHORITY" strike the remainder of the line, strike line 15 and strike line 16 up to the period.

2. On pages 42 and 43, strike Section 12 in its entirety.

3. Renumber the succeeding sections accordingly.

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_____

Michael S. Sanchez

Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

underscored material = new
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FORTY-FOURTH LEGISLATURE

FIRST SESSION

March 6, 1999

SENATE FLOOR AMENDMENT number _____ to SENATE BILL 285, as amended

Amendment sponsored by Senator Michael S. Sanchez

1. Strike Senate Judiciary Committee Amendment 6.

2. On page 44, line 22, after "certification" insert:

"and submitted proof of successful completion of additional training required by rule of the board. The board shall adopt the rules determined by the board of pharmacy for additional training required for the prescription or administration of caffeine, procaine, lidocaine, oxygen, epinephrine and naturally derived hormones. The boards shall consult as appropriate.".

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_____

Michael S. Sanchez

Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

underscored material = new
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FORTY-FOURTH LEGISLATURE

FIRST SESSION, 1999

March 11, 1999

Mr. Speaker:

Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to whom has been referred

SENATE BILL 285, as amended

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. Strike Senate Judiciary Committee Amendment 5.

Respectfully submitted,

Patsy Trujillo Knauer, Chairwoman

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Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 4 For 1 Against

Yes: 4

No: Vaughn

Excused: Hamilton, Hawkins

Absent: None

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