

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILLS 297 AND 341

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO THE PRACTICE OF MEDICINE; AMENDING CERTAIN SECTIONS
OF THE MEDICAL PRACTICE ACT; PROVIDING FOR THE SUBPOENA OF
CERTAIN INFORMATION OBTAINED PURSUANT TO THE REVIEW
ORGANIZATION IMMUNITY ACT; DECLARING AN EMERGENCY.

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

Section 1. Section 41-9-5 NMSA 1978 (being Laws 1979,
Chapter 169, Section 5) is amended to read:

"41-9-5. CONFIDENTIALITY OF RECORDS OF REVIEW
ORGANIZATION. -- Except for information released pursuant to a
valid subpoena issued under Section 61-6-23 NMSA 1978, all data
and information acquired by a review organization in the
exercise of its duties and functions shall be held in
confidence and shall not be disclosed to anyone except to the
extent necessary to carry out one or more of the purposes of

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underscoring material = new
[bracketed material] = delete

1 the review organization or in a judicial appeal from the action
2 of a review organization. No person described in Section [~~4 of~~
3 ~~the Review Organization Immunity Act~~] 41-9-4 NMSA 1978 shall
4 disclose what transpired at a meeting of a review organization
5 except to the extent necessary to carry out one or more of the
6 purposes of a review organization or in a judicial appeal from
7 the action of a review organization. Information, documents or
8 records otherwise available from original sources shall not be
9 immune from discovery or use in any civil action merely because
10 they were presented during proceedings of a review
11 organization, nor shall any person who testified before a
12 review organization or who is a member of a review organization
13 be prevented from testifying as to matters within [~~his~~] the
14 person's knowledge, but a witness cannot be asked about
15 opinions formed by [~~him~~] the witness as a result of the review
16 organization's hearings. "

17 Section 2. Section 61-6-11 NMSA 1978 (being Laws 1923,
18 Chapter 44, Section 3, as amended) is amended to read:

19 "61-6-11. LICENSURE. --

20 A. The board may consider for licensure a person
21 who [~~is of good moral character~~] is a graduate of [~~a medical~~
22 ~~college or school in good standing~~] an accredited United States
23 or Canadian medical school, has passed an examination approved
24 by the board and has completed two years of an approved
25 postgraduate training program

1 B. An applicant who has not completed two years of
 2 an approved postgraduate training program, but who otherwise
 3 meets all other licensing requirements, may present evidence to
 4 the board of the applicant's other professional experience for
 5 consideration by the board in lieu of the approved postgraduate
 6 training program. The board shall, in its sole discretion,
 7 determine if the professional experience is substantially
 8 equivalent to the required approved postgraduate training
 9 program.

10 C. A graduate of a board-approved medical [~~col~~lege]
 11 school located outside the United States or Canada may be
 12 granted a license to practice medicine in New Mexico, provided
 13 the applicant presents evidence to the board that the applicant
 14 is [~~a person of good moral character and is~~] in compliance with
 15 the United States immigration laws and provided that the
 16 applicant presents satisfactory evidence to the board that the
 17 applicant has successfully passed an examination as required by
 18 the board and has successfully completed two years of
 19 postgraduate medical training in an approved postgraduate
 20 training program. A graduate of a medical school located
 21 outside the United States who successfully completes at least
 22 two years of an approved postgraduate training program at or
 23 affiliated with an institution located in New Mexico prior to
 24 December 30, 2007 and who meets the other requirements of this
 25 section may also be granted a license to practice medicine.

1 D. All applicants for licensure may be required to
2 appear personally before the board or a designated agent for an
3 interview.

4 E. An applicant for licensure by examination shall
5 not be granted a license if the applicant has taken the
6 examination in two or more steps and has failed to successfully
7 pass the final step within seven years of the date that the
8 first step was passed. An applicant for licensure who holds a
9 medical doctor degree and a doctoral degree in a medically
10 related field must successfully complete the entire examination
11 series within ten years from the date the first step of the
12 examination is passed. Provided, that the board may, by rule,
13 establish exceptions to the time requirements of this
14 subsection.

15 F. Every applicant for licensure under this section
16 shall pay the fees required by Section 61-6-19 NMSA 1978.

17 G. The board may require fingerprints and other
18 information necessary for a state and national criminal
19 background check. "

20 Section 3. Section 61-6-13 NMSA 1978 (being Laws 1989,
21 Chapter 269, Section 9, as amended) is amended to read:

22 "61-6-13. LICENSURE BY ENDORSEMENT. --

23 A. The board may grant a license [~~without~~
24 ~~examination and~~] by endorsement to an applicant who [~~is~~
25 ~~properly endorsed by the officers of the examining board with~~

1 ~~jurisdiction or by the Canadian medical council and]:~~

2 (1) has graduated from ~~[a medical college or~~
3 ~~school in good standing]~~ an accredited United States or
4 Canadian medical school;

5 (2) is board certified in a specialty
6 recognized by the American board of medical specialties;

7 (3) has been a licensed physician in
8 the United States or Canada and has practiced medicine in the
9 United States or Canada immediately preceding the application
10 for at least three years;

11 (4) holds an unrestricted license in another
12 state or Canada; and

13 (5) was not the subject of a disciplinary
14 action in a state or province.

15 B. The board may grant a license by endorsement to
16 an applicant who ~~[is properly endorsed by the officers of the~~
17 ~~examining board with jurisdiction or by the Canadian medical~~
18 ~~council and]:~~

19 (1) has graduated from a medical ~~[college]~~
20 school located outside the United States or Canada;

21 ~~[(2) is of good moral character;~~

22 ~~(3)]~~ (2) is in compliance with the United
23 States immigration laws;

24 ~~[(4)]~~ (3) is board certified in a specialty
25 recognized by the American board of medical specialties;

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1 [~~(5)~~] (4) has been a licensed physician in the
2 United States or Canada and has practiced medicine in the
3 United States or Canada immediately preceding the application
4 for at least three years;

5 [~~(6)~~] (5) holds an unrestricted license in
6 another state or Canada; and

7 [~~(7)~~] (6) was not the subject of disciplinary
8 action in a state or province.

9 C. An endorsement provided pursuant to this section
10 shall certify that the applicant has passed an examination that
11 meets with board approval and that the applicant is in good
12 standing in that jurisdiction. In cases when the applicant is
13 board-certified, has not been the subject of disciplinary
14 action that would be reportable to the national practitioner
15 data bank or the healthcare integrity and protection data bank
16 and has unusual skills and experience not generally available
17 in this state, and patients residing in this state have a
18 significant need for such skills and experience, the board may
19 waive a requirement imposing time limits for examination
20 completion that are different from requirements of the state
21 where the applicant is licensed.

22 D. An applicant for licensure under this section
23 may be required to personally appear before the board or a
24 designated agent for an interview.

25 E. An applicant for licensure under this section

1 shall pay an application fee as provided in Section 61-6-19
2 NMSA 1978.

3 F. The board may require fingerprints and other
4 information necessary for a state and national criminal
5 background check. "

6 Section 4. Section 61-6-14 NMSA 1978 (being Laws 1953,
7 Chapter 48, Section 2, as amended) is amended to read:

8 "61-6-14. ORGANIZED YOUTH CAMP OR SCHOOL TEMPORARY
9 LICENSES AND TEMPORARY LICENSES FOR OUT-OF-STATE
10 PHYSICIANS. --

11 A. The secretary-treasurer of the board or the
12 board's designee may, ~~[issue]~~ either by examination or
13 endorsement, approve a temporary license to practice medicine
14 and surgery to an applicant qualified to practice medicine and
15 surgery in this state ~~[either by examination or by endorsement]~~
16 who will be temporarily in attendance at an organized youth
17 camp or school, ~~[a temporary license to practice medicine and~~
18 ~~surgery]~~ provided that:

19 (1) the practice ~~[to]~~ shall be confined to
20 enrollees, leaders and employees of the camp or school; ~~[and~~
21 ~~the following provisions shall apply;~~

22 ~~(1)]~~ (2) the temporary license shall be issued
23 for a period not to exceed three months from date of issuance;
24 and

25 ~~[(2)]~~ (3) the temporary license may be issued

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1 upon written application of the applicant, accompanied by such
2 proof of the qualifications of the applicant as specified by
3 board rule.

4 B. The secretary-treasurer of the board or the
5 board's designee may ~~[issue]~~ approve a temporary license to
6 practice medicine and surgery under the supervision of a
7 licensed physician to an applicant who is licensed to practice
8 medicine in another state, territory of the United States or
9 another country and who is qualified to practice medicine and
10 surgery in this state [~~a temporary license to practice medicine~~
11 ~~under the supervision of a licensed physician~~]. The following
12 provisions shall apply:

13 (1) the temporary license may be issued upon
14 written application of the applicant, accompanied by proof of
15 qualifications as specified by rule of the board. A temporary
16 license may be granted to allow the applicant to assist in
17 teaching, conducting research, performing specialized
18 diagnostic and treatment procedures, implementing new
19 technology and for physician educational purposes. A licensee
20 may engage in only the activities specified on the temporary
21 license, and the temporary license shall identify the licensed
22 physician who will supervise the applicant during the time the
23 applicant practices medicine in New Mexico. The supervising
24 licensed physician shall submit an affidavit attesting to the
25 qualifications of the applicant and activities the applicant

1 will perform; and

2 (2) the temporary license shall be issued for
3 a period not to exceed three months from date of issuance and
4 may be renewed upon application and payment of fees as provided
5 in Section 61-6-19 NMSA 1978.

6 C. The application for a temporary license under
7 this section shall be accompanied by a license fee as provided
8 in Section 61-6-19 NMSA 1978. "

9 Section 5. Section 61-6-15 NMSA 1978 (being Laws 1969,
10 Chapter 46, Section 6, as amended) is amended to read:

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

16 A. The board may refuse to license and may revoke
17 or suspend a license that has been issued by the board or a
18 previous board and may fine, censure or reprimand a licensee
19 upon satisfactory proof being made to the board that the
20 applicant for or holder of the license has been guilty of
21 unprofessional or dishonorable conduct. The board may also
22 refuse to license an applicant who is unable to practice
23 medicine, or practice as a physician assistant or an
24 anesthesiologist assistant, pursuant to Section 61-7-3 NMSA
25 1978. All proceedings shall be as required by the Uniform

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1 Licensing Act or the Impaired Health Care Provider Act.

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

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

23 D. "Unprofessional or dishonorable conduct", as
24 used in this section, means, but is not limited to because of
25 enumeration, conduct of a licensee that includes the following:

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- 1 (1) procuring, aiding or abetting a criminal
2 abortion;
- 3 (2) employing a person to solicit patients for
4 the licensee;
- 5 (3) representing to a patient that a
6 manifestly incurable condition of sickness, disease or injury
7 can be cured;
- 8 (4) obtaining a fee by fraud or
9 misrepresentation;
- 10 (5) willfully or negligently divulging a
11 professional confidence;
- 12 (6) conviction of an offense punishable by
13 incarceration in a state penitentiary or federal prison or
14 conviction of a misdemeanor associated with the practice of the
15 licensee. A copy of the record of conviction, certified by the
16 clerk of the court entering the conviction, is conclusive
17 evidence;
- 18 (7) habitual or excessive use of intoxicants
19 or drugs;
- 20 (8) fraud or misrepresentation in applying for
21 or procuring a license to practice in this state or in
22 connection with applying for or procuring renewal, including
23 cheating on or attempting to subvert the licensing
24 examinations;
- 25 (9) making false or misleading statements

1 regarding the skill of the licensee or the efficacy or value of
2 the medicine, treatment or remedy prescribed or administered by
3 the licensee or at the direction of the licensee in the
4 treatment of a disease or other condition of the human body or
5 mind;

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

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

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

14 (13) manifest incapacity or incompetence to
15 practice as a licensee;

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

22 (15) the use of a false, fraudulent or
23 deceptive statement in a document connected with the practice
24 of a licensee;

25 (16) fee splitting;

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

4 (18) conduct likely to deceive, defraud or
5 harm the public;

6 (19) repeated similar negligent acts;

7 (20) employing abusive billing practices;

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

10 (a) another licensing jurisdiction;

11 (b) a peer review body;

12 (c) a health care entity;

13 (d) a professional or medical society or
14 association;

15 (e) a governmental agency;

16 (f) a law enforcement agency; or

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

20 (22) failure to report to the board surrender
21 of a license or other authorization to practice in another
22 state or jurisdiction or surrender of membership on any medical
23 staff or in any medical or professional association or society
24 following, in lieu of and while under disciplinary
25 investigation by any of those authorities or bodies for acts or

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1 conduct similar to acts or conduct that would constitute
2 grounds for action as defined in this section;

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

6 (24) abandonment of patients;

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

9 (26) injudicious prescribing, administering or
10 dispensing of a drug or medicine;

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

14 (28) sexual contact with a patient or person
15 who has authority to make medical decisions for a patient,
16 other than the spouse of the licensee [~~after representing or~~
17 ~~inferring that the activity is a legitimate part of the~~
18 ~~patient's treatment~~];

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

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

1 this section;

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

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

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

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

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

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

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

25 (38) willfully or negligently divulging

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1 privileged information or a professional secret.

2 E. As used in this section, "fee splitting"
3 includes offering, delivering, receiving or accepting any
4 unearned rebate, refunds, commission preference, patronage
5 dividend, discount or other unearned consideration, whether in
6 the form of money or otherwise, as compensation or inducement
7 for referring patients, clients or customers to a person,
8 irrespective of any membership, proprietary interest or co-
9 ownership in or with a person to whom the patients, clients or
10 customers are referred.

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

16 Section 6. Section 61-6-18 NMSA 1978 (being Laws 1989,
17 Chapter 269, Section 14, as amended) is amended to read:

18 "61-6-18. MEDICAL STUDENTS--INTERNS--RESIDENTS. --

19 A. Nothing in the Medical Practice Act shall
20 prevent a medical student properly registered or enrolled in a
21 medical college or school in good standing from diagnosing or
22 treating the sick or afflicted, provided that the medical
23 student does not receive compensation for services and such
24 services are rendered under the supervision of the school
25 faculty as part of ~~[his]~~ the student's course of study.

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1 B. Any intern or resident who is appointed in a
2 board-approved residency training program [~~accredited and~~
3 ~~approved by the board in New Mexico~~] may pursue such training
4 after obtaining a postgraduate training license from the board.
5 The board may adopt by rule specific education or examination
6 requirements for a postgraduate training license.

7 C. Any person serving in the assigned rotations and
8 performing the assigned duties in a board-approved residency
9 training program accredited in New Mexico may do so for an
10 aggregate period not to exceed eight years or completion of the
11 residency, whichever is shorter.

12 D. The board may require any applicant for a
13 postgraduate training license required in Subsections B and C
14 of this section to personally appear before the board or a
15 designated member of the board for an interview.

16 E. Every applicant for a postgraduate training
17 license under this section shall pay the fees required by
18 Section 61-6-19 NMSA 1978.

19 F. Postgraduate training licenses shall be renewed
20 annually and shall be effective during each year or part of a
21 year of postgraduate training."

22 Section 7. Section 61-6-18.1 NMSA 1978 (being Laws 1994,
23 Chapter 80, Section 10, as amended) is amended to read:

24 "61-6-18.1. PUBLIC SERVICE LICENSE. --

25 A. Applicants for a public service license shall
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1 meet all requirements for licensure and shall:

2 (1) be enrolled in a board-approved residency
3 training program either in New Mexico or in another
4 jurisdiction;

5 (2) obtain written approval from the training
6 program director of the applicant to pursue a public service
7 practice opportunity outside the residency training program;
8 and

9 ~~[(3) obtain advance written approval from the~~
10 ~~training program director of the applicant to return to the~~
11 ~~residency training program following the period of public~~
12 ~~service; and~~

13 ~~(4)]~~ (3) satisfy other reasonable requirements
14 imposed by the board.

15 B. A physician with one year postdoctoral training
16 may apply for a public service license ~~[when he is]~~ to practice
17 under the direct supervision of a licensed physician or ~~[has]~~
18 with immediate access to a licensed physician by electronic
19 means when the public service physician is employed in a
20 medically underserved area.

21 C. ~~[A public service license shall be valid for a~~
22 ~~period of time not to exceed twelve months.]~~ A public service
23 license shall expire on September 1 of each year and may be
24 renewed by the board.

25 D. An applicant for a public service license shall

1 pay the required fees set forth in Section 61-6-19 NMSA 1978. "

2 Section 8. Section 61-6-23 NMSA 1978 (being Laws 1989,
3 Chapter 269, Section 19, as amended) is amended to read:

4 "61-6-23. INVESTIGATION--SUBPOENA. --

5 A. To investigate a complaint against a licensee,
6 the board may issue investigative subpoenas prior to the
7 issuance of a notice of contemplated action.

8 B. Notwithstanding the provisions of Section 41-9-5
9 NMSA 1978, a review organization shall comply with an
10 investigative subpoena issued pursuant to this section provided
11 that all records received by the board from a review
12 organization:

13 (1) are confidential and not public records
14 for the purposes of the Inspection of Public Records Act; and

15 (2) shall not be disclosed except to the
16 extent necessary to carry out the board's purposes or in a
17 judicial appeal from the board's actions."

18 Section 9. EMERGENCY.--It is necessary for the public
19 peace, health and safety that this act take effect immediately.

underscored material = new
[bracketed material] = delete