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SENATE BILL 213

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY  
Stuart Ingle

AN ACT

RELATING TO THE PRACTICE OF MEDICINE; AMENDING THE MEDICAL PRACTICE ACT TO PROVIDE FOR THE LICENSING AND REGULATION OF CERTAIN ENTITIES; IMPOSING LICENSING FEES AND OTHER RESTRICTIONS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. Section 61-6-1 NMSA 1978 (being Laws 1989, Chapter 269, Section 1, as amended) is amended to read:

"61-6-1. SHORT TITLE--PURPOSE.--

A. Chapter 61, Article 6 NMSA 1978 may be cited as the "Medical Practice Act".

B. In the interest of the public health, safety and welfare and to protect the public from the improper, unprofessional, incompetent and unlawful practice of medicine, it is necessary to provide laws and rules controlling the

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1 granting and use of the privilege to practice medicine and to  
2 establish a medical board to implement and enforce the laws and  
3 rules.

4 C. The primary duties and obligations of the  
5 medical board are to issue licenses to qualified physicians,  
6 physician assistants and anesthesiologist assistants and their  
7 business entities, to discipline incompetent or unprofessional  
8 physicians, physician assistants or anesthesiologist assistants  
9 and to aid in the rehabilitation of impaired physicians,  
10 physician assistants and anesthesiologist assistants for the  
11 purpose of protecting the public."

12 Section 2. Section 61-6-6 NMSA 1978 (being Laws 1973,  
13 Chapter 361, Section 1, as amended) is amended to read:

14 "61-6-6. DEFINITIONS.--As used in Chapter 61, Article 6  
15 NMSA 1978:

16 A. "approved postgraduate training program" means a  
17 program approved by the accrediting council on graduate medical  
18 education of the American medical association or by the board;

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

20 C. "business entity" means a corporation, limited  
21 liability company or partnership that is licensed or seeking a  
22 license to practice medicine pursuant to the Medical Practice  
23 Act;

24 [~~C.~~] D. "licensed physician" means a medical doctor  
25 licensed under the Medical Practice Act to practice medicine in

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1 New Mexico;

2           ~~[D-]~~ E. "licensee" means a medical doctor,  
3 physician assistant, polysomnographic technologist or  
4 anesthesiologist assistant licensed by the board to practice in  
5 New Mexico;

6           ~~[E-]~~ F. "medical college or school in good  
7 standing" means a board-approved medical college or school that  
8 has as high a standard as that required by the association of  
9 American medical colleges and the council on medical education  
10 of the American medical association;

11           ~~[F-]~~ G. "medical student" means a student enrolled  
12 in a board-approved medical college or school in good standing;

13           H. "person" means an individual;

14           ~~[G-]~~ I. "physician assistant" means a health  
15 professional who is licensed by the board to practice as a  
16 physician assistant and who provides services to patients under  
17 the supervision and direction of a licensed physician;

18           ~~[H-]~~ J. "intern" means a first-year postgraduate  
19 student upon whom a degree of doctor of medicine and surgery or  
20 equivalent degree has been conferred by a medical college or  
21 school in good standing;

22           ~~[I-]~~ K. "resident" means a graduate of a medical  
23 college or school in good standing who is in training in a  
24 board-approved and accredited residency training program in a  
25 hospital or facility affiliated with an approved hospital and

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1 who has been appointed to the position of "resident" or  
2 "fellow" for the purpose of postgraduate medical training;

3 [~~J-~~] L. "the practice of medicine" consists of:

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

7 (2) offering or undertaking to administer,  
8 dispense or prescribe a drug or medicine for the use of another  
9 person, except as authorized pursuant to a professional or  
10 occupational licensing statute set forth in Chapter 61 NMSA  
11 1978;

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

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

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

23 (6) offering medical peer review, utilization  
24 review or diagnostic service of any kind that directly  
25 influences patient care, except as authorized pursuant to a

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1 professional or occupational licensing statute set forth in  
2 Chapter 61 NMSA 1978; or

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

5 [~~K.~~] M. "the practice of medicine across state  
6 lines" means:

7 (1) the rendering of a written or otherwise  
8 documented medical opinion concerning diagnosis or treatment of  
9 a patient within this state by a physician located outside this  
10 state as a result of transmission of individual patient data by  
11 electronic, telephonic or other means from within this state to  
12 the physician or the physician's agent; or

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

18 [~~L.~~] N. "sexual contact" means touching the primary  
19 genital area, groin, anus, buttocks or breast of a patient or  
20 allowing a patient to touch another's primary genital area,  
21 groin, anus, buttocks or breast in a manner that is commonly  
22 recognized as outside the scope of acceptable medical practice;

23 [~~M.~~] O. "sexual penetration" means sexual  
24 intercourse, cunnilingus, fellatio or anal intercourse, whether  
25 or not there is any emission, or introducing any object into

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1 the genital or anal openings of another in a manner that is  
2 commonly recognized as outside the scope of acceptable medical  
3 practice; and

4 ~~[N-]~~ P. "United States" means the fifty states, its  
5 territories and possessions and the District of Columbia."

6 Section 3. Section 61-6-19 NMSA 1978 (being Laws 1989,  
7 Chapter 269, Section 15, as amended) is amended to read:

8 "61-6-19. FEES.--

9 A. The board shall impose the following fees:

10 (1) an application fee not to exceed four  
11 hundred dollars (\$400) for licensure by endorsement as provided  
12 in Section 61-6-13 NMSA 1978;

13 (2) an application fee not to exceed four  
14 hundred dollars (\$400) for licensure by examination as provided  
15 in Section 61-6-11 NMSA 1978;

16 (3) a triennial renewal fee not to exceed four  
17 hundred fifty dollars (\$450);

18 (4) a fee of twenty-five dollars (\$25.00) for  
19 placing a physician's license or a physician assistant's  
20 license on inactive status;

21 (5) a late fee not to exceed one hundred  
22 dollars (\$100) for licensed physicians who or business entities  
23 that renew their license within forty-five days after the  
24 required renewal date;

25 (6) a late fee not to exceed two hundred

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1 dollars (\$200) for licensed physicians who or business entities  
2 that renew their licenses between forty-six and ninety days  
3 after the required renewal date;

4 (7) a reinstatement fee not to exceed six  
5 hundred dollars (\$600) for reinstatement of a revoked,  
6 suspended or inactive license;

7 (8) a reasonable administrative fee for  
8 verification and duplication of license or registration and  
9 copying of records;

10 (9) a reasonable publication fee for the  
11 purchase of a publication containing the names of all  
12 practitioners licensed under the Medical Practice Act;

13 (10) an impaired physician fee not to exceed  
14 one hundred fifty dollars (\$150) for a three-year period;

15 (11) an interim license fee not to exceed one  
16 hundred dollars (\$100);

17 (12) a temporary license fee not to exceed one  
18 hundred dollars (\$100);

19 (13) a postgraduate training license fee not  
20 to exceed fifty dollars (\$50.00) annually;

21 (14) an application fee not to exceed one  
22 hundred fifty dollars (\$150) for physician assistants applying  
23 for initial licensure;

24 (15) a licensure fee not to exceed one hundred  
25 fifty dollars (\$150) for physician assistants biennial

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1 licensing and registration of supervising licensed physician;

2 (16) a late fee not to exceed fifty dollars  
3 (\$50.00) for physician assistants who renew their licensure  
4 within forty-five days after the required renewal date;

5 (17) a late fee not to exceed seventy-five  
6 dollars (\$75.00) for physician assistants who renew their  
7 licensure between forty-six and ninety days after the required  
8 renewal date;

9 (18) a reinstatement fee not to exceed one  
10 hundred dollars (\$100) for physician assistants who reinstate  
11 an expired license;

12 (19) a processing fee not to exceed fifty  
13 dollars (\$50.00) for each change of a supervising licensed  
14 physician for a physician assistant;

15 (20) a fee not to exceed three hundred dollars  
16 (\$300) annually for a physician supervising a clinical  
17 pharmacist;

18 (21) an application and renewal fee for a  
19 telemedicine license not to exceed four hundred dollars (\$400);

20 (22) an application and renewal fee for a  
21 business entity license not to exceed four hundred dollars  
22 (\$400);

23 [~~(22)~~] (23) a reasonable administrative fee,  
24 not to exceed the current cost of application for a license,  
25 that may be charged for reprocessing applications and renewals

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1 that include minor but significant errors and that would  
2 otherwise be subject to investigation and possible disciplinary  
3 action; and

4 [~~(23)~~] (24) a reasonable fee as established by  
5 the department of public safety for nationwide and statewide  
6 criminal history screening of applicants and licensees.

7 B. All fees are nonrefundable and shall be used by  
8 the board to carry out its duties efficiently."

9 Section 4. Section 61-6-26 NMSA 1978 (being Laws 1989,  
10 Chapter 269, Section 22, as amended) is amended to read:

11 "61-6-26. TRIENNIAL RENEWAL FEES--PENALTY FOR FAILURE TO  
12 RENEW LICENSE.--

13 A. On or before July 1 of every third year, every  
14 licensed physician and licensed business entity in this state  
15 shall apply for a certificate of triennial renewal of license  
16 for the ensuing three years. The fact that a licensed  
17 physician or business entity has not received a renewal form  
18 from the board shall not relieve the physician or business  
19 entity of the duty to renew the license, and the omission by  
20 the board shall not operate to exempt the physician or business  
21 entity from the penalties provided by Chapter 61, Article 6  
22 NMSA 1978 for failure to renew [~~his~~] a license.

23 B. All licensed physicians and business entities  
24 shall pay a triennial renewal fee and impaired physicians fee  
25 as provided in Section 61-6-19 NMSA 1978 and shall return the

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1 completed renewal form together with the renewal fee and other  
2 required documentation.

3 C. Each application for triennial renewal of  
4 license shall state the licensed physician's and business  
5 entity's full name, business address, license number and date  
6 and all other information requested by the board.

7 D. A licensed physician who or business entity that  
8 fails to submit [~~his~~] the application for triennial renewal on  
9 or before July 1 but who submits [~~his~~] the application for  
10 triennial renewal by August 15 shall be assessed a late fee as  
11 provided in Section 61-6-19 NMSA 1978.

12 E. A licensed physician who or business entity that  
13 submits the application for triennial renewal between August 16  
14 and September 30 shall be assessed a cumulative late fee as  
15 provided in Paragraph (6) of Subsection A of Section 61-6-19  
16 NMSA 1978.

17 F. After September 30, the board may, in its  
18 discretion, summarily suspend for nonpayment of fees the  
19 license of a physician who or business entity that has failed  
20 to renew [~~his~~] the physician's or business entity's license."

21 Section 5. Section 61-6-27 NMSA 1978 (being Laws 1945,  
22 Chapter 74, Section 2, as amended) is amended to read:

23 "61-6-27. ISSUANCE AND DISPLAY OF RENEWAL  
24 CERTIFICATE.--The board shall issue to each licensed physician,  
25 or business entity upon application in accordance with the

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1 provisions of the Medical Practice Act and upon payment of the  
2 appropriate fees and, in the case of a licensed physician, upon  
3 documentation of continuing education requirements, a  
4 certificate of triennial renewal, under the seal of the board,  
5 for the ensuing three years. The certificate of renewal shall  
6 contain the licensed physician's or business entity's name,  
7 business address, license date and number and other information  
8 as the board deems advisable. The certificate of triennial  
9 renewal shall, at all times, be displayed conspicuously in the  
10 principal office or practice location of the licensed physician  
11 or business entity to whom it has been issued."

12 Section 6. A new section of the Medical Practice Act is  
13 enacted to read:

14 "[NEW MATERIAL] BUSINESS ENTITY LICENSE.--

15 A. The board may grant a license to practice  
16 medicine to a business entity that meets the following  
17 requirements:

18 (1) the business entity is organized under the  
19 laws of New Mexico; and

20 (2) the business entity is controlled by  
21 persons who are licensed to practice medicine in New Mexico.

22 B. An applicant for a business entity license shall  
23 provide the following information to the board in connection  
24 with any application or renewal of its license:

25 (1) the ownership of the issued and

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1 outstanding equity of the business entity;

2 (2) in the case of a corporation, its  
3 directors and officers; in the case of a limited liability  
4 company, each of its managing members; and in the case of a  
5 partnership, each of its general partners; and

6 (3) such other information as may be required  
7 by the board.

8 C. Applicants for a business entity license shall  
9 pay the fees set forth in Section 61-6-19 NMSA 1978.

10 D. For the purposes of this section, "controlled"  
11 means ownership of the issued and outstanding equity of the  
12 business entity that:

13 (1) represents more than fifty percent of the  
14 total voting power of the business entity; and

15 (2) has a value of more than fifty percent of  
16 the total value of all the issued and outstanding equity of the  
17 business entity.

18 E. Notwithstanding anything in the Medical Practice  
19 Act or the Uniform Licensing Act to the contrary, the board's  
20 responsibility and authority over business entities is limited  
21 to:

22 (1) processing and either granting or denying  
23 an application submitted by a business entity for a license to  
24 practice medicine; and

25 (2) assessing and collecting fees pursuant to

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1 Section 61-6-19 NMSA 1978."

2 Section 7. EMERGENCY.--It is necessary for the public  
3 peace, health and safety that this act take effect immediately.

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