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SENATE BILL 332

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

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 [~~G.~~] 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 [~~H-~~] 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
23 entities that, renew their license within forty-five days after
24 the 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
2 entities that, renew their licenses between forty-six and
3 ninety days 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
8 that, fails to submit [~~his~~] the application for triennial
9 renewal on or before July 1 but who submits [~~his~~] the
10 application for triennial renewal by August 15 shall be
11 assessed a late fee as provided in Section 61-6-19 NMSA 1978.

12 E. A licensed physician who, or business entity
13 that, submits the application for triennial renewal between
14 August 16 and September 30 shall be assessed a cumulative late
15 fee as provided in Paragraph (6) of Subsection A of Section
16 61-6-19 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 to whom, or business entity to which, 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 as a
16 doctor of medicine to a business entity that meets the
17 following 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. Notwithstanding anything in the Medical Practice
11 Act or the Uniform Licensing Act to the contrary, the board's
12 responsibility and authority over business entities is limited
13 to:

14 (1) processing and either granting or denying
15 an application submitted by a business entity for a license to
16 practice medicine;

17 (2) assessing and collecting fees pursuant to
18 Section 61-6-19 NMSA 1978; and

19 (3) suspending a license for nonpayment of
20 fees pursuant to Subsection F of Section 61-6-26 NMSA 1978."

21 **SECTION 7. EMERGENCY.**--It is necessary for the public
22 peace, health and safety that this act take effect immediately.