

SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 117

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO LICENSURE; ENACTING THE PRESCRIBING PSYCHOLOGIST PRACTICE ACT; CREATING THE PRESCRIBING PSYCHOLOGIST ADVISORY COUNCIL; REQUIRING THE NEW MEXICO MEDICAL BOARD TO ADMINISTER THE PRESCRIBING PSYCHOLOGIST PRACTICE ACT; AMENDING THE PROFESSIONAL PSYCHOLOGIST ACT TO REMOVE PRESCRIBING PSYCHOLOGISTS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. A new section of Chapter 61 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Prescribing Psychologist Practice Act"."

SECTION 2. A new section of Chapter 61 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Prescribing Psychologist Practice Act:

- A. "board" means the New Mexico medical board;
- B. "board-approved prescribing psychologist supervisor" means a licensed prescribing psychologist who, after five years of practice after being licensed without condition, has applied to the board to supervise prescribing psychologists with conditions;
- C. "independently licensed prescribing clinician" means a:
 - (1) licensed physician;
 - (2) osteopathic physician;
 - (3) nurse practitioner;
 - (4) psychiatric nurse practitioner; or
 - (5) clinical nurse specialist;
- D. "licensed" means a person licensed by the board to practice as a prescribing psychologist or a prescribing

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psychologist with conditions;

E. "practice of psychology" means the observation, description, evaluation, interpretation and modification of human behavior by the application of psychological principles, methods and procedures for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health; and further means the rendering of such psychological services to individuals, families or groups regardless of whether payment is received for services rendered. The practice of psychology includes psychological testing or neuropsychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, behavior analysis and therapy; diagnosis and treatment of a mental and emotional disorder or disability, alcoholism and substance abuse, disorders of habit or conduct and the psychological aspects of physical illness, accident, injury and disability; and psychoeducational evaluation, therapy, remediation and consultation;

F. "prescribing psychologist" means a licensed psychologist who is trained in clinical psychopharmacology,

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engages in the practice of psychology and holds the authority to administer, prescribe, count and distribute without charge medication to treat mental illness consistent with the standards of practice for clinical psychopharmacology;

G. "prescribing psychologist with conditions" means a license issued by the board to a licensed psychologist that permits the holder to practice psychology and to prescribe and administer psychotropic medication to treat mental illness consistent with the standards of practice for the profession of clinical psychopharmacology while under the supervision of a board-approved supervising clinician pursuant to the Prescribing Psychologist Practice Act;

H. "psychologist" means a person SJC→~~who engages in the practice of psychology or holds the person's self out to the public by any title or description of services representing the person as a psychologist, which incorporates the words "psychological", "psychologist" or "psychology", or when a person describes the person's self as above and, under such title or description, offers to render or renders services involving the application of principles, methods and procedures of the science and profession of psychology to persons for compensation or other personal gain;~~←SJC SJC→**licensed by the New Mexico state board of psychologist examiners as a psychologist;**←SJC

I. "psychotropic medication" means a controlled

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substance or dangerous drug that may not be dispensed or administered without a prescription but is limited to only those agents related to the diagnosis and treatment or management of mental, nervous, emotional, behavioral, substance abuse or cognitive disorders, including the management of or protection from side effects that result from the use of those agents, whose use is consistent with the standards of practice for clinical psychopharmacology;

J. "school" means a university or other institution of higher education that is regionally accredited and that offers a full-time graduate course of study in psychology as defined by rule of the board or that is approved by the American psychological association; and

K. "supervising clinician" means a licensed physician, osteopathic physician, nurse practitioner, psychiatric nurse practitioner or clinical nurse specialist or board-approved prescribing psychologist supervisor who is supervising a psychologist in the prescribing of medication to treat mental illness consistent with the standards of practice for clinical psychopharmacology."

SECTION 3. A new section of Chapter 61 NMSA 1978 is enacted to read:

"[NEW MATERIAL] BOARD DUTIES.--By November 11, 2023, the board shall:

A. pursuant to the State Rules Act, promulgate

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rules as necessary to implement the Prescribing Psychologist Practice Act, including rules for the initial licensure, renewal and certification of prescribing psychologists;

B. establish standards of prescribing psychology practice in accordance with those developed and accepted by the profession;

C. develop educational requirements for the expansion of the scope of practice of prescribing psychology;

D. examine, approve, deny, revoke, suspend and renew the licenses of prescribing psychologists;

E. conduct hearings pursuant to the Uniform Licensing Act upon complaints concerning the disciplining of a prescribing psychologist;

F. prosecute and enjoin persons alleged to be in violation of the Prescribing Psychologist Practice Act; and

G. set fees for licensure of prescribing psychologists; provided that the fees do not to exceed:

(1) seven hundred fifty dollars (\$750) for a triennial prescribing psychologist license; and

(2) one hundred dollars (\$100) for a two-year prescribing psychologist with conditions license."

SECTION 4. A new section of Chapter 61 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DRUGS--MEDICINES.--

A. A prescribing psychologist with conditions may

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prescribe and administer psychotropic medication, including intramuscular injections to include antipsychotic medication and injectable naltrexone, under the supervision of a supervising clinician.

B. A prescribing psychologist may prescribe, count and administer psychotropic medication, including intramuscular injections to include antipsychotic medications and injectable naltrexone."

SECTION 5. A new section of Chapter 61 NMSA 1978 is enacted to read:

"[NEW MATERIAL] LICENSURE APPLICATION--REQUIREMENTS--RULEMAKING--ISSUANCE, DENIAL, RENEWAL AND REVOCATION OF LICENSE.--

A. A psychologist may apply to the board for a prescribing psychologist license. The application shall be made on a form approved by the board and be accompanied by evidence satisfactory to the board that the applicant:

- (1) holds a current license to practice psychology in New Mexico;
- (2) has successfully completed pharmacological training from an institution of higher education approved by the board;
- (3) has passed a national certification examination approved by the association of state and provincial psychology boards or successor organizations that tests the

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applicant's proficiency and knowledge of psychopharmacology in the diagnosis, care and treatment of mental disorders;

(4) within the five years immediately preceding the date of application, has successfully completed an organized program of education approved by the board and consisting of didactic instruction of no fewer than four hundred fifty classroom hours in at least the following core areas of instruction:

- (a) neuroscience;
- (b) pharmacology;
- (c) psychopharmacology;
- (d) physiology;
- (e) pathophysiology;
- (f) appropriate and relevant physical and laboratory assessment; and
- (g) clinical pharmacotherapeutics;

(5) within the five years immediately preceding the date of application, has been certified by each of the applicant's supervising independently licensed prescribing clinicians as having successfully completed a supervised and relevant clinical experience, approved by the board, of:

- (a) no less than an eighty-hour practicum in clinical assessment and pathophysiology under the supervision of an approved supervising clinician; and

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(b) an additional supervised practicum of at least four hundred hours treating no fewer than one hundred patients with mental disorders, which is supervised, either in person, telephonically or by video conference, by a board-approved supervising clinician determined to be competent to train the applicant in the treatment of a diverse patient population;

(6) has malpractice insurance sufficient to satisfy the rules adopted by the board and provides coverage of the applicant during the period that the license is active; and

(7) meets all other requirements as determined by rule of the board for obtaining a prescribing psychologist license.

B. The board shall issue a prescribing psychologist license with conditions if it finds that the applicant has met the requirements of Subsection A of this section. The license shall be valid for a period of two years, at the end of which the holder may reapply pursuant to Subsection A of this section. A prescribing psychologist with conditions may prescribe psychotropic medication under the supervision of a supervising clinician subject to the following conditions:

(1) the psychologist shall notify the board of the name of the psychologist's supervising clinician; and

(2) a supervising clinician shall notify the supervising clinician's own licensing board of the name of each

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psychologist under the supervising clinician's supervision.

C. A supervising clinician shall not be liable for the acts of a prescribing psychologist under the supervising clinician's supervision unless the injury or loss arises from those acts under the direction and control of the supervising clinician.

D. A prescribing psychologist may prescribe psychotropic medication pursuant to the provisions of the Prescribing Psychologist Practice Act if the psychologist annually satisfies the continuing education requirements for psychologists as set by the board, which shall be no fewer than twenty hours and no more than twenty-five hours each year.

E. The board shall promulgate rules providing for the procedures to be followed in obtaining a prescribing psychologist license.

F. The board shall promulgate rules establishing the grounds for denial, suspension or revocation of prescribing psychologist with conditions and prescribing psychologist licenses authorized to be issued pursuant to this section, including a provision for suspension or revocation of a license to practice psychology upon suspension or revocation of a prescribing psychologist or prescribing psychologist with conditions license. Actions of denial, suspension or revocation of a license shall be in accordance with the Medical Practice Act."

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SECTION 6. A new section of Chapter 61 NMSA 1978 is enacted to read:

"[NEW MATERIAL] PRESCRIBING PRACTICES.--

A. A prescribing psychologist or a prescribing psychologist with conditions may prescribe and administer medication to treat mental illness within the recognized scope of clinical psychopharmacology.

B. A supervising clinician shall supervise no more than four prescribing psychologists with conditions simultaneously.

C. When prescribing medication for a patient, the prescribing psychologist or the prescribing psychologist with conditions shall maintain an ongoing collaborative relationship with the health care practitioner who oversees the patient's general medical care, and such collaboration should be documented in the patient's record.

D. If a patient presents for care to a prescribing psychologist or a prescribing psychologist with conditions, but does not have an established patient relationship with a primary health care provider, and the prescribing psychologist or prescribing psychologist with conditions believes that delaying the initiation of medication might endanger the patient's health or safety, the prescribing psychologist or the prescribing psychologist with conditions may begin treatment for no more than sixty days during the interval from when the

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patient makes a new patient appointment until the patient is seen by the new primary health care provider.

E. The guidelines shall ensure that the prescribing psychologist or the prescribing psychologist with conditions and the health care practitioner coordinate and collaborate to provide optimal care for the patient. Nothing in this subsection shall require a prescribing psychologist or prescribing psychologist with conditions to give prior notice to or obtain prior approval from a health care practitioner to prescribe psychotropic medication to a patient with whom the prescribing psychologist or prescribing psychologist with conditions has established a psychologist-patient relationship; provided that the psychologist provides written notice of the prescription to the health care practitioner within twenty-four hours of its issuance to such patient.

F. A prescribing psychologist or a prescribing psychologist with conditions shall not delegate prescriptive authority to any other person. Records of all prescriptions shall be maintained in patient records.

G. When authorized to prescribe controlled substances, a prescribing psychologist or a prescribing psychologist with conditions shall file with the board in a timely manner all individual federal and state drug enforcement administration registrations and numbers. The board shall maintain current records on every prescribing psychologist,

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including federal registrations and numbers.

H. For the purpose of this section:

(1) "collaborative relationship" means a cooperative working relationship between a prescribing psychologist or a prescribing psychologist with conditions and a health care practitioner in the provision of patient care, including diagnosis and cooperation in the management and delivery of physical and mental health care; and

(2) "health care practitioner" means a physician, osteopathic physician, nurse practitioner, physician assistant or clinical nurse specialist."

SECTION 7. A new section of Chapter 61 NMSA 1978 is enacted to read:

"[NEW MATERIAL] ISSUANCE AND RENEWAL OF PRESCRIBING PSYCHOLOGIST LICENSE.--

A. The board shall issue a prescribing psychologist or a prescribing psychologist with conditions license to a licensed psychologist who meets the qualifications under Section 5 of the Prescribing Psychologist Practice Act and who pays the licensing fees.

B. The board shall issue a prescribing psychologist license to a licensed psychologist who, at the time of the enactment of the Prescribing Psychologist Practice Act, was certified to unconditionally prescribe medication by the New Mexico state board of psychologist examiners.

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C. The board shall issue a prescribing psychologist with conditions license to a licensed psychologist who, at the time of the enactment of the Prescribing Psychologist Practice Act, was certified to prescribe medication on a conditional basis by the New Mexico state board of psychologist examiners.

D. A license or certification shall be subject to renewal every three years.

E. SJC→~~The prescribing psychologist license shall include the practice of psychology.~~←SJC SJC→A psychologist license in good standing is required for licensure as a prescribing psychologist."←SJC

SECTION 8. A new section of Chapter 61 NMSA 1978 is enacted to read:

"[NEW MATERIAL] PRESCRIBING PSYCHOLOGIST ADVISORY COUNCIL CREATED.--

A. The "prescribing psychologist advisory council" is created under the direction of the board. The council shall advise the board regarding:

- (1) reviewing and recommending licensure of prescribing psychologists;
- (2) recommending additional education requirements for prescribing psychologists;
- (3) recommending continuing education requirements;
- (4) reviewing complaints for possible action;

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(5) identifying disciplinary actions and circumstances that require disciplinary action;

(6) recommending changes related to statutes and rules; and

(7) other matters as requested by the board.

B. The council consists of six members selected by the board as follows:

(1) two members shall be physicians recommended by the board and the New Mexico medical society; and

(2) four members shall be prescribing psychologists selected from names submitted by the statewide organization of prescribing psychologists.

C. A vacancy shall be filled in the manner of the original appointment.

D. The council shall meet at least four times per year.

E. Members of the council shall be reimbursed as nonsalaried public officers pursuant to the Per Diem and Mileage Act, and members shall receive no other compensation, perquisite or allowance for their service on the council."

SECTION 9. Section 61-3-23.5 NMSA 1978 (being Laws 2019, Chapter 19, Section 7) is amended to read:

"61-3-23.5. SUPERVISION OF PSYCHOLOGIST IN THE PRESCRIBING OF PSYCHOTROPIC MEDICATION BY NURSE PRACTITIONER OR

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CLINICAL NURSE SPECIALIST.--

A. Subject to rules promulgated by the board, a nurse practitioner or clinical nurse specialist may supervise a psychologist in the prescribing of psychotropic medication pursuant to the [~~Professional Psychologist~~] Prescribing Psychologist Practice Act.

B. No later than January 1, 2020, the board shall promulgate [~~regulations~~] rules for a nurse practitioner or clinical nurse specialist who supervises a psychologist in the prescribing of psychotropic medication pursuant to the [~~Professional Psychologist~~] Prescribing Psychologist Practice Act."

SECTION 10. Section 61-6-5 NMSA 1978 (being Laws 1973, Chapter 361, Section 2, as amended) is amended to read:

"61-6-5. MEDICAL BOARD DUTIES AND POWERS.--The board shall:

A. enforce and administer the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Impaired Health Care Provider Act, the Polysomnography Practice Act, the Prescribing Psychologist Practice Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act;

B. promulgate, in accordance with the State Rules Act, all rules for the implementation and enforcement of the

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provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Impaired Health Care Provider Act, the Polysomnography Practice Act, the Prescribing Psychologist Practice Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act;

C. adopt and use a seal;

D. administer oaths to all applicants, witnesses and others appearing before the board, as appropriate;

E. take testimony on matters within the board's jurisdiction;

F. keep an accurate record of all its meetings, receipts and disbursements;

G. maintain records in which the name, address and license number of all licensees shall be recorded, together with a record of all license renewals, suspensions, revocations, probations, stipulations, censures, reprimands and fines;

H. discipline licensees or deny, review, suspend and revoke licenses to practice medicine and censure, reprimand, fine and place on probation and stipulation licensees and applicants in accordance with the Uniform Licensing Act for any cause stated in the law that the board is charged with enforcing;

I. hire staff and administrators as necessary to

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carry out the provisions of the Medical Practice Act;

J. have the authority to hire or contract with investigators to investigate possible violations of the Medical Practice Act;

K. have the authority to hire a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the laws in relation to a health care profession or occupation over which the board has authority and to fix the compensation to be paid to such attorney; provided, however, that such attorney shall be compensated from the funds of the board;

L. establish continuing education requirements for licensed practitioners over which the board has authority;

M. establish committees as it deems necessary for carrying on its business;

N. hire or contract with a licensed physician to serve as medical director and fulfill specified duties of the secretary-treasurer;

O. establish and maintain rules related to the management of pain based on review of national standards for pain management; and

P. have the authority to waive licensure fees for the purpose of the recruitment and retention of health care practitioners over which the board has authority."

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SECTION 11. Section 61-6-6 NMSA 1978 (being Laws 1973, Chapter 361, Section 1, as amended) is amended to read:

"61-6-6. DEFINITIONS.--As used in the Medical Practice Act:

- A. "approved postgraduate training program for physicians" means a program approved by the accreditation council for graduate medical education, the American osteopathic association or other board-approved program;
- B. "board" means the New Mexico medical board;
- C. "collaboration" means the process by which a licensed physician and a physician assistant jointly contribute to the health care and medical treatment of patients; provided that:

(1) each collaborator performs actions that the collaborator is licensed or otherwise authorized to perform; and

(2) collaboration shall not be construed to require the physical presence of the licensed physician at the time and place services are rendered;

D. "licensed physician" means a medical or osteopathic physician licensed under the Medical Practice Act to practice medicine in New Mexico;

E. "licensee" or "health care practitioner" means a medical physician, osteopathic physician, physician assistant, polysomnographic technologist, anesthesiologist assistant,

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prescribing psychologist, naturopathic doctor or naprapath licensed by the board to practice in New Mexico;

F. "medical college or school in good standing" for medical physicians means a board-approved medical college or school that has as high a standard as that required by the association of American medical colleges and the council on medical education of the American medical association; and for osteopathic physicians means a college of osteopathic medicine accredited by the commission of osteopathic college accreditation;

G. "medical student" means a student enrolled in a board-approved medical college or school in good standing;

H. "physician assistant" means a health care practitioner who is licensed by the board to practice as a physician assistant and who provides services to patients with the supervision of or in collaboration with a licensed physician as set forth in rules promulgated by the board;

I. "resident" means a graduate of a medical college or school in good standing who is in training in a board-approved and accredited residency training program in a hospital or facility affiliated with an approved hospital and who has been appointed to the position of "resident" or "fellow" for the purpose of postgraduate medical training;

J. "the practice of medicine" consists of:

(1) advertising, holding out to the public or

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representing in any manner that one is authorized to practice medicine or to practice health care that is under the authority of the board in this state;

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

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

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

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

(6) offering medical peer review, utilization review or diagnostic service of any kind that directly influences patient care, except as authorized pursuant to a professional or occupational licensing statute set forth in Chapter 61 NMSA 1978; or

(7) acting as the representative or agent of a

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person in doing any of the things listed in this subsection;

K. "the practice of medicine across state lines" means:

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

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

L. "sexual contact" means touching the primary genital area, groin, anus, buttocks or breast of a patient or allowing a patient to touch another's primary genital area, groin, anus, buttocks or breast in a manner that is commonly recognized as outside the scope of acceptable medical or health care practice;

M. "sexual penetration" means sexual intercourse, cunnilingus, fellatio or anal intercourse, whether or not there is any emission, or introducing any object into the genital or anal openings of another in a manner that is commonly recognized as outside the scope of acceptable medical or health

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care practice; and

N. "United States" means the fifty states, its territories and possessions and the District of Columbia."

SECTION 12. Section 61-6-15 NMSA 1978 (being Laws 1969, Chapter 46, Section 6, as amended) is amended to read:

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

A. The board may refuse to license and may revoke or suspend a license that has been issued by the board or a previous board and may fine, censure or reprimand a licensee upon satisfactory proof being made to the board that the applicant for or holder of the license has been guilty of unprofessional or dishonorable conduct. The board may also refuse to license an applicant who is unable to practice as a physician, practice as a physician assistant, an anesthesiologist assistant, a genetic counselor, a naturopathic practitioner [~~or~~], a naprapathic practitioner or a prescribing psychologist or practice polysomnography, pursuant to Section 61-7-3 NMSA 1978. All proceedings shall be as required by the Uniform Licensing Act or the Impaired Health Care Provider Act.

B. The board may, in its discretion and for good cause shown, place the licensee on probation on the terms and

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conditions it deems proper for protection of the public, for the purpose of rehabilitation of the probationer or both. Upon expiration of the term of probation, if a term is set, further proceedings may be abated by the board if the holder of the license furnishes the board with evidence that the licensee is competent to practice, is of good moral character and has complied with the terms of probation.

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

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

- (1) procuring, aiding or abetting an illegal procedure;
- (2) employing a person to solicit patients for

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the licensee;

(3) representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;

(4) obtaining a fee by fraud or misrepresentation;

(5) willfully or negligently divulging a professional confidence;

(6) conviction of an offense punishable by incarceration in a state penitentiary or federal prison or conviction of a misdemeanor associated with the practice of the licensee. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;

(7) habitual or excessive use of intoxicants or drugs;

(8) fraud or misrepresentation in applying for or procuring a license to practice in this state or in connection with applying for or procuring renewal, including cheating on or attempting to subvert the licensing examinations;

(9) making false or misleading statements regarding the skill of the licensee or the efficacy or value of the medicine, treatment or remedy prescribed or administered by the licensee or at the direction of the licensee in the

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treatment of a disease or other condition of the human body or mind;

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

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

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

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

(14) discipline imposed on a licensee by another licensing jurisdiction, including denial, probation, suspension or revocation, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of disciplinary action or sanction taken by another jurisdiction is conclusive evidence of the action;

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

(16) fee splitting;

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

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

(19) repeated similar negligent acts or a pattern of conduct otherwise described in this section or in violation of a board rule;

(20) employing abusive billing practices;

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

- (a) another licensing jurisdiction;
- (b) a peer review body;
- (c) a health care entity;
- (d) a professional or medical society or association;
- (e) a governmental agency;
- (f) a law enforcement agency; or
- (g) a court for acts or conduct similar

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

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

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conduct that would constitute grounds for action as defined in this section;

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

(24) abandonment of patients;

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

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

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

(28) sexual contact with a patient or person who has authority to make medical decisions for a patient, other than the spouse of the licensee;

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

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

(31) sexual contact with a former mental

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health patient of the licensee, other than the spouse of the licensee, within one year from the end of treatment;

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

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

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

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

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

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

(38) willfully or negligently divulging privileged information or a professional secret; or

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(39) the use of conversion therapy on a minor.

E. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex.

"Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "fee splitting" includes offering, delivering, receiving or accepting any unearned rebate, refunds, commission preference, patronage dividend, discount or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients or customers to a person, irrespective of any membership, proprietary interest or co-ownership in or with a

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person to whom the patients, clients or customers are referred;

(3) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(4) "minor" means a person under eighteen years of age; and

(5) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

F. Licensees whose licenses are in a probationary status shall pay reasonable expenses for maintaining probationary status, including laboratory costs when laboratory testing of biological fluids ~~[are]~~ is included as a condition of probation."

SECTION 13. Section 61-6-31 NMSA 1978 (being Laws 1989, Chapter 269, Section 27, as amended) is amended to read:

"61-6-31. DISPOSITION OF FUNDS--NEW MEXICO MEDICAL BOARD FUND CREATED--METHOD OF PAYMENTS.--

A. There is created the "New Mexico medical board fund".

B. All funds received by the board and money collected under the Medical Practice Act, the Physician

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Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Prescribing Psychologist Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act shall be deposited with the state treasurer, who shall place the same to the credit of the New Mexico medical board fund.

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

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

(1) the performance of the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Prescribing Psychologist Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act and the duties and powers imposed by those acts;

(2) the promotion of medical education and standards in this state within the budgetary limits; and

(3) efforts to recruit and retain medical and

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osteopathic physicians for practice in New Mexico.

E. All funds that may have accumulated to the credit of the board under any previous law shall be transferred to the New Mexico medical board fund and shall continue to be available for use by the board in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Prescribing Psychologist Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act. All money unused at the end of the fiscal year shall not revert, but shall remain in the fund for use in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Prescribing Psychologist Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act."

SECTION 14. Section 61-9-3 NMSA 1978 (being Laws 1963, Chapter 92, Section 3, as amended) is amended to read:

"61-9-3. DEFINITIONS.--As used in the Professional Psychologist Act:

A. "board" means the New Mexico state board of psychologist examiners;

~~[B. "conditional prescription certificate" means a~~

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~~document issued by the board to a licensed psychologist that permits the holder to prescribe psychotropic medication under the supervision of a supervising clinician pursuant to the Professional Psychologist Act;~~

~~G. "independently licensed prescribing clinician" means a licensed physician, osteopathic physician, nurse practitioner, psychiatric nurse practitioner or clinical nurse specialist;~~

~~D.] B. "person" includes an individual, firm, partnership, association or corporation;~~

~~[E. "prescribing psychologist" means a licensed psychologist who holds a valid prescription certificate;~~

~~F. "prescription certificate" means a document issued by the board to a licensed psychologist that permits the holder to prescribe psychotropic medication pursuant to the Professional Psychologist Act;~~

~~G. "psychotropic medication" means a controlled substance or dangerous drug that may not be dispensed or administered without a prescription and whose primary indication for use has been approved by the federal food and drug administration for the treatment of mental disorders or is listed as a psychotherapeutic agent in *Drug Facts and Comparisons 2017*, or the most recent edition of that book, or in *American Hospital Formulary Service Drug Information*;~~

~~H.] C. "psychologist" means a person who engages in~~

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the practice of psychology or holds the person's self out to the public by any title or description of services representing the person as a psychologist, which incorporates the words "psychological", "psychologist", "psychology", or when a person describes the person's self as above and, under such title or description, offers to render or renders services involving the application of principles, methods and procedures of the science and profession of psychology to persons for compensation or other personal gain;

~~[F.]~~ D. "practice of psychology" means the observation, description, evaluation, interpretation and modification of human behavior by the application of psychological principles, methods and procedures for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health, and further means the rendering of such psychological services to individuals, families or groups regardless of whether payment is received for services rendered. The practice of psychology includes psychological testing or neuropsychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, behavior

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analysis and therapy; diagnosis and treatment of a mental and emotional disorder or disability, alcoholism and substance abuse, disorders of habit or conduct and the psychological aspects of physical illness, accident, injury and disability; and psychoeducational evaluation, therapy, remediation and consultation; and

[J-] E. "school" or "college" means a university or other institution of higher education that is regionally accredited and that offers a full-time graduate course of study in psychology as defined by rule of the board or that is approved by the American psychological association [~~and~~

~~K. "Supervising clinician" means a licensed physician, osteopathic physician, nurse practitioner, psychiatric nurse practitioner or clinical nurse specialist who is supervising a psychologist in the prescribing of psychotropic medication]."~~

SECTION 15. Section 61-9-10 NMSA 1978 (being Laws 1963, Chapter 92, Section 9, as amended) is amended to read:

"61-9-10. LICENSURE OF PSYCHOLOGISTS FROM OTHER AREAS-- EXPEDITED LICENSURE.--

A. Except as provided in Section 61-9-10.1 NMSA 1978 for temporary or other provisional licensure that is not an expedited license, upon application accompanied by a fee as required by the Professional Psychologist Act, the board shall, without written or oral examination, issue an expedited license

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to a person who furnishes, upon a form and in such manner as the board prescribes, evidence to the board that the person has been licensed or certified as a psychologist [~~or prescribing psychologist~~] by another licensing jurisdiction for two years. An applicant seeking a license shall demonstrate to the board that the training and education received by the applicant is equivalent to the requirements for a doctoral degree in psychology as provided in the Professional Psychologist Act; that the applicant holds a valid, unrestricted license and is in good standing with the licensing board of that licensing jurisdiction; and the applicant has practiced psychology for at least two years immediately prior to application in New Mexico.

B. The board shall, as soon as practicable but not later than thirty days after an out-of-state licensee files an application for an expedited license, process the application and issue an expedited license in accordance with Section 61-1-31.1 NMSA 1978.

C. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before license renewal.

D. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and shall determine any foreign countries from which

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it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The rule shall be reviewed annually to determine if amendments to the rule are warranted."

SECTION 16. DELAYED REPEAL.--Sections 61-9-17 through 61-9-17.3 NMSA 1978 (being Laws 1963, Chapter 92, Section 16, Laws 2002, Chapter 100, Sections 6 and 7 and Laws 2019, Chapter 19, Section 8, as amended) are repealed effective March 1, 2024.

SECTION 17. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2024.

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