SENATE BILL 272

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MICHAEL S. SANCHEZ

AN ACT

RELATING TO LICENSURE; CLARIFYING THE PRACTICE OF ORIENTAL MEDICINE; GIVING DOCTORS OF ORIENTAL MEDICINE PRESCRIPTIVE AUTHORITY; DESIGNATING DOCTORS OF ORIENTAL MEDICINE AS PRIMARY CARE PROVIDERS; PROVIDING FOR ANNUAL LICENSURE; INCREASING FEES; EXPANDING THE AUTHORITY TO DENY, SUSPEND OR REVOKE A LICENSE; REQUIRING LICENSEES TO PAY COSTS OF DISCIPLINARY PROCEEDINGS UNDER CERTAIN CIRCUMSTANCES.

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

Section 1. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended) is amended to read:

"26-1-2. DEFINITIONS.--As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

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

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

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

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

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

(4) an "antitoxin" is a product containing the soluble substance in serum or other body fluid of an immunized animal [~~which~~] that specifically neutralizes the toxin against

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which the animal is immune;

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

E. "drug" means:

(1) articles recognized in an official compendium;

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

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

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

F. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, [~~which~~] that because of any potentiality for harmful effect or the method of its use or the collateral

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measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the layman can use a drug or device safely and for the purposes for which it is intended. A drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe such drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance, or any chemical derivative of such substance, [~~which~~] that has been found under the federal act and the board to be habit-forming;

(2) because of its toxicity or other potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe such drug;

(3) is limited by an approved application by Section 505 of the federal act to the use under the professional supervision of a practitioner licensed by law to administer or prescribe such drug;

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

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

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veterinarian.";

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

H. "device", except when used in Subsection P of this section and in Subsection G of Section 26-1-3, Subsection L and Paragraph (4) of Subsection A of Section 26-1-11 and Subsection C of Section 26-1-24 NMSA 1978, means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory,[~~which~~] that is:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in man or other animals; or

(3) intended to affect the structure or any function of the body of man or other animals and [~~which~~] that does not achieve any of its principal intended purposes through

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chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for achievement of any of its principal intended purposes;

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

J. "practitioner" means a physician, doctor of oriental medicine, dentist, veterinarian or other person licensed to prescribe and administer drugs [~~which~~] that are subject to the New Mexico Drug, Device and Cosmetic Act;

K. "cosmetic" means:

(1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and

(2) articles intended for use as a component of any articles enumerated in Paragraph (1) of this subsection, except that the term shall not include soap;

L. "official compendium" means the official United

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States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them;

M. "label" means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made by or under the authority of the New Mexico Drug, Device and Cosmetic Act that any word, statement or other information appear on the label shall not be considered to be complied with unless the word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of the article or is easily legible through the outside container or wrapper;

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

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

(1) upon any article or any of its containers or wrappers; or

(2) accompanying any article;

P. "misbranded" means a label to an article [~~which~~] that is misleading. In determining whether the label is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the foregoing, but also the extent to which the label fails to reveal facts

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material in the light of such representations or material with respect to consequences [~~which~~] that may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual;

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

R. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder or such other use as involves prolonged contact with the body;

S. "new drug" means:

(1) any drug, the composition of which is such that the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and efficacy of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) any drug, the composition of which is such that the drug, as a result of investigation to determine its

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safety and efficacy for use under such conditions, has become so recognized, but [~~which~~] that has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

T. "contaminated with filth" applies to any drug, device or cosmetic not securely protected from dirt, dust and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or any drug, device or cosmetic found to contain any dirt, dust, foreign or injurious contamination or infestation;

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

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

(1) is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, mineral, animal or other source; or

(2) when added or applied to a drug or cosmetic or to the human body or any part thereof, is capable, alone or through reaction with other substances, of imparting color

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thereto; except that such term does not include any material [~~which~~] that has been or hereafter is exempted under the federal act;

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

X. "restricted device" means a device for which the sale, distribution or use is lawful only upon the written or oral authorization of a practitioner licensed by law to administer, prescribe or use the device and for which the federal food and drug administration requires special training or skills of the practitioner to use or prescribe. This definition does not include custom devices defined in the federal act and exempt from performance standards or premarket approval requirements under Section 520 (b) of the federal act; and

Y. "prescription device" means a device [~~which~~] that, because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but that bears the label: "Caution: Federal law restricts this device to sale by or on the order of a ", the blank to be filled with the word "physician", "doctor of oriental medicine", "dentist", "veterinarian" or with the descriptive designation of any other

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practitioner licensed in this state to use or order the use of the device."

Section 2. Section 61-14A-1 NMSA 1978 (being Laws 1993, Chapter 158, Section 9) is amended to read:

"61-14A-1. SHORT TITLE.--[~~Sections 61-14A-1 through 61-14A-21~~] Chapter 61, Article 14A NMSA 1978 may be cited as the "Acupuncture and Oriental Medicine Practice Act"."

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

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

A. "acupuncture" means the use of needles inserted into and removed from the human body and the use of other devices, modalities and procedures at specific locations on the body for the prevention, cure or correction of any disease, illness, injury, pain or other condition by controlling and regulating the flow and balance of energy and functioning of the person to restore and maintain health;

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

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

~~D.~~] C. "doctor of oriental medicine" means a [~~physician~~] person licensed as a physician to practice acupuncture and oriental medicine [~~and includes the terms~~

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~~"oriental medical physician", "doctor of acupuncture", "acupuncture physician", "acupuncture practitioner" and "acupuncturist"~~] with the ability to practice independently, serve as a primary care provider and as necessary collaborate with other health care providers;

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

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

F. "primary care provider" means a health care professional who provides the first level of basic or general health care for an individual's health needs, including diagnostic and treatment services; and

G. "techniques of oriental medicine" means:

(1) the diagnostic and treatment techniques [~~utilized~~] used in oriental medicine that include [~~but are not limited to~~] diagnostic procedures; acupuncture; moxibustion;

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manual therapy, also known as tui na; other physical medicine modalities and therapeutic procedures; breathing and exercise techniques; and dietary, nutritional and lifestyle counseling; [~~and~~]

(2) the prescription or administration of any herbal medicine, homeopathic medicine [~~vitamin, mineral, enzyme, glandular or nutritional supplement~~] or other substances, including vitamins, minerals, enzymes, glandular products, amino acids, dietary and nutritional supplements; and

(3) the prescription or administration of biological products, drugs, dangerous drugs and cosmetics, other than those enumerated in Paragraph (2) of this subsection, and the prescription or administration of devices, restricted devices and prescription devices, as these substances and devices are defined in the New Mexico Drug, Device and Cosmetic Act, if the board determines by rule that any such substance or device is necessary in the practice of oriental medicine."

Section 4. Section 61-14A-5 NMSA 1978 (being Laws 1993, Chapter 158, Section 13) is amended to read:

"61-14A-5. TITLE.--Any person licensed [~~under~~] pursuant to provisions of the Acupuncture and Oriental Medicine Practice Act, in advertising his services to the public, shall use the title "doctor of oriental medicine" or "D.O.M.". [~~Effective July 1, 1994~~] The title "doctor of oriental medicine" or "D.O.M." shall supersede the use of all other titles that

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include the words "medical doctor" or the initials "M.D." unless the person is a medical doctor licensed pursuant to provisions of the Medical Practice Act."

Section 5. Section 61-14A-6 NMSA 1978 (being Laws 1993, Chapter 158, Section 14) is amended to read:

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

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

~~B.~~] A. Students enrolled in an educational program in acupuncture and oriental medicine approved by the board may practice acupuncture and oriental medicine under the direct supervision of a teacher at an institute or with a private tutor as part of the educational program in which they are enrolled.

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

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acupuncture or oriental medicine:

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

(2) the domestic administering of family remedies;

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

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

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

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

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

Section 6. Section 61-14A-10 NMSA 1978 (being Laws 1993, Chapter 158, Section 18) is amended to read:

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

A. the completed application for licensing on the

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form provided by the board;

B. the required documentation as determined by the board;

C. the required fees;

D. an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency;

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

F. proof that he has passed [~~an examination~~] the examinations approved by the board."

Section 7. Section 61-14A-11 NMSA 1978 (being Laws 1993, Chapter 158, Section 19) is amended to read:

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

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

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

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

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

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

(1) anatomy and physiology;

(2) pathology;

(3) diagnosis; [~~and~~]

(4) pharmacology; and

[~~(4)~~] (5) principles, practices and treatment techniques of acupuncture and oriental medicine.

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

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

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

(2) needle and instrument sterilization techniques.

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

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medicine."

Section 8. Section 61-14A-13 NMSA 1978 (being Laws 1993, Chapter 158, Section 21, as amended) is amended to read:

"61-14A-13. REQUIREMENTS FOR RECIPROCAL LICENSING.--The board may grant a license to practice acupuncture and oriental medicine to a person who has been licensed, certified, registered or legally recognized as a doctor of oriental medicine in another state, district or territory of the United States or foreign country if the applicant:

A. submits the completed application for reciprocal licensing on the form provided by the board;

B. submits the required documentation as determined by the board;

C. submits the required fee for application for reciprocal licensing;

D. submits an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency;

E. has passed a practical examination that demonstrates his knowledge of and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine, if the board requires regular applicants to pass a practical examination, or within the last six years has five years of clinical experience, as defined by rule, in the practice of acupuncture and oriental medicine;

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F. has passed a written examination on the state laws and rules that pertain to the practice of acupuncture and oriental medicine, if the board requires regular applicants for licensure to pass such an examination;

[~~F.~~] G. is licensed, certified, registered or legally recognized as a doctor of oriental medicine in another state, district or territory of the United States or foreign country in which the requirements for practice are similar to those of this state; and

[~~G.~~] H. is licensed, certified, registered or legally recognized as a doctor of oriental medicine in a state, district or territory of the United States or foreign country that permits a doctor of oriental medicine licensed under the provisions of the Acupuncture and Oriental Medicine Practice Act to practice acupuncture and oriental medicine in that jurisdiction by reciprocal credentials review."

Section 9. Section 61-14A-14 NMSA 1978 (being Laws 1993, Chapter 158, Section 22) is amended to read:

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

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

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

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

(3) was taught by qualified teachers or a qualified private tutor;

(4) required as a prerequisite to graduation personal attendance in all classes and clinics and, as a minimum, the completion of the following subjects:

(a) anatomy and physiology;

(b) pathology;

(c) diagnosis;

(d) pharmacology;

[~~(d)~~] (e) oriental principles of life therapy, including diet, nutrition and counseling;

[~~(e)~~] (f) theory and techniques of traditional and modern acupuncture and oriental medicine;

[~~(f)~~] (g) precautions and contraindications for acupuncture treatment;

[~~(g)~~] (h) theory and application of meridian pulse evaluation and meridian point location;

[~~(h)~~] (i) traditional and modern methods of life-energy evaluation;

[~~(i)~~] (j) the prescription of herbal medicine and precautions and contraindications for its use;

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[~~(j)~~] (k) hygiene, sanitation and clean-needle technique;

[~~(k)~~] (l) care and management of needling devices; and

[~~(l)~~] (m) needle and instrument sterilization techniques; and

(5) resulted in the presentation of a certificate or diploma after completion of all the educational program requirements.

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

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

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

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

(4) the required fee for application for

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approval of an educational program.

C. Institutes and private tutors outside New Mexico that offer educational programs in acupuncture and oriental medicine with the intent to graduate students qualified to be applicants for licensing examination by the board may have their educational programs annually approved by the board. For the educational program in acupuncture and oriental medicine to be approved by the board, the institute or private tutor shall submit:

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

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

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

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

D. Each institute and private tutor in New Mexico that offers an approved educational program in acupuncture and oriental medicine as referred to in Subsection B of this section shall renew their approval annually by submitting:

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

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

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

E. Each institute and private tutor outside New Mexico that offers an approved educational program in acupuncture and oriental medicine as referred to in Subsection C of this section may renew their approval annually by submitting:

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

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

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

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

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

(2) proof, as determined by the board, that the educational requirements [~~referred to~~] provided for in

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Subsection A of this section are being met;

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

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

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

Section 10. Section 61-14A-15 NMSA 1978 (being Laws 1993, Chapter 158, Section 23) is amended to read:

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

A. Each licensee shall renew his license [~~biennially~~] annually by submitting:

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

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

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

C. A sixty-day grace period shall be allowed each licensee after the end of the licensing period, during which

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time the license may be renewed by submitting:

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

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

(3) the required fee for late license renewal.

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

Section 11. Section 61-14A-16 NMSA 1978 (being Laws 1993, Chapter 158, Section 24) is amended to read:

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

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

B. application for reciprocal licensing [~~750~~] 1,500;

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

D. examination, not including the cost of any nationally recognized examination . . . . . [~~350~~] 1,500;

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

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

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

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

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

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

K. expired renewal of approval of an educational program . . . . . [~~400~~] 800;

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

M. duplicate license . . . . . $100; and

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

Section 12. Section 61-14A-17 NMSA 1978 (being Laws 1993, Chapter 158, Section 25) is amended to read:

"61-14A-17. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW--APPLICATION OF UNIFORM LICENSING ACT.--

A. In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any permanent or temporary license held or applied for under the Acupuncture and Oriental Medicine Practice Act, upon findings by the board that the licensee or applicant:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license;

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(2) has been convicted of a felony. A certified copy of the record of conviction shall be conclusive evidence of such conviction;

(3) is guilty of incompetence as defined by board rule;

(4) is habitually intemperate, is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice as a doctor of oriental medicine;

(5) is guilty of unprofessional conduct, as defined by board rule;

(6) is guilty of any violation of the Controlled Substances Act;

(7) has violated any provision of the Acupuncture and Oriental Medicine Practice Act or rules [~~and regulations adopted~~] promulgated by the board;

(8) is guilty of failing to furnish the board, its investigators or representatives with information requested by the board;

(9) is guilty of willfully or negligently practicing beyond the scope of acupuncture and oriental medicine as defined in the Acupuncture and Oriental Medicine Practice Act;

(10) is guilty of failing to adequately supervise a sponsored temporary licensee;

Underscored material = new
[~~bracketed material~~] = delete

(11) is guilty of aiding or abetting the practice of acupuncture and oriental medicine by a person not licensed by the board;

(12) is guilty of practicing or attempting to practice under an assumed name;

(13) advertises by means of knowingly false statements;

(14) advertises or attempts to attract patronage in any unethical manner prohibited by the Acupuncture and Oriental Medicine Practice Act or the rules [~~and regulations~~] of the board;

(15) has been declared mentally incompetent by regularly constituted authorities; [~~or~~]

(16) has had a license, certificate or registration to practice as a doctor of oriental medicine revoked, suspended or denied in any jurisdiction of the United States or a foreign country for actions of the licensee similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking such disciplinary action will be conclusive evidence thereof; or

(17) fails, when diagnosing or treating a patient, to possess or apply the knowledge or to use the skill and care ordinarily used by reasonably well-qualified doctors of oriental medicine practicing under similar circumstances, giving due consideration to the locality involved.

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[~~bracketed material~~] = delete

B. Disciplinary proceedings may be instituted by any person, shall be by sworn complaint and shall conform with the provisions of the Uniform Licensing Act. Any party to the hearing may obtain a copy of the hearing record upon payment of the costs of the copy.

C. Any person filing a sworn complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

D. The licensee shall bear the costs of disciplinary proceedings unless exonerated."

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[~~bracketed material~~] = delete

FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997 SB 272/a

February 14, 1997

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

SENATE BILL 272

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

1. On page 12, line 19, after "professional" insert "acting within the scope of his license".

2. On page 13, line 17, before the period insert:

"; provided, however, that for the purposes of the Acupuncture and Oriental Medicine Practice Act, "dangerous drug" does not include any controlled substance as defined in the Controlled Substances Act".

3. On page 14, lines 7 through 16, remove the beginning bracket and line-through.

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[~~bracketed material~~] = delete

4. On page 14, line 17, remove the bracket and line-through and strike the underscored "A.".

5. On page 14, line 22, remove the brackets and line-through and strike the underscored "B.".,

and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

_____
Shannon Robinson, Chairman

Adopted_____ Not Adopted_____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 4 For 1 Against
Yes: 4
No: Adair
Excused: Boitano, Ingle, Vernon, Smith
Absent: None

Underscored material = new
[~~bracketed material~~] = delete

Underscored material = new
[~~bracketed material~~] = delete

State of New Mexico

House of Representatives

FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997

March 17, 1997

Mr. Speaker:

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

SENATE BILL 272, as amended

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

1. On page 11, lines 21 and 22, remove the beginning bracket and line-through.

2. On page 11, line 23, remove the line-through and end bracket and strike the underscored "C.".

3. Strike Senate Public Affairs Committee Amendment 2.

.113836.1

Underscored material = new
[~~bracketed material~~] = delete

4. On page 13, line 7, after the bracket strike the remainder of the line, strike line 8 through "including" and insert in lieu thereof a comma.

5. On page 13, line 9, after the semicolon strike "and".

6. On page 13, strike lines 11 through 17 and insert in lieu thereof:

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

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

(5) the prescription or administration of the following dangerous drugs as they are defined in the New Mexico

Drug, Device and Cosmetic Act, if the prescribing doctor of oriental medicine has fulfilled the requirements for prescriptive authority in accordance with rules promulgated by the board for the substances enumerated in this paragraph:

(a) vapocoolants;

(b) topical application of naturally occurring hormones; and

(c) any of the drugs or substances enumerated in Paragraphs (2) and (4) of this subsection if at any time these substances or drugs are classified as dangerous drugs."".

7. On pages 24 through 26, strike Sections 10 and 11 in their entirety.

8. Renumber the succeeding section accordingly.,

and thence referred to the APPROPRIATIONS AND FINANCE COMMITTEE.

Underscored material = new
[~~bracketed material~~] = delete

Respectfully submitted,

Gary King, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 2 Against

Yes: 5

No: Crook, Dana

Excused: Johnson, Rios, Vigil

Absent: None

118863.1

118938.2

M:\S0272

Underscored material = new
[~~bracketed material~~] = delete

State of New Mexico
House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 18, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to whom has been referred

SENATE BILL 272, as amended

has had it under consideration and reports same with recommendation that it DO PASS.

Respectfully submitted,

Max Coll, Chairman

Underscored material = new
[~~bracketed material~~] = delete

.113836.1

Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 17 For 0 Against

Yes: 17

Excused: None

Absent: None

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