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SENATE BILL 653

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

INTRODUCED BY

TIMOTHY Z. JENNINGS

AN ACT

RELATING TO MEDICINE; AMENDING THE MEDICAL PRACTICE ACT;  
PROVIDING GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF  
LICENSES; PRESCRIBING CERTAIN LICENSE FEE CATEGORIES; INCREASING  
FEES.

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

Section 1. 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-- NOTICE OF CLAIM --

A. The board may refuse to license and may revoke or  
suspend any license that has been issued by the board or any

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1 previous board and may fine, censure or reprimand any licensee  
2 upon satisfactory proof being made to the board that the  
3 applicant for or holder of the license has been guilty of  
4 unprofessional or dishonorable conduct. The board may also  
5 refuse to license an applicant who is unable to practice  
6 medicine, pursuant to Section 61-7-3 NMSA 1978. All proceedings  
7 shall be as required by the Uniform Licensing Act or the  
8 Impaired [~~Physician~~] Health Care Provider Act.

9 B. The board may, in its discretion and for good  
10 cause shown, place the licensee on probation on such terms and  
11 conditions as it deems proper for protection of the public [~~and~~]  
12 or for the purpose of the rehabilitation of the probationer, or  
13 both. Upon expiration of the term of probation, if a term is  
14 set, further proceedings may be abated by the board if the  
15 holder of the license furnishes the board with evidence that the  
16 physician is competent to practice medicine, is of good moral  
17 character and has complied with the terms of probation.

18 C. If evidence fails to establish to the  
19 satisfaction of the board that the licensee is competent and is  
20 of good moral character or if evidence shows that he has not  
21 complied with the terms of probation, the board may revoke or  
22 suspend the license forthwith. If a license to practice  
23 medicine in this state is suspended, the holder of the license  
24 may not practice during the term of suspension; and any person  
25 whose license has been revoked or suspended by the board and who

1 thereafter practices or attempts or offers to practice medicine  
2 in New Mexico, unless the period of suspension has expired or  
3 been modified by the board or the physician's license  
4 reinstated, is guilty of a felony and shall be punished as  
5 provided in Section 61-6-20 NMSA 1978.

6 D. "Unprofessional or dishonorable conduct", as used  
7 in this section, means among other things, but not limited to  
8 because of enumeration:

9 (1) procuring, aiding or abetting a criminal  
10 abortion;

11 (2) employing any person to solicit patients  
12 for the physician;

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

15 (4) obtaining any fee by fraud or  
16 misrepresentation;

17 (5) willfully or negligently divulging a  
18 professional confidence;

19 (6) conviction of any offense punishable by  
20 incarceration in a state penitentiary or federal prison. A copy  
21 of the record of conviction, certified by the clerk of the court  
22 entering the conviction, is conclusive evidence;

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

25 (8) fraud or misrepresentation in applying for

1 or procuring a license to practice in this state or in  
2 connection with applying for or procuring renewal, including  
3 cheating on or attempting to subvert the licensing examinations;

4 (9) making false or misleading statements  
5 regarding the physician's skill or the efficacy or value of the  
6 medicine, treatment or remedy prescribed or administered by the  
7 physician or at the physician's direction in the treatment of  
8 any disease or other condition of the human body or mind;

9 (10) impersonating another person licensed to  
10 practice medicine, permitting or allowing any person to use the  
11 physician's license or certificate of registration or practicing  
12 medicine under a false or assumed name;

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

15 (12) gross negligence in the practice of  
16 medicine;

17 (13) manifest incapacity or incompetence to  
18 practice medicine;

19 (14) [the] discipline imposed on a licensee to  
20 practice medicine by another state, including probation.

21 suspension or revocation [~~by another state of a license to~~  
22 ~~practice medicine~~], based upon acts by the licensee similar to  
23 acts described in this section. A certified copy of the record  
24 of suspension or revocation of the state making the suspension  
25 or revocation is conclusive evidence;

1 (15) the use of any false, fraudulent or  
2 deceptive statement in any document connected with the practice  
3 of medicine;

4 (16) fee splitting;

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

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

10 (19) repeated similar negligent acts;

11 (20) employing abusive billing practices;

12 (21) failure to report to the board any adverse  
13 action taken against the physician by:

14 (a) another licensing jurisdiction;

15 (b) any peer review body;

16 (c) any health care entity;

17 (d) any professional or medical society

18 or association;

19 (e) any governmental agency;

20 (f) any law enforcement agency; or

21 (g) any court for acts or conduct similar

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

24 (22) failure to report to the board surrender  
25 of a license or other authorization to practice medicine in

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1 another state or jurisdiction or surrender of membership on any  
2 medical staff or in any medical or professional association or  
3 society following, in lieu of and while under disciplinary  
4 investigation by any of those authorities or bodies for acts or  
5 conduct similar to acts or conduct that would constitute grounds  
6 for action as defined in this section;

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

10 (24) abandonment of patients;

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

13 (26) injudicious prescribing, administering or  
14 dispensing of any drug or medicine;

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

18 (28) intentionally engaging in sexual contact  
19 or sexual penetration with a patient other than one's spouse  
20 after representing or inferring that such activity is a  
21 legitimate part of the patient's treatment; [and]

22 (29) conduct unbecoming in a person licensed to  
23 practice medicine or detrimental to the best interests of the  
24 public; and

25 (30) the surrender of a license to practice

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1 medicine or withdrawal of an application for a license to  
2 practice medicine before another state licensing board while  
3 disciplinary action is pending before that board for acts or  
4 conduct similar to acts or conduct that would constitute grounds  
5 for action as provided for in this section.

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

15 F. Licensees shall bear all costs of disciplinary  
16 proceedings unless exonerated.

17 G. Licensees whose licenses are in a probationary  
18 status shall pay reasonable expenses for maintaining  
19 probationary status, including but not limited to laboratory  
20 costs when laboratory testing of biological fluids are included  
21 as a condition of probation.

22 H. For the purpose of investigating the competence  
23 of medical practitioners covered by the Medical Practice Act who  
24 practice medicine in the state of New Mexico, any entity issuing  
25 professional liability insurance to physicians or indemnifying

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1 physicians for professional liability in New Mexico shall report  
2 to the board all settlements or judgments against licensed  
3 physicians, whether they are tried in court or settled out of  
4 court. "

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

7 "61-6-11. LICENSURE. --

8 A. The board may admit to examination for license  
9 any person who is of good moral character and is a graduate of a  
10 medical college or school in good standing as defined in  
11 Subsection D of Section 61-6-6 NMSA 1978 and who has completed  
12 two years of postgraduate training.

13 B. One year of postgraduate medical training may be  
14 accepted by the board if the applicant was an intern in a board-  
15 approved program from July 1, 1993 through June 30, 1994 and if  
16 the applicant applies to the board for licensure before July 1,  
17 1995. All postgraduate training shall be approved by the board.

18 C. An applicant who has not completed two years of  
19 postgraduate medical training, but who otherwise meets all other  
20 licensing requirements, may present evidence to the board of the  
21 applicant's other professional experience for consideration by  
22 the board in lieu of postgraduate medical training. The board  
23 shall, in its sole discretion, determine if the professional  
24 experience is substantially equivalent to the required  
25 postgraduate medical training.

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1           D. The board may administer a board-approved  
2 licensing examination. The board shall determine a grade  
3 constituting successful completion of the exam.

4           E. Alternatively, the board may issue a license to  
5 any applicant successfully completing an examination accepted by  
6 the board as administered in this or another state.

7           F. A graduate of a medical college located outside  
8 the United States may be granted a license to practice medicine  
9 in New Mexico, provided the applicant presents evidence to the  
10 board that the applicant is a person of good moral character and  
11 is in compliance with the United States immigration laws and  
12 provided that the applicant presents satisfactory evidence to  
13 the board that the applicant has successfully passed an  
14 examination as required by the board and has successfully  
15 completed two years of postgraduate medical training in a board-  
16 approved program.

17           G. All applicants for licensure by examination shall  
18 personally appear before the board or a designated member of the  
19 board for an interview.

20           H. Every applicant for licensure under this section  
21 shall pay the fees required by Section 61-6-19 NMSA 1978. "

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

24           "61-6-19. FEES. --

25           A. The board shall impose the following fees:

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

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

7 (3) an examination fee equal to the cost of  
8 purchasing the examination plus an administration fee not to  
9 exceed fifty percent of that cost;

10 (4) a triennial renewal fee not to exceed four  
11 hundred fifty dollars (\$450);

12 (5) a fee of twenty-five dollars (\$25.00) for  
13 placing a physician's license on inactive status;

14 (6) a late fee not to exceed one hundred  
15 dollars (\$100) for licensees who fail to renew their license  
16 within forty-five days after the required renewal date;

17 [~~(5)~~] (7) a late fee not to exceed [~~one hundred~~  
18 ~~fifty dollars (\$150)~~] two hundred dollars (\$200) for  
19 [~~applicants~~] licensees who fail to renew their [~~license within~~  
20 ~~forty-five~~] licenses from forty-six days [of] to ninety days  
21 after the required renewal date;

22 [~~(6)~~] ~~a late fee not to exceed two hundred~~  
23 ~~dollars (\$200) for applicants who fail to renew their licenses~~  
24 ~~within ninety days of the renewal date;~~

25 ~~(7)~~] (8) a reinstatement fee not to exceed the

1 current application fee for reinstatement of a revoked,  
2 suspended or inactive license;

3 [~~(8)~~] (9) a reasonable administrative fee for  
4 verification and duplication of license or registration and  
5 copying of records;

6 [~~(9)~~] (10) a reasonable publication fee for the  
7 purchase of a publication containing the names of all  
8 practitioners licensed under the Medical Practice Act;

9 [~~(10)~~] (11) an impaired physician fee not to  
10 exceed one hundred fifty dollars (\$150) for a three-year period;

11 [~~(11)~~] (12) an interim license fee not to  
12 exceed one hundred dollars (\$100);

13 [~~(12)~~] (13) a temporary license fee not to  
14 exceed one hundred dollars (\$100);

15 [~~(13)~~] (14) a postgraduate training license fee  
16 not to exceed fifty dollars (\$50.00) annually;

17 [~~(14)~~] (15) an application fee not to exceed  
18 one hundred fifty dollars (\$150) for physician assistants  
19 applying for initial registration; [~~and~~

20 ~~(15)~~] (16) a registration fee not to exceed  
21 seventy-five dollars (\$75.00) for physician assistants annually  
22 reregistering their certificate of registration, supervising  
23 physician and place of employment;

24 (17) a late fee not to exceed fifty dollars  
25 (\$50.00) for physician assistants who fail to renew their

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1 registration within forty-five days after the required renewal  
2 date; and

3 (18) a late fee not to exceed seventy-five  
4 dollars (\$75.00) for physician assistants who fail to renew  
5 their registration from forty-six days to ninety days after the  
6 required renewal date.

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

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1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

3 SB 653/a

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5  
6 February 24, 1997

7  
8 Mr. President:

9  
10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been  
11 referred

12  
13 SENATE BILL 653

14  
15 has had it under consideration and reports same with  
16 recommendation that it DO PASS, amended as follows:

17  
18  
19 1. On page 9, line 5, after "applicant" insert "of good moral  
20 character and after".

21  
22 2. On page 10, line 13, after "license" insert "or a  
23 physician assistant's license".

24  
25 3. On page 11, line 19, strike "registration" and insert in  
lieu thereof "licensure".

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FIRST SESSION, 1997

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4. On page 11, line 20, strike "registration" and insert in lieu thereof "licensure".

5. On page 11, line 21, strike "seventy-five dollars (\$75.00)" and insert in lieu thereof "one hundred fifty dollars (\$150)".

6. On page 11, line 21, strike "annually" and strike lines 22 and 23 in their entirety and insert in lieu thereof "biennial licensing and registration of supervising physician;".

7. On page 12, line 1, strike "registration" and insert in lieu thereof "licensure".

8. On page 12, line 5, strike "registration" and insert in lieu thereof "licensure".

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FIRST SESSION, 1997

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9. On page 12, between lines 6 and 7, insert the following:

"(19) a fee not to exceed three hundred dollars (\$300)  
annually for a physician supervising a clinical pharmacist.".,  
and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

\_\_\_\_\_  
Shannon Robinson, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

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FORTY-THIRD LEGISLATURE  
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Page 2

The roll call vote was 8 For 0 Against

Yes: 8

No: 0

Excused: Vernon

Absent: None

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1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

SB 653/a

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6 February 24, 1997

7  
8 Mr. President:

9  
10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been  
11 referred

12  
13 SENATE BILL 653

14  
15 has had it under consideration and reports same with  
16 recommendation that it DO PASS, amended as follows:

17  
18  
19 1. On page 9, line 5, after "applicant" insert "of good moral  
20 character and after".

21  
22 2. On page 10, line 13, after "license" insert "or a  
23 physician assistant's license".

24  
25 3. On page 11, line 19, strike "registration" and insert in  
lieu thereof "licensure".

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Page 2

4. On page 11, line 20, strike "registration" and insert in lieu thereof "licensure".

5. On page 11, line 21, strike "seventy-five dollars (\$75.00)" and insert in lieu thereof "one hundred fifty dollars (\$150)".

6. On page 11, line 21, strike "annually" and strike lines 22 and 23 in their entirety and insert in lieu thereof "biennial licensing and registration of supervising physician;".

7. On page 12, line 1, strike "registration" and insert in lieu thereof "licensure".

8. On page 12, line 5, strike "registration" and insert in lieu thereof "licensure".

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FIRST SESSION, 1997

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Page 2

9. On page 12, between lines 6 and 7, insert the following:

"(19) a fee not to exceed three hundred dollars (\$300) annually for a physician supervising a clinical pharmacist.".,  
and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

\_\_\_\_\_  
Shannon Robinson, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

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Page 2

The roll call vote was 8 For 0 Against

Yes: 8

No: 0

Excused: Vernon

Absent: None

S0653PA1

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1 FORTY-THIRD LEGISLATURE

SB 653/a

2 FIRST SESSION, 1997

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6 March 6, 1997

7  
8 Mr. President:

9  
10 Your FINANCE COMMITTEE, to whom has been referred

11  
12 SENATE BILL 653, as amended

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, amended as follows:

16  
17  
18 1. On page 9, between lines 21 and 22, insert the following  
19 new section:

20  
21 "Section 3. Section 61-6-17 NMSA 1978 (being Laws 1973,  
22 Chapter 361, Section 8, as amended) is amended to read:

23  
24 "61-6-17. EXCEPTIONS TO ACT. -- The Medical Practice Act shall  
25 not apply to or affect:

A. gratuitous services rendered in cases of emergency;

. 115583.1

FORTY-THIRD LEGISLATURE  
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B. the domestic administration of family remedies;

C. the practice of midwifery as regulated in this state;

D. commissioned medical officers of the armed forces of the United States and medical officers of the United States public health service or the veterans administration of the United States in the discharge of their official duties or within federally controlled facilities, provided that such persons who hold medical licenses in

New Mexico shall be subject to the provisions of the Medical Practice Act and provided that all such persons shall be fully licensed to practice medicine in one or more jurisdictions of the United States;

E. the practice of medicine by a physician, unlicensed in New Mexico, who performs emergency medical procedures in air or ground transportation of a patient from inside of New Mexico to another state or back, provided that the physician is duly licensed in that state;

F. the practice, as defined and limited under their

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respective licensing laws, of:

- (1) osteopathy;
- (2) dentistry;
- (3) podiatry;
- (4) nursing;
- (5) optometry;
- (6) psychology;
- (7) chiropractic;
- (8) pharmacy;
- (9) acupuncture and oriental medicine; or
- (10) physical therapy;

G. any act, task or function performed by a physician

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assistant at the direction of and under the supervision of a  
licensed physician, when:

(1) the assistant is registered and has annually  
renewed his registration with the board as one qualified by  
training or experience to function as an assistant to a physician;

(2) the act, task or function is performed at the  
direction of and under the supervision of a licensed physician in  
accordance with rules and regulations promulgated by the board;

and

(3) the acts of the physician assistant are within  
the scope of duties assigned or delegated by the supervising  
licensed physician and the acts are within the scope of the  
assistant's training;

H. any act, task or function of laboratory technicians  
or technologists, x-ray technicians, nurse practitioners, medical  
or surgical assistants or other technicians or qualified persons  
permitted by law or established by custom as part of the duties  
delegated to them by:

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(1) a licensed physician or a hospital, clinic or institution licensed or approved by the public health division of the department of health or an agency of the federal government;  
or

(2) a health care program operated or financed by an agency of the state or federal government;

I. a properly trained medical or surgical assistant or technician or professional licensee performing under the physician's employment and direct supervision or a visiting physician or surgeon operating under the physician's direct supervision any medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician, the act can be properly and safely performed in its customary manner and if the person does not hold himself out to the public as being authorized to practice medicine in New Mexico. The delegating physician shall remain responsible for the medical acts of the person performing the delegated medical acts; and

J. the practice of the religious tenets of any church in the ministrations to the sick or suffering by mental or spiritual

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means as provided by law; provided that the Medical Practice Act shall not be construed to exempt any person from the operation or enforcement of the sanitary and quarantine laws of the state.".

2. Renumber the succeeding section accordingly.

Respectfully submitted,

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Ben D. Altamirano, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

No: None

Excused: Aragon, Carraro, Lyons, McKibben

Absent: None

S0653FC1

Underscored material = new  
[bracketed material] = delete