

1 SENATE BILL 267

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

4 Michael S. Sanchez

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10 AN ACT

11 RELATING TO THE PRACTICE OF MEDICINE; PROVIDING FOR
12 COLLABORATION BETWEEN A PHYSICIAN ASSISTANT AND PHYSICIAN.

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

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

17 "61-6-6. DEFINITIONS.--As used in Chapter 61, Article 6
18 NMSA 1978:

19 A. "approved postgraduate training program" means a
20 program approved by the [~~accrediting~~] accreditation council
21 [~~on~~] for graduate medical education [~~of the American medical~~
22 ~~association or by the board~~];

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

24 C. "collaboration" means the process by which a
25 physician and a physician assistant jointly contribute to the

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1 health care and medical treatment of patients; provided that:

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

5 (2) collaboration shall be continuous; and

6 (3) collaboration shall not be construed to
7 require the physical presence of the physician at the time and
8 place services are rendered;

9 ~~[G.]~~ D. "licensed physician" means a medical doctor
10 licensed under the Medical Practice Act to practice medicine in
11 New Mexico;

12 ~~[D.]~~ E. "licensee" means a medical doctor,
13 physician assistant, polysomnographic technologist,
14 anesthesiologist assistant or naprapath licensed by the board
15 to practice in New Mexico;

16 ~~[E.]~~ F. "medical college or school in good
17 standing" means a board-approved medical college or school that
18 has as high a standard as that required by the association of
19 American medical colleges and the council on medical education
20 of the American medical association;

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

23 ~~[G.]~~ H. "physician assistant" means a health
24 professional who is licensed by the board to practice as a
25 physician assistant and who provides services to patients

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1 ~~[under the supervision and direction of]~~ in collaboration with
2 a licensed physician;

3 ~~[H.]~~ I. "intern" means a first-year postgraduate
4 student upon whom a degree of doctor of medicine and surgery or
5 equivalent degree has been conferred by a medical college or
6 school in good standing;

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

13 ~~[J.]~~ K. "the practice of medicine" consists of:

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

17 (2) offering or undertaking to administer,
18 dispense or prescribe a drug or medicine for the use of another
19 person, except as authorized pursuant to a professional or
20 occupational licensing statute set forth in Chapter 61 NMSA
21 1978;

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

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

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

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

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

15 [~~K-~~] L. "the practice of medicine across state
16 lines" means:

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

23 (2) the rendering of treatment to a patient
24 within this state by a physician located outside this state as
25 a result of transmission of individual patient data by

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1 electronic, telephonic or other means from within this state to
2 the physician or the physician's agent;

3 ~~[L-]~~ M. "sexual contact" means touching the primary
4 genital area, groin, anus, buttocks or breast of a patient or
5 allowing a patient to touch another's primary genital area,
6 groin, anus, buttocks or breast in a manner that is commonly
7 recognized as outside the scope of acceptable medical practice;

8 ~~[M-]~~ N. "sexual penetration" means sexual
9 intercourse, cunnilingus, fellatio or anal intercourse, whether
10 or not there is any emission, or introducing any object into
11 the genital or anal openings of another in a manner that is
12 commonly recognized as outside the scope of acceptable medical
13 practice; and

14 ~~[N-]~~ O. "United States" means the fifty states, its
15 territories and possessions and the District of Columbia."

16 **SECTION 2.** Section 61-6-7 NMSA 1978 (being Laws 1973,
17 Chapter 361, Section 3, as amended) is amended to read:

18 "61-6-7. SHORT TITLE--LICENSURE AS A PHYSICIAN
19 ASSISTANT--SCOPE OF PRACTICE--BIENNIAL REGISTRATION OF
20 SUPERVISION--LICENSE RENEWAL--FEES.--

21 A. Sections 61-6-7 through 61-6-10 NMSA 1978 may be
22 cited as the "Physician Assistant Act".

23 B. The board may license as a physician assistant a
24 qualified person who has graduated from a physician assistant
25 [~~or surgeon assistant~~] program accredited by the national

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1 accrediting body as established by rule and has passed a
2 physician assistant national certifying examination as
3 established by rule. The board may also license as a physician
4 assistant a person who passed the physician assistant national
5 certifying examination administered by the national commission
6 on certification of physician assistants prior to 1986.

7 C. A person shall not perform, attempt to perform
8 or hold ~~[himself]~~ the person's own self out as a physician
9 assistant without first applying for and obtaining a license
10 from the board ~~[and without registering his supervising~~
11 ~~licensed physician in accordance with board rules]~~.

12 D. Physician assistants may prescribe, administer
13 and distribute dangerous drugs other than controlled substances
14 in Schedule I of the Controlled Substances Act pursuant to
15 rules adopted by the board after consultation with the board of
16 pharmacy if the prescribing, administering and distributing are
17 done ~~[under the direction of a supervising]~~ in collaboration
18 with a licensed physician ~~[and within the parameters of a~~
19 ~~board approved formulary and guidelines established under~~
20 ~~Subsection C of Section 61-6-9 NMSA 1978]~~. The distribution
21 process shall comply with state laws concerning prescription
22 packaging, labeling and recordkeeping requirements. ~~[Physician~~
23 ~~assistants shall not otherwise dispense dangerous drugs or~~
24 ~~controlled substances.]~~

25 E. A physician assistant shall perform only the

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1 acts and duties [~~assigned to the physician assistant by a~~
2 ~~supervising~~] that are within the physician assistant's scope of
3 practice and that the collaborating licensed physician [that
4 ~~are within the scope of practice of the supervising licensed~~
5 ~~physician]~~ of record assigns to the physician assistant.

6 F. An applicant for licensure as a physician
7 assistant shall complete application forms supplied by the
8 board and shall pay a licensing fee as provided in Section
9 61-6-19 NMSA 1978.

10 G. A physician assistant shall biennially submit
11 proof of current certification by the national commission on
12 certification of physician assistants and shall renew the
13 license [~~and registration of supervision~~] of the physician
14 assistant with the board. Applications for licensure [~~or~~
15 ~~registration of supervision~~] shall include the applicant's
16 name, current address [~~the name and office address of the~~
17 ~~supervising licensed physician~~] and such other additional
18 information as the board deems necessary.

19 [~~H. Before starting work, a physician assistant~~
20 ~~shall ensure that the supervising licensed physician of the~~
21 ~~physician assistant is registered by the board. The license of~~
22 ~~a physician assistant shall only be valid when the physician~~
23 ~~assistant works under the supervision of a board-registered~~
24 ~~licensed physician.~~

25 ~~F.]~~ H. Each biennial renewal of licensure shall be

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1 accompanied by a fee as provided in Section 61-6-19 NMSA 1978."

2 SECTION 3. Section 61-6-9 NMSA 1978 (being Laws 1973,
3 Chapter 361, Section 5, as amended) is amended to read:

4 "61-6-9. PHYSICIAN ASSISTANTS--RULES.--The board may
5 adopt and enforce reasonable rules for:

6 A. education, skill and experience for licensure of
7 a person as a physician assistant and providing forms and
8 procedures for biennial licensure [~~and registration of~~
9 ~~supervision by a licensed physician~~];

10 B. examining and evaluating an applicant for
11 licensure as a physician assistant as to skill, knowledge and
12 experience of the applicant in the field of medical care;

13 C. establishing when and for how long physician
14 assistants are permitted to prescribe, administer, dispense and
15 distribute dangerous drugs other than controlled substances in
16 Schedule I of the Controlled Substances Act pursuant to rules
17 adopted by the board after consultation with the board of
18 pharmacy;

19 [~~D. allowing a supervising licensed physician to~~
20 ~~temporarily delegate supervisory responsibilities for a~~
21 ~~physician assistant to another licensed physician~~];

22 [~~E. allowing a physician assistant to temporarily~~
23 ~~serve under the supervision of a licensed physician other than~~
24 ~~the supervising licensed physician of record~~]; and

25 [~~F.~~] D. carrying out all other provisions of the

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1 Physician Assistant Act."

2 SECTION 4. Section 61-6-10 NMSA 1978 (being Laws 1973,
3 Chapter 361, Section 6, as amended) is amended to read:

4 "61-6-10. [~~SUPERVISING~~] LICENSED PHYSICIAN COLLABORATING
5 WITH A PHYSICIAN ASSISTANT--RESPONSIBILITY.--

6 A. As a condition of licensure, all physician
7 assistants practicing in New Mexico shall inform the board of
8 the name of the licensed physician under whose [~~supervision~~]
9 collaboration they will practice. All [~~supervising~~] physicians
10 collaborating with a physician assistant shall be licensed
11 under the Medical Practice Act [~~and shall be approved by the~~
12 ~~board~~].

13 B. Every licensed physician [~~supervising~~]
14 collaborating with a licensed physician assistant shall be
15 individually responsible and liable for the performance of the
16 acts and omissions delegated to the physician assistant.
17 Nothing in this section shall be construed to relieve the
18 physician assistant of responsibility and liability for the
19 acts and omissions of the physician assistant.

20 C. A physician assistant shall [~~be supervised by~~]
21 collaborate with a physician [~~as approved by the board~~]."

22 SECTION 5. Section 61-6-17 NMSA 1978 (being Laws 1973,
23 Chapter 361, Section 8, as amended) is amended to read:

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

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- 1 A. gratuitous services rendered in cases of
2 emergency;
- 3 B. the domestic administration of family remedies;
- 4 C. the practice of midwifery as regulated in this
5 state;
- 6 D. commissioned medical officers of the armed
7 forces of the United States and medical officers of the United
8 States public health service or [~~the veterans administration~~
9 ~~of~~] the United States department of veterans affairs in the
10 discharge of their official duties or within federally
11 controlled facilities; provided that such persons who hold
12 medical licenses in New Mexico shall be subject to the
13 provisions of the Medical Practice Act and provided that all
14 such persons shall be fully licensed to practice medicine in
15 one or more jurisdictions of the United States;
- 16 E. the practice of medicine by a physician,
17 unlicensed in New Mexico, who performs emergency medical
18 procedures in air or ground transportation on a patient from
19 inside of New Mexico to another state or back, provided the
20 physician is duly licensed in that state;
- 21 F. the practice, as defined and limited under their
22 respective licensing laws, of:
- 23 (1) osteopathy;
- 24 (2) dentistry;
- 25 (3) podiatry;

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

8 G. an act, task or function performed by a
9 physician assistant [~~at the direction of and under the~~
10 ~~supervision of~~] in collaboration with a licensed physician,
11 when:

- 12 (1) the physician assistant is currently
13 licensed by the board;
- 14 (2) the act, task or function is performed [~~at~~
15 ~~the direction of and under the supervision of~~] in collaboration
16 with a licensed physician in accordance with rules promulgated
17 by the board; and
- 18 (3) the acts of the physician assistant are
19 [~~within the scope of duties assigned or delegated by the~~
20 ~~supervising~~] in collaboration with a licensed physician and the
21 acts are within the scope of the physician assistant's
22 training;

23 H. an act, task or function of laboratory
24 technicians or technologists, x-ray technicians, nurse
25 practitioners, medical or surgical assistants or other

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1 technicians or qualified persons permitted by law or
2 established by custom as part of the duties delegated to them
3 by:

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

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

10 I. a properly trained medical or surgical assistant
11 or technician or professional licensee performing under the
12 physician's employment and direct supervision or a visiting
13 physician or surgeon operating under the physician's direct
14 supervision a medical act that a reasonable and prudent
15 physician would find within the scope of sound medical judgment
16 to delegate if, in the opinion of the delegating physician, the
17 act can be properly and safely performed in its customary
18 manner and if the person does not hold [~~himself~~] the person's
19 own self out to the public as being authorized to practice
20 medicine in New Mexico. The delegating physician shall remain
21 responsible for the medical acts of the person performing the
22 delegated medical acts;

23 J. the practice of the religious tenets of a church
24 in the ministrations to the sick or suffering by mental or
25 spiritual means as provided by law; provided that the Medical

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1 Practice Act shall not be construed to exempt a person from the
2 operation or enforcement of the sanitary and quarantine laws of
3 the state;

4 K. the acts of a physician licensed under the laws
5 of another state of the United States who is the treating
6 physician of a patient and orders home health or hospice
7 services for a resident of New Mexico to be delivered by a home
8 and community support services agency licensed in this state;
9 provided that a change in the condition of the patient shall be
10 physically reevaluated by the treating physician in the
11 treating physician's jurisdiction or by a licensed New Mexico
12 physician;

13 L. a physician licensed to practice under the laws
14 of another state who acts as a consultant to a New Mexico-
15 licensed physician on an irregular or infrequent basis, as
16 defined by rule of the board; and

17 M. a physician who engages in the informal practice
18 of medicine across state lines without compensation or
19 expectation of compensation; provided that the practice of
20 medicine across state lines conducted within the parameters of
21 a contractual relationship shall not be considered informal and
22 is subject to licensure and rule by the board."

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

25 "61-6-19. FEES.--

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- 1 A. The board shall impose the following fees:
- 2 (1) an application fee not to exceed four
- 3 hundred dollars (\$400) for licensure by endorsement as provided
- 4 in Section 61-6-13 NMSA 1978;
- 5 (2) an application fee not to exceed four
- 6 hundred dollars (\$400) for licensure by examination as provided
- 7 in Section 61-6-11 NMSA 1978;
- 8 (3) a triennial renewal fee not to exceed four
- 9 hundred fifty dollars (\$450);
- 10 (4) a fee of twenty-five dollars (\$25.00) for
- 11 placing a physician's license or a physician assistant's
- 12 license on inactive status;
- 13 (5) a late fee not to exceed one hundred
- 14 dollars (\$100) for physicians who renew their license within
- 15 forty-five days after the required renewal date;
- 16 (6) a late fee not to exceed two hundred
- 17 dollars (\$200) for physicians who renew their licenses between
- 18 forty-six and ninety days after the required renewal date;
- 19 (7) a reinstatement fee not to exceed six
- 20 hundred dollars (\$600) for reinstatement of a revoked,
- 21 suspended or inactive license;
- 22 (8) a reasonable administrative fee for
- 23 verification and duplication of license or registration and
- 24 copying of records;
- 25 (9) a reasonable publication fee for the

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1 purchase of a publication containing the names of all
2 practitioners licensed under the Medical Practice Act;

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

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

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

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

11 (14) an application fee not to exceed one
12 hundred fifty dollars (\$150) for physician assistants applying
13 for initial licensure;

14 (15) a licensure fee not to exceed one hundred
15 fifty dollars (\$150) for physician assistants biennial
16 licensing [~~and registration of supervising licensed physician~~];

17 (16) a late fee not to exceed fifty dollars
18 (\$50.00) for physician assistants who renew their licensure
19 within forty-five days after the required renewal date;

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

24 (18) a reinstatement fee not to exceed one
25 hundred dollars (\$100) for physician assistants who reinstate

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1 an expired license;

2 ~~[(19) a processing fee not to exceed fifty~~
3 ~~dollars (\$50.00) for each change of a supervising licensed~~
4 ~~physician for a physician assistant;~~

5 ~~(20)]~~ (19) a fee not to exceed three hundred
6 dollars (\$300) annually for a physician supervising a clinical
7 pharmacist;

8 ~~[(21)]~~ (20) an application and renewal fee for
9 a telemedicine license not to exceed four hundred dollars
10 (\$400);

11 ~~[(22)]~~ (21) a reasonable administrative fee,
12 not to exceed the current cost of application for a license,
13 that may be charged for reprocessing applications and renewals
14 that include minor but significant errors and that would
15 otherwise be subject to investigation and possible disciplinary
16 action; and

17 ~~[(23)]~~ (22) a reasonable fee as established by
18 the department of public safety for nationwide and statewide
19 criminal history screening of applicants and licensees.

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