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SENATE BILL 408

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

INTRODUCED BY

Antoinette Sedillo Lopez

AN ACT

RELATING TO HEALTH; PROHIBITING HEALTH CARE PROVIDERS AND STUDENTS SUPERVISED BY HEALTH CARE PROVIDERS FROM PERFORMING INTIMATE EXAMINATIONS ON ANESTHETIZED OR UNCONSCIOUS PATIENTS; PROVIDING GROUNDS FOR DISCIPLINE.

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

SECTION 1. A new section of Public Health Act is enacted to read:

"[NEW MATERIAL] INTIMATE EXAMINATION OF ANESTHETIZED OR UNCONSCIOUS PATIENT PROHIBITED--INFORMED CONSENT.--

A. A health care provider or any student under the supervision of a health care provider treating a patient shall not perform an intimate examination upon an anesthetized or unconscious patient unless:

- (1) the patient or the patient's authorized

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1 representative has provided informed consent to the  
2 examination;

3 (2) the intimate examination is necessary for  
4 diagnostic or treatment purposes; or

5 (3) a court orders the performance of the  
6 intimate examination for the collection of evidence.

7 B. A health care provider shall be required to  
8 obtain informed consent from a patient or a patient's  
9 authorized representative before authorizing a student to  
10 perform an intimate examination on an unconscious patient when  
11 the examination is performed solely for learning purposes and  
12 offers no benefit to the patient. If a patient does not  
13 recognize a student authorized by a health care provider as a  
14 member of the patient's care team, then the intimate  
15 examination shall not occur. If informed consent is not  
16 granted by the patient to allow a student to perform an  
17 intimate examination, the intimate examination by a student  
18 shall not take place.

19 C. Pursuant to Subsection A of this section, to  
20 obtain informed consent to perform an intimate examination on  
21 an anesthetized or unconscious patient, before performing the  
22 patient examination, the health care provider shall:

23 (1) provide a written or electronic document  
24 to the patient or the patient's authorized representative that:

25 (a) is provided separately from any

1 other notice or agreement;

2 (b) contains the following heading at  
3 the top of the document in not smaller than eighteen-point  
4 boldface type: "CONSENT FOR EXAMINATION OF PELVIC REGION";

5 (c) specifies the nature and purpose of  
6 the patient examination;

7 (d) names one or more health care  
8 providers whom the patient or the patient's authorized  
9 representative may authorize to perform the patient  
10 examination;

11 (e) states whether there may be a  
12 medical student or resident that the patient or the patient's  
13 authorized representative authorizes to perform an additional  
14 patient examination or observe or otherwise be present at the  
15 patient examination, either in person or through electronic  
16 means; and

17 (f) provides the patient or the  
18 patient's authorized representative with a series of check  
19 boxes that allow the patient or the patient's authorized  
20 representative to: 1) consent to the patient examination for  
21 diagnosis or treatment and an additional patient examination  
22 performed by a student or resident for an educational or  
23 training purpose; 2) consent to the patient examination only  
24 for diagnosis or treatment; or 3) refuse to consent to the  
25 patient examination;

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1 (2) obtain the signature of the patient or the  
2 patient's authorized representative on the written or  
3 electronic document while witnessed by a third party; and

4 (3) sign the written or electronic document.

5 D. As used in this section:

6 (1) "authorized representative" means a  
7 surrogate or person that is legally authorized to represent a  
8 patient;

9 (2) "health care provider" means a person  
10 licensed to provide health care in the ordinary course of  
11 business;

12 (3) "informed consent" means explicit, written  
13 permission to be obtained by the health care provider from the  
14 patient or the patient's authorized representative, without  
15 coercion, that includes an explanation of an intimate  
16 examination that may take place while the patient is  
17 unconscious or under anesthesia, including an intimate  
18 examination that may be performed by a medical student;

19 (4) "intimate examination" means a breast,  
20 pelvic, prostate or rectal exam;

21 (5) "patient's authorized representative"  
22 means a person that is authorized to make health care decisions  
23 for the patient pursuant to state law; and

24 (6) "student" means a non-licensed learner  
25 under the supervision of a health care provider."

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1           SECTION 2. Section 61-6-15 NMSA 1978 (being Laws 1969,  
2 Chapter 46, Section 6, as amended) is amended to read:

3           "61-6-15. LICENSE MAY BE REFUSED, REVOKED OR SUSPENDED--  
4 LICENSEE MAY BE FINED, CENSURED OR REPRIMANDED--PROCEDURE--  
5 PRACTICE AFTER SUSPENSION OR REVOCATION--PENALTY--  
6 UNPROFESSIONAL AND DISHONORABLE CONDUCT DEFINED--FEES AND  
7 EXPENSES.--

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

21           B. The board may, in its discretion and for good  
22 cause shown, place the licensee on probation on the terms and  
23 conditions it deems proper for protection of the public, for  
24 the purpose of rehabilitation of the probationer or both. Upon  
25 expiration of the term of probation, if a term is set, further

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1 proceedings may be abated by the board if the holder of the  
2 license furnishes the board with evidence that the licensee is  
3 competent to practice, is of good moral character and has  
4 complied with the terms of probation.

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

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

- 20 (1) procuring, aiding or abetting an illegal  
21 procedure;
- 22 (2) employing a person to solicit patients for  
23 the licensee;
- 24 (3) representing to a patient that a  
25 manifestly incurable condition of sickness, disease or injury

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1 can be cured;

2 (4) obtaining a fee by fraud or  
3 misrepresentation;

4 (5) willfully or negligently divulging a  
5 professional confidence;

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

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

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

19 (9) making false or misleading statements  
20 regarding the skill of the licensee or the efficacy or value of  
21 the medicine, treatment or remedy prescribed or administered by  
22 the licensee or at the direction of the licensee in the  
23 treatment of a disease or other condition of the human body or  
24 mind;

25 (10) impersonating another licensee,

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1 permitting or allowing a person to use the license of the  
2 licensee or practicing as a licensee under a false or assumed  
3 name;

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

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

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

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

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

19 (16) fee splitting;

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

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

25 (19) repeated similar negligent acts or a

1 pattern of conduct otherwise described in this section or in  
2 violation of a board rule;

3 (20) employing abusive billing practices;

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

6 (a) another licensing jurisdiction;

7 (b) a peer review body;

8 (c) a health care entity;

9 (d) a professional or medical society or  
10 association;

11 (e) a governmental agency;

12 (f) a law enforcement agency; or

13 (g) a court for acts or conduct similar  
14 to acts or conduct that would constitute grounds for action as  
15 defined in this section;

16 (22) failure to report to the board the denial  
17 of licensure, surrender of a license or other authorization to  
18 practice in another state or jurisdiction or surrender of  
19 membership on any medical staff or in any medical or  
20 professional association or society following, in lieu of and  
21 while under disciplinary investigation by any of those  
22 authorities or bodies for acts or conduct similar to acts or  
23 conduct that would constitute grounds for action as defined in  
24 this section;

25 (23) failure to furnish the board, its

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1 investigators or representatives with information requested by  
2 the board;

3 (24) abandonment of patients;

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

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

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

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

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

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

22 (31) sexual contact with a former mental  
23 health patient of the licensee, other than the spouse of the  
24 licensee, within one year from the end of treatment;

25 (32) sexual contact with a patient when the

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1 licensee uses or exploits treatment, knowledge, emotions or  
2 influence derived from the current or previous professional  
3 relationship;

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

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

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

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

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

21 (38) willfully or negligently divulging  
22 privileged information or a professional secret; ~~[or]~~

23 (39) the use of conversion therapy on a minor;

24 or

25 (40) performing or authorizing a medical

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1 student to perform an intimate examination on an anesthetized  
2 or unconscious person in the absence of informed consent,  
3 necessity for treatment or diagnosis or court order.

4 E. As used in this section:

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

10 "Conversion therapy" does not mean:

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

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

21 (2) "fee splitting" includes offering,  
22 delivering, receiving or accepting any unearned rebate,  
23 refunds, commission preference, patronage dividend, discount or  
24 other unearned consideration, whether in the form of money or  
25 otherwise, as compensation or inducement for referring

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1 patients, clients or customers to a person, irrespective of any  
2 membership, proprietary interest or co-ownership in or with a  
3 person to whom the patients, clients or customers are referred;

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

10 (4) "intimate examination" means a pelvic,  
11 prostate or rectal exam;

12 [~~(4)~~] (5) "minor" means a person under  
13 eighteen years of age; and

14 [~~(5)~~] (6) "sexual orientation" means  
15 heterosexuality, homosexuality or bisexuality, whether actual  
16 or perceived.

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