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HOUSE BILL 170

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Edward C. Sandoval

AN ACT

RELATING TO PSYCHOLOGISTS; GRANTING PRESCRIPTIVE AUTHORITY TO
CERTAIN PSYCHOLOGISTS; PROVIDING QUALIFICATIONS AND
LIMITATIONS; REQUIRING MALPRACTICE INSURANCE.

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;

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

C. "biological product" means any virus,
therapeutic serum, toxin, antitoxin or analogous product

underscored material = new
[bracketed material] = delete

1 applicable to the prevention, treatment or cure of diseases or
2 injuries of man and domestic animals and, as used within the
3 meaning of this definition:

4 (1) a "virus" is interpreted to be a product
5 containing the minute living cause of an infectious disease
6 and includes filterable viruses, bacteria, rickettsia, fungi
7 and protozoa;

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

11 (3) a "toxin" is a product containing a
12 soluble substance poisonous to laboratory animals or man in
13 doses of one milliliter or less of the product and having the
14 property, following the injection of nonfatal doses into an
15 animal, or causing to be produced therein another soluble
16 substance that specifically neutralizes the poisonous
17 substance and that is demonstrable in the serum of the animal
18 thus immunized; and

19 (4) an "antitoxin" is a product containing
20 the soluble substance in serum or other body fluid of an
21 immunized animal that specifically neutralizes the toxin
22 against which the animal is immune;

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

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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, 58 Stat 702, as amended, and 42 U.S.C. 262;

(3) articles other than food 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, that because of a potentiality for harmful effect or the method of its use or the collateral 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

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1 directions under which the layman can use a drug or device
2 safely and for the purposes for which it is intended. A drug
3 shall be dispensed only upon the prescription of a
4 practitioner licensed by law to administer or prescribe such
5 drug if it:

6 (1) is a habit-forming drug and contains any
7 quantity of a narcotic or hypnotic substance or a chemical
8 derivative of such substance that has been found under the
9 federal act and the board to be habit forming;

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

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

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

21 (5) bears the legend: "Caution: federal law
22 restricts this drug to use by or on the order of a licensed
23 veterinarian."; or

24 (6) bears the legend "RX only";

25 G. "counterfeit drug" means a drug other than a

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1 controlled substance that, or the container or labeling of
2 which, without authorization, bears the trademark, trade name
3 or other identifying mark, imprint or device or any likeness
4 of a drug manufacturer, processor, packer or distributor other
5 than the person who manufactured, processed, packed or
6 distributed the drug and that falsely purports or is
7 represented to be the product of or to have been packed or
8 distributed by such other drug manufacturer, processor, packer
9 or distributor;

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

17 (1) recognized in an official compendium;
18 (2) intended for use in the diagnosis of
19 disease or other conditions or in the cure, mitigation,
20 treatment or prevention of disease in man or other animals; or

21 (3) intended to affect the structure or a
22 function of the body of man or other animals and that does not
23 achieve any of its principal intended purposes through
24 chemical action within or on the body of man or other animals
25 and that is not dependent on being metabolized for achievement

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1 of any of its principal intended purposes;

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

11 J. "practitioner" means a physician, doctor of
12 oriental medicine, dentist, veterinarian, certified nurse
13 practitioner, clinical nurse specialist, pharmacist,
14 pharmacist clinician, certified nurse-midwife, prescribing
15 psychologist or other person licensed or certified to
16 prescribe and administer drugs that are subject to the New
17 Mexico Drug, Device and Cosmetic Act;

18 K. "cosmetic" means:
19 (1) articles intended to be rubbed, poured,
20 sprinkled or sprayed on, introduced into or otherwise applied
21 to the human body or any part thereof for cleansing,
22 beautifying, promoting attractiveness or altering the
23 appearance; and

24 (2) articles intended for use as a component
25 of any articles enumerated in Paragraph (1) of this

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1 subsection, except that the term shall not include soap;

2 L. "official compendium" means the official United
3 States pharmacopoeia national formulary or the official
4 homeopathic pharmacopoeia of the United States or any
5 supplement to either of them;

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

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

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

19 (1) on an article or its containers or
20 wrappers; or

21 (2) accompanying an article;

22 P. "misbranded" means a label to an article that
23 is misleading. In determining whether the label is
24 misleading, there shall be taken into account, among other
25 things, not only representations made or suggested by

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1 statement, word, design, device or any combination of the
2 foregoing, but also the extent to which the label fails to
3 reveal facts material in the light of such representations or
4 material with respect to consequences that may result from the
5 use of the article to which the label relates under the
6 conditions of use prescribed in the label or under such
7 conditions of use as are customary or usual;

8 Q. "advertisement" means all representations
9 disseminated in any manner or by any means, other than by
10 labeling, for the purpose of inducing, or that are likely to
11 induce, directly or indirectly, the purchase of drugs, devices
12 or cosmetics;

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

19 S. "new drug" means any drug:

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

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1 (2) the composition of which is such that the
2 drug, as a result of investigation to determine its safety and
3 efficacy for use under such conditions, has become so
4 recognized, but that has not, otherwise than in such
5 investigations, been used to a material extent or for a
6 material time under such conditions;

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

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

19 V. "color additive" means a material that:

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

25 (2) when added or applied to a drug or

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1 cosmetic or to the human body or a part thereof, is capable,
2 alone or through reaction with other substances, of imparting
3 color thereto; except that such term does not include any
4 material that has been or hereafter is exempted under the
5 federal act;

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

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

18 Y. "prescription device" means a device that,
19 because of its potential for harm, the method of its use or
20 the collateral measures necessary to its use, is not safe
21 except under the supervision of a practitioner licensed in
22 this state to direct the use of such device and for which
23 "adequate directions for use" cannot be prepared, but that
24 bears the label: "Caution: federal law restricts this device
25 to sale by or on the order of a _____", the blank to be

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1 filled with the word "physician", "doctor of oriental
2 medicine", "dentist", "veterinarian", "certified nurse
3 practitioner", "clinical nurse specialist", "pharmacist",
4 "pharmacist clinician", "certified nurse-midwife" or with the
5 descriptive designation of any other practitioner licensed in
6 this state to use or order the use of the device."

7 Section 2. Section 30-31-2 NMSA 1978 (being Laws 1972,
8 Chapter 84, Section 2, as amended) is amended to read:

9 "30-31-2. DEFINITIONS.--As used in the Controlled
10 Substances Act:

11 A. "administer" means the direct application of a
12 controlled substance by any means to the body of a patient or
13 research subject by a practitioner or his agent;

14 B. "agent" includes an authorized person who acts
15 on behalf of a manufacturer, distributor or dispenser. It
16 does not include a common or contract carrier, public
17 warehouseman or employee of the carrier or warehouseman;

18 C. "board" means the board of pharmacy;

19 D. "bureau" means the narcotic and dangerous drug
20 section of the criminal division of the United States
21 department of justice, or its successor agency;

22 E. "controlled substance" means a drug or
23 substance listed in Schedules I through V of the Controlled
24 Substances Act or rules adopted thereto;

25 F. "counterfeit substance" means a controlled

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1 substance that bears the unauthorized trademark, trade name,
2 imprint, number, device or other identifying mark or likeness
3 of a manufacturer, distributor or dispenser other than the
4 person who in fact manufactured, distributed or dispensed the
5 controlled substance;

6 G. "deliver" means the actual, constructive or
7 attempted transfer from one person to another of a controlled
8 substance or controlled substance analog, whether or not there
9 is an agency relationship;

10 H. "dispense" means to deliver a controlled
11 substance to an ultimate user or research subject pursuant to
12 the lawful order of a practitioner, including the
13 administering, prescribing, packaging, labeling or compounding
14 necessary to prepare the controlled substance for that
15 delivery;

16 I. "dispenser" means a practitioner who dispenses
17 and includes hospitals, pharmacies and clinics where
18 controlled substances are dispensed;

19 J. "distribute" means to deliver other than by
20 administering or dispensing a controlled substance or
21 controlled substance analog;

22 K. "drug" or "substance" means substances
23 recognized as drugs in the official United States
24 pharmacopoeia, official homeopathic pharmacopoeia of the
25 United States or official national formulary or any respective

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1 supplement to those publications. It does not include devices
2 or their components, parts or accessories;

3 L. "hashish" means the resin extracted from any
4 part of marijuana, whether growing or not, and every compound,
5 manufacture, salt, derivative, mixture or preparation of such
6 resins;

7 M. "manufacture" means the production,
8 preparation, compounding, conversion or processing of a
9 controlled substance or controlled substance analog by
10 extraction from substances of natural origin or independently
11 by means of chemical synthesis or by a combination of
12 extraction and chemical synthesis and includes any packaging
13 or repackaging of the substance or labeling or relabeling of
14 its container, except that this term does not include the
15 preparation or compounding of a controlled substance:

16 (1) by a practitioner as an incident to his
17 administering or dispensing of a controlled substance in the
18 course of his professional practice; or

19 (2) by a practitioner, or by his agent under
20 his supervision, for the purpose of or as an incident to
21 research, teaching or chemical analysis and not for sale;

22 N. "marijuana" means all parts of the plant
23 cannabis, including any and all varieties, species and
24 subspecies of the genus cannabis, whether growing or not, the
25 seeds thereof and every compound, manufacture, salt,

.140137.1

1 derivative, mixture or preparation of the plant or its seeds.
2 It does not include the mature stalks of the plant, hashish,
3 tetrahydrocannabinols extracted or isolated from marijuana,
4 fiber produced from the stalks, oil or cake made from the
5 seeds of the plant, any other compound, manufacture, salt,
6 derivative, mixture or preparation of the mature stalks,
7 fiber, oil or cake, or the sterilized seed of the plant that
8 is incapable of germination;

9 O. "narcotic drug" means any of the following,
10 whether produced directly or indirectly by extraction from
11 substances of vegetable origin or independently by means of
12 chemical synthesis or by a combination of extraction and
13 chemical synthesis:

14 (1) opium and opiate and any salt, compound,
15 derivative or preparation of opium or opiate;

16 (2) any salt, compound, isomer, derivative or
17 preparation that is a chemical equivalent of any of the
18 substances referred to in Paragraph (1) of this subsection,
19 except the isoquinoline alkaloids of opium;

20 (3) opium poppy and poppy straw, including
21 all parts of the plant of the species *Papaver somniferum* L.
22 except its seeds; or

23 (4) coca leaves and any salt, compound,
24 derivative or preparation of coca leaves, any salt, compound,
25 isomer, derivative or preparation that is a chemical

.140137.1

1 equivalent of any of these substances except decocainized coca
2 leaves or extractions of coca leaves that do not contain
3 cocaine or ecgonine;

4 P. "opiate" means any substance having an
5 addiction-forming or addiction-sustaining liability similar to
6 morphine or being capable of conversion into a drug having
7 addiction-forming or addiction-sustaining liability. "Opiate"
8 does not include, unless specifically designated as controlled
9 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of
10 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
11 "Opiate" does include its racemic and levorotatory forms;

12 Q. "person" means an individual, partnership,
13 corporation, association, institution, political subdivision,
14 government agency or other legal entity;

15 R. "practitioner" means a physician, doctor of
16 oriental medicine, dentist, physician assistant, certified
17 nurse practitioner, clinical nurse specialist, certified
18 nurse-midwife, prescribing psychologist, veterinarian,
19 pharmacist, pharmacist clinician or other person licensed or
20 certified to prescribe and administer drugs that are subject
21 to the Controlled Substances Act;

22 S. "prescription" means an order given
23 individually for the person for whom is prescribed a
24 controlled substance, either directly from the prescriber to
25 the pharmacist or indirectly by means of a written order

1 signed by the prescriber, in accordance with the Controlled
2 Substances Act or rules adopted thereto;

3 T. "scientific investigator" means a person
4 registered to conduct research with controlled substances in
5 the course of his professional practice or research and
6 includes analytical laboratories;

7 U. "ultimate user" means a person who lawfully
8 possesses a controlled substance for his own use or for the
9 use of a member of his household or for administering to an
10 animal under the care, custody and control of the person or by
11 a member of his household;

12 V. "drug paraphernalia" means all equipment,
13 products and materials of any kind that are used, intended for
14 use or designed for use in planting, propagating, cultivating,
15 growing, harvesting, manufacturing, compounding, converting,
16 producing, processing, preparing, testing, analyzing,
17 packaging, repackaging, storing, containing, concealing,
18 injecting, ingesting, inhaling or otherwise introducing into
19 the human body a controlled substance or controlled substance
20 analog in violation of the Controlled Substances Act. It
21 includes:

22 (1) kits used, intended for use or designed
23 for use in planting, propagating, cultivating, growing or
24 harvesting any species of plant that is a controlled substance
25 or controlled substance analog or from which a controlled

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1 substance can be derived;

2 (2) kits used, intended for use or designed
3 for use in manufacturing, compounding, converting, producing,
4 processing or preparing controlled substances or controlled
5 substance analogs;

6 (3) isomerization devices used, intended for
7 use or designed for use in increasing the potency of any
8 species of plant that is a controlled substance;

9 (4) testing equipment used, intended for use
10 or designed for use in identifying or in analyzing the
11 strength, effectiveness or purity of controlled substances or
12 controlled substance analogs;

13 (5) scales or balances used, intended for use
14 or designed for use in weighing or measuring controlled
15 substances or controlled substance analogs;

16 (6) diluents and adulterants, such as quinine
17 hydrochloride, mannitol, mannite dextrose and lactose, used,
18 intended for use or designed for use in cutting controlled
19 substances or controlled substance analogs;

20 (7) separation gins and sifters used,
21 intended for use or designed for use in removing twigs and
22 seeds from, or in otherwise cleaning and refining, marijuana;

23 (8) blenders, bowls, containers, spoons and
24 mixing devices used, intended for use or designed for use in
25 compounding controlled substances or controlled substance

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1 analogs;

2 (9) capsules, balloons, envelopes and other
3 containers used, intended for use or designed for use in
4 packaging small quantities of controlled substances or
5 controlled substance analogs;

6 (10) containers and other objects used,
7 intended for use or designed for use in storing or concealing
8 controlled substances or controlled substance analogs;

9 (11) hypodermic syringes, needles and other
10 objects used, intended for use or designed for use in
11 parenterally injecting controlled substances or controlled
12 substance analogs into the human body;

13 (12) objects used, intended for use or
14 designed for use in ingesting, inhaling or otherwise
15 introducing marijuana, cocaine, hashish or hashish oil into
16 the human body, such as:

17 (a) metal, wooden, acrylic, glass,
18 stone, plastic or ceramic pipes, with or without screens,
19 permanent screens, hashish heads or punctured metal bowls;

20 (b) water pipes;

21 (c) carburetion tubes and devices;

22 (d) smoking and carburetion masks;

23 (e) roach clips, meaning objects used

24 to hold burning material, such as a marijuana cigarette, that

25 has become too small to hold in the hand;

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- 1 (f) miniature cocaine spoons and
2 cocaine vials;
- 3 (g) chamber pipes;
4 (h) carburetor pipes;
5 (i) electric pipes;
6 (j) air-driven pipes;
7 (k) chilams;
8 (l) bonges; or
9 (m) ice pipes or chillers; and
- 10 (13) in determining whether an object is drug
11 paraphernalia, a court or other authority should consider, in
12 addition to all other logically relevant factors, the
13 following:
- 14 (a) statements by the owner or by
15 anyone in control of the object concerning its use;
- 16 (b) the proximity of the object, in
17 time and space, to a direct violation of the Controlled
18 Substances Act or any other law relating to controlled
19 substances or controlled substance analogs;
- 20 (c) the proximity of the object to
21 controlled substances or controlled substance analogs;
- 22 (d) the existence of any residue of a
23 controlled substance or controlled substance analog on the
24 object;
- 25 (e) instructions, written or oral,

.140137.1

1 provided with the object concerning its use;

2 (f) descriptive materials accompanying
3 the object that explain or depict its use;

4 (g) the manner in which the object is
5 displayed for sale; and

6 (h) expert testimony concerning its
7 use;

8 W. "controlled substance analog" means a substance
9 other than a controlled substance that has a chemical
10 structure substantially similar to that of a controlled
11 substance in Schedule I, II, III, IV or V or that was
12 specifically designed to produce effects substantially similar
13 to that of controlled substances in Schedule I, II, III, IV or
14 V. Examples of chemical classes in which controlled substance
15 analogs are found include the following:

- 16 (1) phenethylamines;
17 (2) N-substituted piperidines;
18 (3) morphinans;
19 (4) ecgonines;
20 (5) quinazolinones;
21 (6) substituted indoles; and
22 (7) arylcycloalkylamines.

23 Specifically excluded from the definition of "controlled
24 substance analog" are those substances that are generally
25 recognized as safe and effective within the meaning of the

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1 Federal Food, Drug and Cosmetic Act or have been manufactured,
2 distributed or possessed in conformance with the provisions of
3 an approved new drug application or an exemption for
4 investigational use within the meaning of Section 505 of the
5 Federal Food, Drug and Cosmetic Act;

6 X. "human consumption" includes application,
7 injection, inhalation, ingestion or any other manner of
8 introduction; and

9 Y. "drug-free school zone" means a public school
10 or property that is used for public school purposes and the
11 area within one thousand feet of the school property line, but
12 it does not mean any post-secondary school."

13 Section 3. Section 61-9-1 NMSA 1978 (being Laws 1963,
14 Chapter 92, Section 1) is amended to read:

15 "61-9-1. SHORT TITLE.--~~[This act]~~ Chapter 61, Article 9
16 NMSA 1978 may be cited as the "Professional Psychologist
17 Act"."

18 Section 4. Section 61-9-3 NMSA 1978 (being Laws 1963,
19 Chapter 92, Section 3, as amended) is amended to read:

20 "61-9-3. DEFINITIONS.--As used in the Professional
21 Psychologist Act:

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

24 B. "conditional prescription certificate" means a
25 document issued by the board to a licensed psychologist that

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1 permits the holder to prescribe psychotropic medication under
2 the supervision of a licensed physician pursuant to the
3 Professional Psychologist Act;

4 [B-] C. "person" includes an individual, firm,
5 partnership, association or corporation;

6 D. "prescribing psychologist" means a licensed
7 psychologist who holds a valid prescription certificate;

8 E. "prescription certificate" means a document
9 issued by the board to a licensed psychologist that permits
10 the holder to prescribe psychotropic medication pursuant to
11 the Professional Psychologist Act;

12 F. "psychotropic medication" means a controlled
13 substance or dangerous drug that may not be dispensed or
14 administered without a prescription and whose primary
15 indication for use has been approved by the federal food and
16 drug administration for the treatment of mental disorders and
17 is listed as a psychotherapeutic agent in drug facts and
18 comparisons or in the American hospital formulary service;

19 [E-] G. "psychologist" means [any] a person who
20 engages in the practice of psychology or holds himself out to
21 the public by any title or description of services
22 representing himself as a psychologist, which incorporates the
23 words "psychological", "psychologist", "psychology", or when a
24 person describes himself as above and, under such title or
25 description, offers to render or renders services involving

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1 the application of principles, methods and procedures of the
2 science and profession of psychology to persons for
3 compensation or other personal gain;

4 [D.] H. "practice of psychology" means the
5 observation, description, evaluation, interpretation and
6 modification of human behavior by the application of
7 psychological principles, methods and procedures for the
8 purpose of preventing or eliminating symptomatic, maladaptive
9 or undesired behavior and of enhancing interpersonal
10 relationships, work and life adjustment, personal
11 effectiveness, behavioral health and mental health, and
12 further means the rendering of such psychological services to
13 individuals, families or groups regardless of whether payment
14 is received for services rendered. The practice of psychology
15 includes psychological testing or neuropsychological testing
16 and the evaluation or assessment of personal characteristics
17 such as intelligence, personality, abilities, interests,
18 aptitudes and neuropsychological functioning; counseling,
19 psychoanalysis, psychotherapy, hypnosis, biofeedback, behavior
20 analysis and therapy; diagnosis and treatment of any mental
21 and emotional disorder or disability, alcoholism and substance
22 abuse, disorders of habit or conduct and the psychological
23 aspects of physical illness, accident, injury and disability;
24 and psychoeducational evaluation, therapy, remediation and
25 consultation; and

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

7 Section 5. Section 61-9-17 NMSA 1978 (being Laws 1963,
8 Chapter 92, Section 16, as amended) is amended to read:

9 "61-9-17. ~~DRUGS--MEDICINES.--[Nothing in the~~
10 ~~Professional Psychologist Act shall be construed as permitting~~
11 ~~psychologists or psychologist associates licensed under the~~
12 ~~Professional Psychologist Act to]~~

13 A. Except as provided in Subsections B and C of
14 this section, psychologists or psychologist associates shall
15 not administer or prescribe drugs or medicine or in any manner
16 engage in the practice of medicine as defined by the laws of
17 this state.

18 B. A licensed psychologist holding a conditional
19 prescription certificate may prescribe psychotropic medication
20 under the supervision of a licensed physician pursuant to the
21 Professional Psychologist Act.

22 C. A prescribing psychologist may prescribe
23 psychotropic medication pursuant to the Professional
24 Psychologist Act."

25 Section 6. A new section of the Professional

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underscored material = new
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1 Psychologist Act is enacted to read:

2 "[NEW MATERIAL] CONDITIONAL PRESCRIPTION CERTIFICATE--
3 PRESCRIPTION CERTIFICATE--APPLICATION--REQUIREMENTS--
4 RULEMAKING BY BOARD--ISSUANCE, DENIAL, RENEWAL AND REVOCATION
5 OF CERTIFICATION.--

6 A. A psychologist may apply to the board for a
7 conditional prescription certificate. The application shall
8 be made on a form approved by the board and be accompanied by
9 evidence satisfactory to the board that the applicant:

10 (1) has completed a doctoral program in
11 psychology from an accredited institution of higher education
12 or professional school, or, if the program was not accredited
13 at the time of the applicant's graduation, that the program
14 meets professional standards determined acceptable by the
15 board;

16 (2) holds a current license to practice
17 psychology in New Mexico;

18 (3) has successfully completed
19 pharmacological training from an institution of higher
20 education approved by the board or from a provider of
21 continuing education approved by the board;

22 (4) has passed a national certification
23 examination approved by the board that tests the applicant's
24 knowledge of pharmacology in the diagnosis, care and treatment
25 of mental disorders;

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1 (5) within the five years immediately
2 preceding the date of application, has successfully completed
3 an organized program of education consisting of intensive
4 didactic instruction of no fewer than four hundred fifty
5 classroom hours in at least the following core areas of
6 instruction:

- 7 (a) neuroscience;
8 (b) pharmacology;
9 (c) psychopharmacology;
10 (d) physiology;
11 (e) pathophysiology;
12 (f) appropriate and relevant physical
13 and laboratory assessment; and
14 (g) clinical pharmacotherapeutics;

15 (6) within the five years immediately
16 preceding the date of application, has been certified by the
17 applicant's supervising psychiatrist or physician as having
18 successfully completed a supervised and relevant clinical
19 experience of no less than an eighty-hour practicum in
20 clinical assessment and pathophysiology and an additional
21 supervised practicum of at least four hundred hours treating
22 no fewer than one hundred patients with mental disorders, the
23 practica to have been supervised by a psychiatrist or other
24 appropriately trained physician and determined by the board to
25 be sufficient to competently train the applicant in the

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1 treatment of a diverse patient population;

2 (7) has malpractice insurance in place that
3 will cover the applicant during the period the conditional
4 prescription certificate is in effect; and

5 (8) meets all other requirements, as
6 determined by rule of the board, for obtaining a conditional
7 prescription certificate.

8 B. The board shall issue a conditional
9 prescription certificate if it finds that the applicant has
10 met the requirements of Subsection A of this section. The
11 certificate shall be valid for a period of two years, at the
12 end of which the holder may again apply pursuant to the
13 provisions of Subsection A of this section. A psychologist
14 with a conditional prescription certificate may prescribe
15 psychotropic medication under the supervision of a licensed
16 physician subject to the following conditions:

17 (1) the psychologist shall continue to hold a
18 current license to practice psychology in New Mexico and
19 continue to maintain malpractice insurance;

20 (2) the psychologist shall inform the board
21 of the name of the physician under whose supervision the
22 psychologist will prescribe psychotropic medication and
23 promptly inform the board of any change of the supervising
24 physician; and

25 (3) a physician supervising a psychologist

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1 prescribing psychotropic medication pursuant to a conditional
2 prescription certificate shall be individually responsible for
3 the acts and omissions of the psychologist while under his
4 supervision. This provision does not relieve the psychologist
5 from liability for his acts and omissions.

6 C. A psychologist may apply to the board for a
7 prescription certificate. The application shall be made on a
8 form approved by the board and be accompanied by evidence
9 satisfactory to the board that the applicant:

10 (1) has been issued a conditional
11 prescription certificate and has successfully completed two
12 years of prescribing psychotropic medication as certified by
13 the supervising licensed physician;

14 (2) holds a current license to practice
15 psychology in New Mexico;

16 (3) has malpractice insurance in place that
17 will cover the applicant as a prescribing psychologist; and

18 (4) meets all other requirements, as
19 determined by rule of the board, for obtaining a prescription
20 certificate.

21 D. The board shall issue a prescription
22 certificate if it finds that the applicant has met the
23 requirements of Subsection C of this section. A psychologist
24 with a prescription certificate may prescribe psychotropic
25 medication pursuant to the provisions of the Professional

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1 Psychologist Act if the psychologist:

2 (1) continues to hold a current license to
3 practice psychology in New Mexico and continues to maintain
4 malpractice insurance; and

5 (2) annually satisfies the continuing
6 education requirements for prescribing psychologists, as set
7 by the board, which shall be no fewer than twenty hours each
8 year.

9 E. The board shall promulgate rules providing for
10 the procedures to be followed in obtaining a conditional
11 prescription certificate, a prescription certificate and
12 renewals of a prescription certificate. The board may set
13 reasonable application and renewal fees.

14 F. The board shall promulgate rules establishing
15 the grounds for denial, suspension or revocation of
16 conditional prescription certificates and prescription
17 certificates authorized to be issued pursuant to this section,
18 including a provision for suspension or revocation of a
19 license to practice psychology upon suspension or revocation
20 of a certificate. Actions of denial, suspension or revocation
21 of a certificate shall be in accordance with the Uniform
22 Licensing Act."

23 Section 7. A new section of the Professional
24 Psychologist Act is enacted to read:

25 "[NEW MATERIAL] PRESCRIBING PRACTICES.--

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1 A. A prescribing psychologist or a psychologist
2 with a conditional prescription certificate may administer and
3 prescribe psychotropic medication within the recognized scope
4 of the profession, including the ordering and review of
5 laboratory tests in conjunction with the prescription, for the
6 treatment of mental disorders.

7 B. When prescribing psychotropic medication for a
8 patient, the prescribing psychologist or the psychologist with
9 a conditional prescription certificate shall maintain an
10 ongoing collaborative relationship with the health care
11 practitioner who oversees the patient's general medical care
12 to ensure that necessary medical examinations are conducted,
13 the psychotropic medication is appropriate for the patient's
14 medical condition and significant changes in the patient's
15 medical or psychological condition are discussed.

16 C. A prescription written by a prescribing
17 psychologist or a psychologist with a conditional prescription
18 certificate shall:

19 (1) comply with applicable state and federal
20 laws;

21 (2) be identified as issued by the
22 psychologist as "psychologist certified to prescribe"; and

23 (3) include the psychologist's board-assigned
24 identification number.

25 D. A prescribing psychologist or a psychologist

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1 with a conditional prescription certificate shall not delegate
2 prescriptive authority to any other person. Records of all
3 prescriptions shall be maintained in patient records.

4 E. When authorized to prescribe controlled
5 substances, a prescribing psychologist or a psychologist with
6 a conditional prescription certificate shall file with the
7 board in a timely manner all individual federal drug
8 enforcement agency registrations and numbers. The board shall
9 maintain current records on every psychologist, including
10 federal registrations and numbers.

11 F. The board shall provide to the board of
12 pharmacy an annual list of prescribing psychologists and
13 psychologists with conditional prescription certificates that
14 contains the information agreed upon between the board and the
15 board of pharmacy. The board shall promptly notify the board
16 of pharmacy of psychologists who are added or deleted from the
17 list.

18 G. For the purpose of this section:

19 (1) "collaborative relationship" means a
20 cooperative working relationship between a prescribing
21 psychologist or a psychologist with a conditional prescription
22 certificate and a health care practitioner in the provision of
23 patient care, including diagnosis and cooperation in the
24 management and delivery of physical and mental health care;
25 and

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

Section 8. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2002.

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