

61-7-1. Short title.

Chapter 61, Article 7 NMSA 1978 may be cited as the "Impaired Health Care Provider Act".

61-7-2. Definition.

As used in the Impaired Health Care Provider Act [this article], "board" means the boards that license, register or certify health care providers.

61-7-3. Grounds for restriction, suspension or revocation of license; registration or certification.

The license, registration or certification of any health care provider to practice in this state shall be subject to restriction, suspension or revocation in case of inability of the health care provider to practice with reasonable skill or safety to patients by reason of one or more of the following:

- A. mental illness;
- B. physical illness, including but not limited to deterioration through the aging process or loss of motor skill; or
- C. habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act, or alcohol.

61-7-4. Health care provider boards; additional powers and duties.

A. If the board has reasonable cause to believe that a health care provider licensed, registered or certified to practice in this state is unable to practice with reasonable skill and safety to patients because of a condition described in Section 61-7-3 NMSA 1978, the board shall appoint an examining committee as described in Subsection B of this section to examine the health care provider and shall, following the examination, take appropriate action within the provisions of the Impaired Health Care Provider Act [this article].

B. The appropriate board shall designate three licensed health care providers to be members of an examining committee.

61-7-5. Examination by committee.

A. The examining committee assigned to examine a health care provider pursuant to referral by the board as provided in Section 61-7-4 NMSA 1978 shall conduct an examination of the health care provider for the purpose of determining the health care provider's fitness to practice with reasonable skill or safety to patients, either on a restricted or unrestricted basis, and shall report its findings and recommendations to the board. The findings and recommendations shall be based on findings by the examining committee that the health care provider examined possesses

one or more of the impairments set forth in Section 61-7-3 NMSA 1978 and such impairment does, in fact, affect the ability of the health care provider to skillfully or safely practice. The examining committee shall order the health care provider to appear before it for examination and give the health care provider ten days' notice of time and place of the examination, together with a statement of the cause for examination. Notice shall be served upon the health care provider either personally or by registered or certified mail with return receipt requested.

B. If an examining committee, in its discretion, deems a mental or physical examination of the health care provider necessary to its determination of the fitness of the health care provider to practice, the committee shall order the health care provider to submit to such examination. Any person licensed, registered or certified to practice in this state shall, by so practicing or by making or filing of registration to practice in this state, be deemed to have:

(1) given consent to submit to mental or physical examination when so directed by an examining committee; and

(2) waived all objections to the admissibility of an examining committee's report to the board on the grounds of privileged communication.

C. Any health care provider ordered to an examination before an examining committee pursuant to the provisions of Subsection A of this section may present the results of an independent mental or physical examination to the committee.

D. Any health care provider who submits to a diagnostic mental or physical examination as ordered by an examining committee shall have a right to designate another health care provider to be present at the examination and make an independent report to the board.

E. Failure of a health care provider to comply with an examining committee order made pursuant to provisions of Subsection B of this section to appear before it for examination by the committee or to submit to mental or physical examination under this section shall be reported by the committee to the board and, unless due to circumstances beyond the control of the health care provider, shall be grounds for the immediate and summary suspension by the board of the health care provider's license, registration or certification to practice in this state until the further order of the board.

61-7-6. Voluntary restriction of licensure.

A health care provider may request in writing to the board a restriction of the license, registration or certification to practice. The board may grant the request for restriction and shall have authority, if it deems appropriate, to attach conditions to the license, registration or certification of the health care provider to practice within specified limitations and waive the commencement of any proceeding pursuant to provisions of Section 61-7-8 NMSA 1978. Removal of a voluntary restriction on licensure to practice shall be subject to the procedure for reinstatement of license, registration or certification in Section 61-7-9 NMSA 1978.

61-7-7. Report to the board; action.

A. An examining committee shall report to the board its findings on the examination of the person as provided in Section 61-7-5 NMSA 1978, the determination of the committee as to the fitness of the person to engage in practice with reasonable skill or safety to patients, either on a restricted or unrestricted basis, and any management that the committee may recommend. Recommendation by the committee shall be advisory only and shall not be binding on the board.

B. The board may accept or reject any finding, determination or recommendation of an examining committee regarding a health care provider's ability to continue to practice with or without any restriction on the license, registration or certification or may refer the matter back to an examining committee for further examination and report.

C. In the absence of a voluntary agreement by a health care provider as provided in Section 61-7-6 NMSA 1978 for restriction of the license, registration or certification of the person to practice, any person shall be entitled to a hearing under and in accordance with the procedure contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] before the board and a determination on the evidence as to whether restriction, suspension or revocation of license, registration or certification shall be imposed.

61-7-8. Proceedings.

A. The board may formally proceed against a health care provider under the Impaired Health Care Provider Act [this article] in accordance with the procedures contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

B. At the conclusion of a hearing, the board shall make the following findings:

(1) whether the health care provider is impaired by one of the grounds for restriction, suspension or revocation listed in Section 61-7-3 NMSA 1978;

(2) whether the impairment, if found in Paragraph (1) of this subsection, does in fact limit the health care provider's ability to practice skillfully or safely;

(3) to what extent the impairment limits the health care provider's ability to practice skillfully or safely and whether the board finds that the impairment is such that the health care provider's license, registration or certification should be suspended, revoked or restricted; and

(4) if the finding in Paragraph (3) of this subsection recommends suspension or restriction of the health care provider's ability to practice, the board shall make specific recommendations as to the length and nature of the suspension or restriction and shall recommend how the suspension or restriction shall be carried out and supervised.

C. At the conclusion of a hearing, the board shall make a determination of the merits and may order one or more of the following:

- (1) placement of the health care provider on probation on such terms and conditions as it deems proper for the protection of the public;
- (2) suspension or restriction of the license of the health care provider to practice for the duration of the impairment;
- (3) revocation of the license, registration or certification of the health care provider to practice;
or
- (4) reinstatement of the health care provider's license, registration or certification to practice without restriction.

D. The board may temporarily suspend the license, registration or certification of any health care provider without a hearing, simultaneously with the institution of proceedings under the Impaired Health Care Provider Act or the Uniform Licensing Act, if it finds that the evidence in support of the examining committee's determination is clear and convincing and that the health care provider's continuation in practice would constitute an imminent danger to public health and safety. The health care provider shall be entitled to a hearing to set aside the suspension no later than sixty days after the license is suspended.

E. Neither the record of the proceeding nor any order entered against a health care provider may be used against the health care provider in any other legal proceeding except upon judicial review as provided in Section 61-7-10 NMSA 1978.

61-7-9. Reinstatement of license.

A health care provider whose license, registration or certification has been restricted, suspended or revoked pursuant to provisions of the Impaired Health Care Provider Act [this article], voluntarily or by action of the board, shall have a right, at reasonable intervals, to petition for reinstatement and to demonstrate that the health care provider can resume the competent practice with reasonable skill and safety to patients. Petition shall be made in writing and on a form prescribed by the board. Action of the board on the petition shall be initiated by referral to and examination by an examining committee pursuant to the provisions of Sections 61-7-4 and 61-7-5 NMSA 1978. The board may, in its discretion and upon written recommendation of the examining committee, restore the license, registration or certification of the health care provider on a general or limited basis.

61-7-10. Judicial review.

All orders of the board made pursuant to provisions of Subsection C of Section 61-7-8 NMSA 1978 shall be subject to judicial review as provided for in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]. The decision of the board shall not be stayed or enjoined pending review by a district court but may be stayed or enjoined pending review by the court of appeals or the New Mexico supreme court.

61-7-11. Protected action and communication.

There shall be no liability on the part of and no action for damages against:

A. any member of an examining committee of the board for any action undertaken or performed by such member within the scope of the functions or such committee or board under the Impaired Health Care Provider Act [this article] when acting in good faith and in the reasonable belief that the action taken is warranted; or

B. any person providing information to an examining committee or to the board in good faith in the reasonable belief that the information is accurate.

61-7-12. Impaired health care provider treatment program.

A. The board has the authority to enter into an agreement to implement an impaired health care provider treatment program.

B. For the purposes of this section, "impaired health care provider treatment program" means a program of care and rehabilitation services provided by those organizations authorized by the board to provide for the detection, intervention and monitoring of impaired health care providers.

This information is provided for your convenience and may not be correct, complete or current.

The official text of the Medical Practice Act is available at <http://www.conwaygreene.com>. Please follow the links to New Mexico Statutes: Statutory Chapters in New Mexico Statutes Annotated 1978; Chapter 61 Occupational and Professional Licensing; Article 7, Impaired Health Care Provider.