The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 131

SENATE BILL 367, as amended

Introduced by

SENATOR MICHAEL S. SANCHEZ
SENATOR LINDA M. LOPEZ
CHAPTER 131

AN ACT

RELATING TO PROFESSIONAL LICENSURE; AMENDING AND REPEALING
SECTIONS OF THE OPTOMETRY ACT TO MAKE CHANGES TO BOARD POWERS
AND TO PROVIDE OPTOMETRISTS WITH GREATER PRESCRIBING POWERS;
AMENDING A SECTION OF THE NEW MEXICO DRUG, DEVICE AND
COSMETIC ACT TO INCLUDE OPTOMETRISTS AS PRESCRIBING
PRACTITIONERS.

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

SECTION 1. Section 61-2-2 NMSA 1978 (being Laws 1973,
Chapter 353, Section 2, as amended) is amended to read:
"61-2-2. DEFINITIONS.--As used in the Optometry Act:
  A. "practice of optometry" means:
      (1) the employment of any subjective or
          objective means or methods, including but not limited to the
          use of lenses, prisms, autorefractors or other automated
          testing devices, and includes the prescription or
          administration of drugs for the purpose of diagnosing the
          visual defects or abnormal conditions of the human eye and
          its adnexa;
      (2) the employing, adapting or prescribing
          of preventive or corrective measures, including but not
          limited to lenses, prisms, contact or corneal lenses or other
          optical appliances, ocular exercises, vision therapy, vision
          training and vision rehabilitation services, and includes the
prescription or administration of all drugs rational for the

correction, relief or referral of visual defects or abnormal

conditions of the human eye and its adnexa; and

(3) does not include the use of surgery or

injections in the treatment of eye diseases except for the

use of the following types of in-office minor surgical

procedures:

(a) non-laser removal, destruction or

drainage of superficial eyelid lesions and conjunctival

cysts;

(b) removal of nonperforating foreign

bodies from the cornea, conjunctiva and eyelid;

(c) non-laser corneal debridement,

culture, scrape or anterior puncture, not including removal

of pterygium, corneal biopsy or removal of corneal

neoplasias;

(d) removal of eyelashes; and

(e) probing, dilation, irrigation or

closure of the tear drainage structures of the eyelid;

scalpel use is to be applied only for the purpose of use on

the skin surrounding the eye;

B. "ophthalmic lens" means a lens that has a

spherical, cylindrical or prismatic value, is ground pursuant

to a prescription and is intended to be used as eyeglasses;

C. "contact lens" means a lens to be worn on the
anterior segment of the human eye;

D. "prescription" means a written order by an optometrist or a physician for an individual patient for:
   (1) ophthalmic lenses;
   (2) contact lenses; or
   (3) a pharmaceutical agent that is regulated pursuant to the New Mexico Drug, Device and Cosmetic Act;

E. "eyeglasses" means an exterior optical device using ophthalmic lenses for the correction or relief of disturbances in and anomalies of human vision; and

F. "board" means the board of optometry."

SECTION 2. Section 61-2-6 NMSA 1978 (being Laws 1973, Chapter 353, Section 5, as amended) is amended to read:

"61-2-6. ORGANIZATION--MEETINGS--COMPENSATION--POWERS AND DUTIES.--

A. The board shall annually elect a chair, a vice chair and a secretary-treasurer; each shall serve until a successor is elected and qualified.

B. The board shall meet at least annually for the purpose of examining candidates for licensure. Special meetings may be called by the chair and shall be called upon the written request of a majority of the board members. A majority of the board members currently serving constitutes a quorum.

C. Members of the board may be reimbursed as

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provided in the Per Diem and Mileage Act but shall receive no
other compensation, perquisite or allowance.

E. The board has the authority to determine what
constitutes the practice of optometry in accordance with the
provisions of the Optometry Act and has jurisdiction to
exercise any other powers and duties pursuant to that act.
The board may issue advisory opinions and declaratory rulings
pursuant to that act and rules promulgated in accordance with
that act, but shall not expand the scope of practice of
optometry beyond the provisions of that act.

E. The board shall:

(1) administer and enforce the provisions of
the Optometry Act;

(2) adopt, publish and file, in accordance
with the Uniform Licensing Act and the State Rules Act, all
rules for the implementation and enforcement of the
provisions of the Optometry Act;

(3) adopt and use a seal;

(4) administer oaths and take testimony on
matters within the board's jurisdiction;

(5) keep an accurate record of meetings,
receipts and disbursements;

(6) keep a record of examinations held,
together with the names and addresses of persons taking the
examinations and the examination results. Within thirty days
after an examination, the board shall give written notice to
each applicant examined of the results of the examination as
to the respective applicant;

(7) certify as passing each applicant who
obtains a grade of at least seventy-five percent on each
subject upon which the applicant is examined; providing that
an applicant failing may apply for re-examination at the next
scheduled examination date;

(8) keep a book of registration in which the
name, address and license number of licensees shall be
recorded, together with a record of license renewals,
suspensions and revocations;

(9) grant, deny, renew, suspend or revoke
licenses to practice optometry in accordance with the
provisions of the Uniform Licensing Act for any cause stated
in the Optometry Act;

(10) develop and administer qualifications
for certification for the use of pharmaceutical agents as
authorized in Section 61-2-10.2 NMSA 1978, including minimum
educational requirements and examination, as required by
Section 61-2-10.2 NMSA 1978 and provide the board of pharmacy
with an annual list of optometrists certified to use
pharmaceutical agents as authorized in Section 61-2-10.2
NMSA 1978; and

(11) provide for the suspension of an
optometrist's license for sixty days upon a determination of
use of pharmaceutical agents without prior certification in
accordance with Section 61-2-10.2 NMSA 1978, after proper
notice and an opportunity to be heard before the board."

SECTION 3. Section 61-2-10.2 NMSA 1978 (being Laws
1995, Chapter 20, Section 5, as amended) is amended to read:

"61-2-10.2. DESIGNATION OF PHARMACEUTICAL AGENTS--
CERTIFICATION FOR USE OF CERTAIN AGENTS.--

A. Subject to the provisions of the Optometry Act,
optometrists qualified and certified by the board may
prescribe or administer all pharmaceutical agents for the
diagnosis and treatment of disease of the eye or adnexa;
provided that an optometrist:

(1) may prescribe hydrocodone and
hydrocodone combination medications;

(2) may administer epinephrine
auto-injections to counter anaphylaxis; and

(3) shall not prescribe any other controlled
substance classified in Schedule I or II pursuant to the
Controlled Substances Act.

B. The board shall issue certification for the use
of pharmaceutical agents as set forth in Subsection A of this
section to optometrists currently licensed by the board. To
be certified, an optometrist shall submit to the board proof
of having satisfactorily completed a course in pharmacology

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as applied to optometry, with particular emphasis on the
administration of pharmaceutical agents for the purpose of
examination of the human eye, and analysis of ocular
functions and treatment of visual defects or abnormal
conditions of the human eye and its adnexa. The course shall
constitute a minimum of twenty hours of instruction in
clinical pharmacology, including systemic pharmacology as
applied to optometry, and shall be taught by an accredited
institution approved by the board.

C. Applicants for licensure shall meet the
requirements for certification in the use of pharmaceutical
agents as set forth in the Optometry Act and shall
successfully complete the board's examination in
pharmaceutical agents prior to licensure.

D. The certification authorized by this section
shall be displayed in a conspicuous place in the
optometrist's principal office or place of business."

SECTION 4. Section 61-2-10.3 NMSA 1978 (being Laws
2003, Chapter 274, Section 8) is amended to read:

"61-2-10.3. PRESCRIPTION FOR PHARMACEUTICAL AGENT OR
OPHTHALMIC LENSES--REQUIRED ELEMENTS AUTHORITY OF A PERSON
WHO SELLS AND DISPENSES EYEGLASSES.--

A. A prescription written for a pharmaceutical
agent shall include an order given individually for the
person for whom prescribed, either directly from the

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prescriber to a pharmacist or indirectly by means of a
written or electronic order signed by the prescriber, that
bears the name and address of the prescriber, the
prescriber's license classification, the name and address of
the patient, the name and quantity of the agent prescribed
and directions for its use and the date of issue.

B. A prescription written for ophthalmic lenses
shall include:

(1) the dioptric power of spheres, cylinders
and prisms, the axes of cylinders, the position of the prism
base and, if so desired by the prescriber, the light
transmission properties and lens curve values;
(2) the designation of pupillary distance;
and
(3) the name of the patient, the date of the
prescription, the expiration date of the prescription and the
name and address of the prescriber.

C. A person who sells and dispenses eyeglasses
upon the written prescription of a physician, surgeon or
optometrist may determine:

(1) the type, form, size and shape of
ophthalmic lenses;
(2) the placement of optical centers for
distance-seeing and near-work;
(3) the designation of type and placement of
reading segments in multivision lenses;

(4) the type and quality of frame or mounting, the type of bridge and the distance between lenses and the type, length and angling of temples; and

(5) the designation of pupillary distance."

SECTION 5. Section 61-2-14 NMSA 1978 (being Laws 1973, Chapter 353, Section 12, as amended) is amended to read:

"61-2-14. OFFENSES.--

A. A person who commits one of the following acts is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978:

(1) practicing or attempting to practice optometry without a valid current license issued by the board;

(2) using or attempting to use a pharmaceutical agent that is regulated pursuant to the provisions of the New Mexico Drug, Device and Cosmetic Act without having the certification for its use issued by the board, unless the administration of pharmaceutical agents is done under the direct supervision of a licensed optometrist certified to administer the pharmaceutical agents in accordance with the provisions of the Optometry Act; or

(3) permitting a person in one's employ, supervision or control to practice optometry or use
pharmaceutical agents described in Paragraph (2) of this subsection unless that person is licensed and certified in accordance with the provisions of the Optometry Act or unless the administration of pharmaceutical agents is done under the direct supervision of a licensed optometrist certified to administer the pharmaceutical agents in accordance with the provisions of the Optometry Act.

E. A person who commits one of the following acts is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978:

(1) making a willfully false oath or affirmation where the oath or affirmation is required by the Optometry Act;

(2) selling or using any designation, diploma or certificate tending to imply that one is a practitioner of optometry, unless one holds a license as provided by the Optometry Act;

(3) refusing, after a request, to provide a patient a copy of the patient's eyeglasses prescription, if the prescription is not over one year old;

(4) duplicating or replacing an ophthalmic lens without a current prescription not more than two years old or without a written authorization from the patient if the prescription is not available;
(5) except for licensed optometrists, using any trial lenses, trial frames, graduated test cards or other appliances or instruments for the purpose of examining the eyes or rendering assistance to anyone who desires to have an examination of the eyes, but it is not the intent of this paragraph to prevent a school nurse, schoolteacher or employee in public service from ascertaining the possible need of vision services, if the person, clinic or program does not attempt to diagnose or prescribe ophthalmic lenses for the eyes or recommend any particular practitioner or system of practice;

(6) advertising the fabricating, adapting, employing, providing, sale or duplication of eyeglasses or any part of them, but this paragraph does not preclude the use of a business name, trade name or trademark not relating to price or the use of the address, telephone number, office hours and designation of the provider, in or at retail outlets, on business cards, eyeglass cleaners and cases or in news media or in public directories, mailings and announcements of location openings or the use of the words "doctors' prescriptions for eyeglasses filled" or "eyeglass repairs, replacements and adjustments"; or

(7) selling of prescription eyeglasses or contact lenses, frames or mountings for lenses in an establishment in which the majority of its income is not
SECTION 6. 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 an individual, partnership, corporation, association, institution or establishment;

C. "biological product" means a virus, therapeutic serum, toxin, antitoxin or analogous product applicable to the prevention, treatment or cure of diseases or injuries of humans and domestic animals, and, as used within the meaning of this definition:

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

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

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

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

E. "controlled substance" means a drug, substance
or immediate precursor enumerated in Schedules I through V of
the Controlled Substances Act;

E. "drug" means articles:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis, cure,
mitigation, treatment or prevention of disease in humans or
other animals and includes the domestic animal biological
products regulated under the federal Virus-Serum-Toxin Act,
products applicable to humans 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) other than food, that affect the
structure or any function of the human body or the bodies of
other animals; and

(4) intended for use as a component of
Paragraph (1), (2) or (3) of this subsection, but "drug" 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
directions under which the layperson can use a drug or device
safely and for the purposes for which it is intended. A drug
shall be dispensed only upon the prescription or drug order
of a practitioner licensed by law to administer or prescribe
the drug if it:

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

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

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

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

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

(6) bears the legend "RX only";

G. "counterfeit drug" means a drug that is deliberately and fraudulently mislabeled with respect to its identity, ingredients or sources. Types of such pharmaceutical counterfeits may include:

(1) "identical copies", which are counterfeits made with the same ingredients, formulas and packaging as the originals but not made by the original manufacturer;

(2) "look-aikes", which are products that feature high-quality packaging and convincing appearances but contain little or no active ingredients and may contain harmful substances;

(3) "rejects", which are drugs that have been rejected by the manufacturer for not meeting quality standards; and

(4) "relabels", which are drugs that have
passed their expiration dates or have been distributed by
unauthorized foreign sources and may include placebos created
for late-phase clinical trials;

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

(1) recognized in an official compendium;
(2) intended for use in the diagnosis of
disease or other conditions or in the cure, mitigation,
treatment or prevention of disease in humans or other
animals; or
(3) intended to affect the structure or a
function of the human body or the bodies of other animals and
that does not achieve any of its principal intended purposes
through chemical action within or on the human body or the
bodies of other animals and that is not dependent on being
metabolized for achievement of any of its principal intended
purposes;

I. "prescription" means an order given
individually for the person for whom prescribed, either
directly from a licensed practitioner or the practitioner's
agent to the pharmacist, including by means of electronic
transmission, or indirectly by means of a written order
signed by the prescriber, and bearing the name and address of
the prescriber, the prescriber's license classification, the
name and address of the patient, the name and quantity of the
drug prescribed, directions for use and the date of issue;

J. "practitioner" means a certified advanced
practice chiropractic physician, physician, doctor of
oriental medicine, dentist, veterinarian, euthanasia
technician, certified nurse practitioner, clinical nurse
specialist, pharmacist, pharmacist clinician, certified
nurse-midwife, physician assistant, prescribing psychologist,
dental hygienist, optometrist or other person licensed or
certified to prescribe and administer drugs that are subject
to the New Mexico Drug, Device and Cosmetic Act;

K. "cosmetic" means:

(1) articles intended to be rubbed, poured,
sprinkled or sprayed on, introduced into or otherwise applied
to the human body or any part thereof for cleansing,
beautifying, promoting attractiveness or altering the
appearance; and

(2) articles intended for use as a component
of any articles enumerated in Paragraph (1) of this
subsection, except that the term shall not include soap;
L. "official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them;

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

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

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

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

(2) accompanying an article;

P. "misbranded" means a label to an article that is misleading. In determining whether the label is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the
foregoing, but also the extent to which the label fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual;

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

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

S. "new drug" means a drug:

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

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

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

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

V. "color additive" means a material that:

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

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

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

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

Y. "prescription device" means a device that, because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but that bears the label: "Caution: federal law restricts this device to sale by or on the order of a ________", the blank to be filled with the word "physician", "physician
assistant", "certified advanced practice chiropractic
physician", "doctor of oriental medicine", "dentist",
"veterinarian", "euthanasia technician", "certified nurse
practitioner", "clinical nurse specialist", "pharmacist",
"pharmacist clinician", "certified nurse-midwife" or "dental
hygienist", "optometrist" or with the descriptive designation
of any other practitioner licensed in this state to use or
order the use of the device;

Z. "valid practitioner-patient relationship" means
a professional relationship, as defined by the practitioner's
licensing board, between the practitioner and the patient;

AA. "pedigree" means the recorded history of a
drug; and

BB. "drug order" means an order either directly
from a licensed practitioner or the practitioner's agent to
the pharmacist, including by means of electronic transmission
or indirectly by means of a written order signed by the
licensed practitioner or the practitioner's agent, and
bearing the name and address of the practitioner and the
practitioner's license classification and the name and
quantity of the drug or device ordered for use at an
inpatient or outpatient facility."

SECTION 7. REPEAL.--Section 61-2-10 NMSA 1978 (being
Laws 1977, Chapter 30, Section 3, as amended) is repealed.____
John A. Sanchez, President
Senate

Lenore M. Naranjo, Chief Clerk
Senate

Don L. Tripp, Speaker
House of Representatives

Denise Ramonas, Chief Clerk
House of Representatives

Approved by me this 10th day of April, 2015

Governor Susana Martinez
State of New Mexico