

## Explanatory Comments on NM HB664 “Unlicensed Health Care Practice Act”

The purpose of this document is to raise awareness of key sections in the “Unlicensed Health Care Practice Act” and provide explanatory commentary to help practitioners understand their rights and responsibilities. It is suggested to be used in conjunction with the complete statute of New Mexico HB664, the "Unlicensed Health Care Practice Act". This explanatory document and the “Patient Information Document Checklist” are intended to support practitioners’ implementation of their responsibilities and requirements.

NMCAAMP’s comments are lay interpretations and have not been reviewed or approved by legal counsel or any NM state agency. Ultimately each practitioner is on their own in terms of interpretation, implementation and responsibility for NM HB 664.

### Key Sections Covered:

- Section 2. DEFINITIONS
- Section 3. LICENSING EXEMPTION
- Section 4. PROHIBITED ACTS
- Section 5. COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER—DUTIES

<b>KEY SECTIONS OF NM HB664 “UNLICENSED HEALTH CARE PRACTICE ACT”</b>	<b>NMCAAMP’s COMMENTS</b>
<p><b>Section 2. DEFINITIONS.</b>--As used in the Unlicensed Health Care Practice Act:  <b>B.</b> “...”complementary and alternative health care service" means the broad domain of complementary and alternative healing methods and treatments including: ...”</p>	<p><b>NMCAAMP’s Comment on Section 2:</b>                      The word “<i>including</i>” in NM is taken to mean “including, but not limited to”, which means that essentially all healing disciplines that are not specifically licensed in NM fall under HB664. The disciplines mentioned in the definitions section are examples only.</p>
<p><b>Section 3. LICENSING EXEMPTION.</b>--A complementary and alternative health care practitioner who is not licensed, certified or registered in New Mexico as a health care practitioner shall not be in violation of any licensing law relating to health care services pursuant to Chapter 61 NMSA 1978 unless that individual:</p>	<p><b>NMCAAMP’s Comment on Section 3:</b>                      This is the heart of the statute. “...<i>shall not be in violation of any licensing law relating to health care...</i>” This means that this statute provides a safe harbor from being in violation of all NM health care licensing acts (as long as the provisions of HB664 are met), not just the Medical Practice Act like in CA. This is important, because many of the health care licensing acts list in their scope of practice a very broad and general description of health care and although this gives their practitioners a broad scope of practice, it can be interpreted as requiring anyone practicing them to be licensed in that profession or be specifically exempted.                      The legal structure of this statute is called a “safe harbor law” which means that as long as a person is in compliance with it, they are protected by it. However if an unlicensed health care practitioner is in violation of this statute: 1) there may be actions according to the statute itself if convicted after due process of law; 2) they will no longer be protected under the statute and may be subject to actions taken by other agencies, like the NM Medical Board. 3) Further, there is nothing to prevent a private person from initiating legal action at any time.</p>

	Chapter 61 NMSA 1978 is the section of NM law that holds all the licensing statutes.
<b>A.</b> engages in any activity prohibited in Section 4 of the Unlicensed Health Care Practice Act; or	<b>NMCAAMP's Comment on Section 3.A:</b> This refers to a specific list of activities that unlicensed practitioners are prohibited from practicing.
<b>B.</b> fails to fulfill the duties set forth in Section 5 of the Unlicensed Health Care Practice Act.	<b>NMCAAMP's Comment on Section 3.B:</b> This is the specific list of things that an unlicensed practitioner must do to have the protection of this statute.
<b>Section 4. PROHIBITED ACTS.</b> --A complementary and alternative health care practitioner shall not:	<b>NMCAAMP's Comment on Section 4:</b> This section of the statute specifically lists the activities which are prohibited by unlicensed health care practitioners.
<ul style="list-style-type: none"> <li><b>A.</b> perform surgery on an individual;</li> <li><b>B.</b> set fractures on an individual;</li> <li><b>C.</b> administer x-ray radiation to an individual;</li> <li><b>D.</b> prescribe or dispense dangerous drugs or controlled substances to an individual;</li> </ul>	
<b>E.</b> directly manipulate the joints or spine of an individual;	<b>NMCAAMP's Comment on Section 4.E:</b> Here the word "directly" has been specifically provided to exclude those therapies that result in the movement of a joint or the spine (e.g. bending exercises or dance) but there is no physical action with intent to specifically move or adjust a specific joint or the spine.
<b>F.</b> physically invade the body except for the use of non-prescription topical creams, oils, salves, ointments, tinctures or any other preparations that may penetrate the skin without causing harm;	
<b>G.</b> make a recommendation to discontinue current medical treatment prescribed by a licensed health care practitioner;	<b>NMCAAMP's Comment on Section 4.G:</b> If the client or patient makes this decision, this is not in the control of the practitioner. However it is prohibited for an unlicensed health care practitioner to make this recommendation. [see sample recommendations form]
<b>H.</b> make a specific conventional medical diagnosis;	<b>NMCAAMP's Comment on Section 4.H:</b> This means conventional medical terminology such as: cancer, diabetes etc. However, an unlicensed practitioner can apparently say "I have a concern that you <u>might have</u> , or be predisposed to ..." and refer them to a medical doctor or other appropriate licensed health care provider. [see sample medical referral form]
<b>I.</b> have sexual contact with a current patient or former patient within one year of rendering service;	<b>NMCAAMP's Comment on Section 4.I:</b> There is a very explicit and detailed definition of what constitutes "sexual contact" in the definitions section of this statute was taken from the NM Medical Practice Act

<p><b>J.</b> falsely advertise or provide false information in documents described in Subsection A of Section 5 of the Unlicensed Health Care Practice Act;</p> <p><b>K.</b> illegally use dangerous drugs or controlled substances;</p> <p><b>L.</b> reveal confidential information of a patient without the patient's written consent;</p> <p><b>M.</b> engage in fee splitting or kickbacks for referrals; or</p>	
<p><b>N.</b> refer to the practitioner's self as a licensed doctor or physician or other occupational title pursuant to Chapter 61 NMSA 1978.</p>	<p><b>NMCAAMP's Comment on Section 4.N:</b> Chapter 61 includes laws that prohibit citizens from using titles which are exclusively designated to be used by particular health care professions. Persons that are not licensed, registered, or certified by the State of New Mexico to use a particular title may not use any of the exclusively designated titles. In addition, this new act especially highlights the fact that a person practicing under this act must not refer to oneself as a "licensed doctor or physician". There are other states, some of which even have "health freedom" laws, that differ on this point.</p>
<p><b>O.</b> perform massage therapy on an individual pursuant to the Massage Therapy Practice Act.</p>	<p><b>NMCAAMP's Comment on Section 4.O:</b> This is the only prohibition that refers to an entire specific healthcare practice act rather than just a specific activity. However since the Massage Therapy Practice Act itself, has its own exemptions (<a href="#">see excerpt below</a>), it is our understanding that the listed disciplines are exempted from regulation by the NM Massage Board, and they would be subject to the NM Unlicensed Health Care Practice Act.</p>
<p><b>Section 5. COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER--DUTIES.--</b> Except for persons providing health care services pursuant to <a href="#">Section 61-6-17 NMSA 1978</a> or to employees or persons acting pursuant to the direction of licensed health care facilities or licensed health care providers while working within the scope of their employment or direction, A complementary and alternative health care practitioner shall:</p>	<p><b>NMCAAMP's Comment on Section 5:</b> There are 3 exempt categories to the requirement to disclose the information outlined in the "disclosure" section: 1) Section 61-6-17 NMSA 1978 (<a href="#">included for reference at the end of this document</a>) lists those persons exempt from the NM Medical Practice Act and which are then also exempted from HB664 Section 5 disclosure requirements; 2) employees or persons acting pursuant to the direction of licensed health care facilities; 3) licensed health care providers while working within the scope of their employment or direction..." This section does not exempt these practitioners from the other sections of HB664, only from the "disclosure" section.</p>
<p><b>A.</b> provide to a patient prior to rendering services a patient information document, either in writing in plain language that the patient understands or, if the patient cannot read, orally in a language the patient understands, containing the following: (1) the complementary and alternative health care practitioner's name, title and</p>	<p><b>NMCAAMP's Comment on Section 5.A:</b> The "information document" is taken to mean one document or a set of documents that contain all the required disclosures. The NMCAAMP website has a "Patient Information Document Checklist" and a "Sample Patient Information Document"  See the statute or the checklist for the complete list of items needed to meet the disclosure requirements.</p>

business address and telephone number;

(2) a statement that the complementary and alternative health care practitioner is not a health care practitioner licensed by the state of New Mexico;

(3) a statement that the treatment to be provided by the complementary and alternative health care practitioner is complementary or alternative to health care services provided by health care practitioners licensed by the state of New Mexico;

(4) the nature and expected results of the complementary and alternative health care services to be provided;

(5) the complementary and alternative health care practitioner's degrees, education, training, experience or other qualifications regarding the complementary and alternative health care services to be provided;

(6) the complementary and alternative health care practitioner's fees per unit of service and method of billing for such fees and a statement that the patient has a right to reasonable notice of changes in complementary and alternative health care services or charges for complementary and alternative health care services;

(7) a notice that the patient has a right to complete and current information concerning the complementary and alternative health care practitioner's assessment and recommended complementary and alternative health care services that are to be provided, including the expected duration of the complementary and alternative health care services to be provided and the patient's right to be allowed access to the patient's records and written information from the patient's records;

(8) a statement that patient records and transactions with the complementary and

<p>alternative health care practitioner are confidential unless the release of these records is authorized in writing by the patient or otherwise provided by law;</p> <p>(9) a statement that the patient has a right to coordinated transfer when there will be a change in the .177629.3 provider of complementary and alternative health care services; and</p> <p>(10) the name, address and telephone number of the department and notice that a patient may file complaints with the department; and</p> <p><b>B.</b> B. obtain a written acknowledgment from a patient, or if the patient cannot write an oral acknowledgment witnessed by a third party, stating that the patient has been provided with a copy of the information document. The patient shall be provided with a copy of the written acknowledgment, which shall be maintained for three years by the complementary and alternative health care practitioner providing the complementary and alternative health care service.</p>	
<p><b>END EXCERPTS FROM HB664</b></p>	<p><b>END OF NMCAAMP's Comments on HB664</b></p>

**The Information Below Covers:**  
**1) Excerpt of Massage Therapy Practice Act.**  
**2) NMCAAMP's Comments on The Medical Practice Act**  
**3) The Medical Practice Act 61-6-17 NMSA 1978**

<p><b>Massage Therapy Practice Act.</b>  <b><u>61-12C-5.1. Exemptions. (Repealed effective July 1, 2016.)</u></b></p> <p>Nothing in the Massage Therapy Practice Act [61-12C-1 NMSA 1978] shall be construed to prevent:</p> <p>D. sobadores; Hispanic traditional healers; Native American healers; reflexologists whose practices are limited to hands, feet and ears; practitioners of polarity, Trager approach, Feldenkrais method, craniosacral therapy, Rolfing structural integration, reiki, ortho-bionomy or ch'i gung; or practitioners of healing modalities not listed in this subsection who do not manipulate the soft tissues for therapeutic purposes from practicing those skills. An exempt practitioner who applies for a license or registration pursuant to the Massage Therapy Practice Act shall comply with all licensure requirements of that act.</p>	
<p><b>Section 61-6-17 NMSA 1978</b> The Medical Practice Act [Chapter 61, Article 6 NMSA 1978] shall <b>not</b> apply to or affect:</p> <p>A. gratuitous services rendered in cases of emergency;</p>	<p><b>NMCAAMP's Comments on Section 61-6-17 NMSA 1978 The Medical Practice Act [Chapter 61, Article 6 NMSA 1978]</b></p> <p>Section 61-6-17 is the exemption section from the NM Medical Practice Act. The Medical Practice Act itself does not apply to those persons described in Section 61-6-17 and under the Unlicensed Healthcare Practice Act; those same persons have no duty to make disclosures under the Unlicensed Healthcare Practice Act. This is an important distinction.</p>
<p>B. the domestic administration of family remedies;</p>	<p><b>NMCAAMP's Comment on Section B:</b></p> <p>Many people were concerned about treating at home, and as you can see in Section B, "<i>the domestic administration of family remedies</i>" is already exempt from the practice of medicine violations and therefore, also exempt from the disclosure requirements of the Unlicensed Healthcare Practice Act.</p>
<p>C. the practice of midwifery as regulated in this state;</p> <p>D. commissioned medical officers of the armed forces of the United States and medical officers of the United States public health service or the veterans administration of the United States in the hold medical licenses in New Mexico shall be subject to the provisions of the Medical Practice Act and provided that all such persons shall be fully licensed to practice medicine in one or more jurisdictions of the United States;</p> <p>E. the practice of medicine by a physician, unlicensed in New Mexico, who performs</p>	

emergency medical procedures in air or ground transportation of a patient from inside of New Mexico to another state or back, provided the physician is duly licensed in that state;

F. the practice, as defined and limited under their respective licensing laws, of:

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

G. an act, task or function performed by a physician assistant at the direction of and under the supervision of a licensed physician, when:

- (1) the physician assistant is currently licensed by the board;
- (2) the act, task or function is performed at the direction of and under the supervision of a licensed physician in accordance with rules and regulations promulgated by the board; and
- (3) the acts of the physician assistant are within the scope of duties assigned or delegated by the supervising licensed physician and the acts are within the scope of the assistant's training;

H. an act, task or function of laboratory technicians or technologists, x-ray technicians, nurse practitioners, medical or surgical assistants or other technicians or qualified persons permitted by law or established by custom as part of the duties delegated to them by:

- (1) a licensed physician or a hospital, clinic or institution licensed or approved by the public health division of the department of health or an agency of the federal government; or
- (2) a health care program operated or financed by an agency of the state or federal government;

I. a properly trained medical or surgical assistant or technician or professional licensee performing under the physician's employment and direct supervision or a visiting physician or surgeon operating under the physician's direct supervision a medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician, the act can be properly

<p>and safely performed in its customary manner and if the person does not hold himself out to the public as being authorized to practice medicine in New Mexico. The delegating physician shall remain responsible for the medical acts of the person performing the delegated medical acts;</p>	
<p>J. the practice of the religious tenets of any church in the ministration to the sick or suffering by mental or spiritual means as provided by law; provided that the Medical Practice Act shall not be construed to exempt a person from the operation or enforcement of the sanitary and quarantine laws of the state;</p>	<p><b>NMCAAMP's Comment on Section J:</b>  Similarly, many people were concerned about limitations to the “<i>ministration to the sick or suffering by mental or spiritual means</i>” as part of a religious exemption. As you can see, there is an exemption in the NM Medical Practice Act and thus practitioners performing these practices would not be required to provide Disclosures according to Section 5 of the NM Unlicensed Healthcare Practice Act. However it is important to note the complete language of the exemption. However it is our understanding that these practices are not exempt from other practice acts unless indicated in those practice acts.</p>
<p>K. the acts of a physician licensed under the laws of another state of the United States who is the treating physician of a patient and orders home health or hospice services for a resident of New Mexico to be delivered by a home and community support services agency licensed in this state; provided that a change in the condition of the patient shall be physically reevaluated by the treating physician in the treating physician's jurisdiction or by a licensed New Mexico physician;  L. a physician licensed to practice under the laws of another state who acts as a consultant to a New Mexico-licensed physician on an irregular or infrequent basis, as defined by rule of the board; and  M. a physician who engages in the informal practice of medicine across state lines without compensation or expectation of compensation; provided that the practice of medicine across state lines conducted within the parameters of a contractual relationship shall not be considered informal and is subject to licensure and rule by the board.</p>	