

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS
PART 14 MANAGEMENT OF PAIN WITH CONTROLLED SUBSTANCES

16.10.14.1 ISSUING AGENCY: New Mexico Medical Board, hereafter called the board.
[16.10.14.1 NMAC - N, 1/20/03; A, 4/3/05]

16.10.14.2 SCOPE: This part applies to all New Mexico medical board licensees who hold a federal drug enforcement administration registration.
[16.10.14.2 NMAC - N, 1/20/03; A, 9/28/12]

16.10.14.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978 and the Pain Relief Act, Sections 24-2D-1 NMSA through 24-2D-6.
[16.10.14.3 NMAC - N, 1/20/03; A, 9/28/12]

16.10.14.4 DURATION: Permanent
[16.10.14.4 NMAC - N, 1/20/03]

16.10.14.5 EFFECTIVE DATE: January 20, 2003, unless a later date is cited at the end of a section.
[16.10.14.5 NMAC - N, 1/20/03]

16.10.14.6 OBJECTIVE: It is the position of the board that practitioners have an obligation to treat chronic pain and that a wide variety of medicines including controlled substances and other drugs may be prescribed for that purpose. When such medicines and drugs are used, they should be prescribed in adequate doses and for appropriate lengths of time after a thorough medical evaluation has been completed.
[16.10.14.6 NMAC - N, 1/20/03; A, 4/3/05]

16.10.14.7 DEFINITIONS:

A. “Addiction” is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and, craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

B. “Acute pain” means the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus, typically associated with invasive procedures, trauma or disease and is generally time-limited.

C. “Chronic pain” means pain that persists after reasonable medical efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. “Chronic pain” does not, for purpose of the Pain Relief Act requirements, include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

D. “Clinical expert” means a person who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

E. “Drug abuser” means a person who takes a drug or drugs for other than legitimate medical purposes.

F. “Pain” means acute or chronic pain or both.

G. “Physical dependence” means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

H. “Prescription monitoring program” means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data are used to support efforts in education, research, enforcement and abuse prevention.

I. “Therapeutic purpose” means the use of pharmaceutical and non-pharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management.

J. “Tolerance” means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug’s effects over time.
[16.10.14.7 NMAC - N, 1/20/03; A, 9/28/12]

16.10.14.8 REGULATIONS: The following regulations shall be used by the board to determine whether a health care practitioner’s prescriptive practices are consistent with the appropriate treatment of pain.

A. The treatment of pain with various medicines or controlled substances is a legitimate medical practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence or tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

B. The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following.

(1) A practitioner shall complete a physical examination and include an evaluation of the patient's psychological and pain status. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication or contra-indication against the use of controlled substances.

(2) A practitioner shall be familiar with and employ screening tools as appropriate, as well as the spectrum of available modalities, in the evaluation and management of pain. The practitioner shall consider an integrative approach to pain management.

(3) A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan shall include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

(4) The practitioner shall discuss the risks and benefits of using controlled substances with the patient or surrogate or guardian, and shall document this discussion in the record.

(5) Complete and accurate records of care provided and drugs prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized shall be recorded. Prescriptions for opioids shall include indications for use. For chronic pain patients treated with controlled substance analgesic(s), the prescribing practitioner shall use a written agreement for treatment with the patient outlining patient responsibilities. As part of a written agreement, chronic pain patients shall receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible.

(6) The management of patients needing chronic pain control requires monitoring by the attending or the consulting practitioner. The practitioner shall periodically review the course of treatment for chronic pain, the patient’s state of health, and any new information about the etiology of the chronic pain at least every six months. In addition, a practitioner shall consult, when indicated by the patient’s condition, with health care professionals who are experienced (by the length and type of their practice) in the area of chronic pain control; such professionals need not be those who specialize in pain control.

(7) If, in a practitioner’s medical opinion, a patient is seeking pain medication for reasons that are not medically justified, the practitioner is not required to prescribe controlled substances for the patient.

C. Pain management for patients with substance use disorders shall include:

- (1) a contractual agreement;
- (2) appropriate consultation;
- (3) drug screening when other factors suggest an elevated risk of misuse or diversion; and
- (4) a schedule for re-evaluation at appropriate time intervals at least every six months.

D. The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate medical indication for the treatment prescribed; documented change or persistence of the recognized medical indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the practitioner’s treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient’s pain for its duration while effectively addressing other aspects of the patient’s functioning, including physical, psychological, social, and work-related factors.

E. The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection.

F. A practitioner who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Medical Practice Act or board rules.

[16.10.14.8 NMAC - N, 1/20/03; A, 4/3/05; A, 9/28/12; A, 2/14/13]

16.10.14.9 PHYSICIAN, PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANTS

TREATED WITH OPIATES: Physicians, physician assistants or anesthesiologist assistants who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by an M.D. or D.O. pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing in practice. In addition, they must remain under the care of a physician for as long as they remain on opiates while continuing to practice.

[16.10.14.9 NMAC - N, 4/3/05; A, 9/28/12]

16.10.14.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS: The intent of the New Mexico medical board in requiring participation in the PMP is to assist practitioners in balancing the safe use of controlled substances with the need to impede illegal and harmful activities involving these pharmaceuticals.

A. A health care practitioner who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

B. A health care practitioner shall, before prescribing, ordering, administering or dispensing a controlled substance listed in Schedule II, III or IV, obtain a patient PMP report for the preceding 12 months when one of the following situations exists:

(1) the patient is a new patient of the practitioner, in which situation a patient PMP report for the previous 12 months shall only be required when Schedules II, III, and IV drugs are prescribed for a period greater than 10 days; and

(2) during the continuous use of opioids by established patients a PMP shall be requested and reviewed a minimum of once every six months.

[16.10.14.10 NMAC - N, 9/28/12; A, 2/14/13]

16.10.14.11 PAIN MANAGEMENT CONTINUING EDUCATION: This section applies to all New Mexico medical board licensees who hold a federal drug enforcement administration registration and licensure to prescribe opioids. Pursuant to the Pain Relief Act, in order to ensure that all such health care practitioners safely prescribe for pain management and harm reduction, the following rules shall apply.

A. Immediate requirements effective November 1, 2012. Between November 1, 2012 and no later than June 30, 2014, all New Mexico medical board licensees who hold a federal drug enforcement administration registration and licensure to prescribe opioids, shall complete no less than five continuing medical education hours in appropriate courses that shall include:

- (1) an understanding of the pharmacology and risks of controlled substances,
- (2) a basic awareness of the problems of abuse, addiction and diversion,
- (3) awareness of state and federal regulations for the prescription of controlled substances,
- (4) management of the treatment of pain, and
- (5) courses may also include a review of this rule (16.10.14 NMAC) the applicability of such courses

toward fulfillment of the continuing medical education requirement is subject to medical board approval.

Practitioners who have taken continuing medical education hours in these educational elements between July 1, 2011 and November 1, 2012, may apply those hours toward the required five continuing medical education hours described in this subsection.

B. Triennial requirements for physicians. Beginning with the July 1, 2014 triennial renewal date, as part of the 75 continuing medical education hours required during each triennial renewal cycle, all New Mexico medical board physician licensees who hold a federal drug enforcement administration registration and license to prescribe opioids, shall be required to complete and submit five continuing medical education hours. Appropriate courses shall include all of the educational elements described in Subsection A of this section. The applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval. These hours may be earned at any time during the three-year period immediately preceding the triennial renewal date. The five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A above, may be included as part of the required continuing medical education hours in pain management in either

the triennial cycle in which these hours are completed, or the triennial cycle immediately thereafter.

C. Biennial requirements for physician assistants. Beginning with the July 1, 2014 biennial renewal date, in addition to the NCCPA certification required during each biennial renewal cycle pursuant to 16.10.15.16 NMAC, all New Mexico medical board physician assistant licensees who hold a federal drug enforcement administration registration and license to prescribe opioids, shall be required to complete and submit three continuing medical education hours. Appropriate courses shall include all of the educational elements described in Subsection A of this section. The applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval. These hours may be earned at any time during the two-year period immediately preceding the renewal date. Three of the five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A above, may be included as part of these required three continuing medical education hours in pain management in either the biennial cycle in which these hours are completed, or the biennial cycle immediately thereafter. Any or all three of these hours may also be applied to satisfy NCCPA requirements for certification.

D. Biennial requirements for anesthesiologist assistants. Beginning with the July 1, 2014 biennial renewal date, all New Mexico medical board anesthesiologist assistant licensees who hold a federal drug enforcement administration registration and license to prescribe opioids, shall be required to complete and submit three continuing medical education hours. Appropriate courses shall include all of the educational elements described in Subsection A of this section. The applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval. These hours may be earned at any time during the two-year period immediately preceding the renewal date. Three of the five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A above, may be included as part of these required three continuing medical education hours in pain management in either the biennial cycle in which these hours are completed, or the biennial cycle immediately thereafter.

E. Requirements for new licensees. All New Mexico medical board licensees, whether or not the New Mexico license is their first license, who hold a federal drug enforcement administration registration and license to prescribe opioids, shall complete five continuing medical education hours in pain management during the first year of licensure. These five continuing medical education hours completed prior to the first renewal may be included as part of the hours required in Subsections B, C or D, above.

F. The continuing medical education requirements of this section may be included in the total continuing medical education requirements set forth at 16.10.4.8 NMAC, 16.10.15.16 NMAC and 16.10.19.15 NMAC.

[16.10.14.11 NMAC - N, 9/28/12; A, 2/14/13]

16.10.14.12 NOTIFICATION: In addition to the notice of procedures set forth in the State Rules Act, Section 14-4-1 et seq NMSA 1978, the board shall separately notify the following persons of the Pain Relief Act and Part 14 of the New Mexico medical board rule, 16.10.14 NMAC;

A. health care practitioners under its jurisdiction; and

B. a health care practitioner being investigated by the board in relation to the practitioner's pain management services.

[16.10.14.12 NMAC - N, 9/28/12]

HISTORY OF 16.10.14 NMAC: [RESERVED]