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

16.10.14.1 ISSUING AGENCY: New Mexico Medical Board, hereafter called the board.
[16.10.14.1 NMAC - N, 1/20/2003; A, 4/3/2005]

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, 1/20/2003; A, 9/28/2012]

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 through 24-2D-6 NMSA 1978.
[16.10.14.3 NMAC - N, 1/20/2003; A, 9/28/2012]

16.10.14.4 DURATION: Permanent.
[16.10.14.4 NMAC - N, 1/20/2003]

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, 1/20/2003]

16.10.14.6 OBJECTIVE: This part governs the prescribing of controlled substances in the treatment of pain and other conditions to ensure that they are prescribed for appropriate doses and durations and after a thorough medical evaluation.
[16.10.14.6 NMAC - N, 1/20/2003; A, 4/3/2005; A, 11/30/2016]

16.10.14.7 DEFINITIONS:

A. "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.

B. "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.

C. "Benzodiazepine" means any controlled substance referenced at Subsection A of 16.19.20.68 NMAC, as may be amended from time to time.

D. "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.

E. "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.

F. "Controlled Substance" means a drug or substance listed in schedules I through V of the Controlled Substances Act or regulations adopted thereto.

G. "Delegate" means a person designated by a practitioner pursuant to 16.19.29.9 NMAC for the purpose of requesting and receiving prescription monitoring program (PMP) reports for that practitioner.

H. "Opioid" means the class of drugs that includes the natural derivatives of opium, which are morphine and codeine, and related synthetic and semi-synthetic compounds that act upon opioid receptors.

I. "Opioid antagonist" means a drug approved by the federal food and drug administration that when administered negates or neutralizes in whole or in part the pharmacological effects of an opioid analgesic in the body, including naloxone and such other medications approved by the board of pharmacy for the reversal of opioid analgesic overdoses.

J. **"Pain"** means acute or chronic pain or both.

K. **"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.

L. **"Practitioner"** means a New Mexico medical board licensee maintaining licensure pursuant to state law that allows that individual to prescribe, order, administer or dispense controlled substances to patients (see 16.19.29.7 NMAC).

M. **"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.

N. **"Schedule II-V"** refers to any controlled substance listed in schedule II, III, IV, or V of the Controlled Substances Act found at Chapter 30, Article 31 NMSA 1978, regulations promulgated by the New Mexico board of pharmacy found at 16.19.20 NMAC, or federal controlled substances regulations promulgated pursuant to 21 U.S.C. 812.

O. **"Stimulant"** means any controlled substance referenced in Subsection C of 16.19.20.66 NMAC, Subsection A of 16.19.20.67 NMAC, Subsection D of 16.19.20.68 NMAC, or Subsection B of 16.19.20.69 NMAC, as may be amended from time to time.

P. **"Therapeutic purpose"** means the use of pharmaceutical and non-pharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management and other conditions.

Q **"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, 1/20/2003; A, 9/28/2012; A, 11/30/2016; A, 3/24/2020]

16.10.14.8 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 harmful and illegal activities involving these pharmaceuticals.

A. Any 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 practitioner may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a practitioner's delegate may obtain a report from the state's prescription monitoring program, the practitioner is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the patient's medical record.

C. Before a practitioner prescribes or dispenses for the first time, a controlled substance in schedule II, III, IV or V to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the patient for the preceding 12 months. When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the patient's medical record.

D. A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in schedule II, III, IV or V for each patient. The practitioner shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a practitioner from reviewing prescription monitoring reports with greater frequency than that required by this section.

E. A practitioner does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in schedule II, III, IV or V:

- **(1)** for a period of four days or less; or
- **(2)** to a patient in a nursing facility; or
- **(3)** to a patient in hospice care; or
- **(4)** when prescribing , dispensing or administering of:
  - **(a)** testosterone; or
  - **(b)** pregabalin; or
  - **(c)** lacosamide; or
  - **(d)** ezogabine; or
  - **(e)** stimulant therapy for pediatric patients less than age 14.

F. Upon review of a prescription monitoring report for a patient, the practitioner shall identify, document and be aware of a patient currently:

(1) receiving opioids from multiple prescribers;
(2) receiving opioids and benzodiazepines concurrently;
(3) receiving opioids for more than 12 consecutive weeks;
(4) receiving more than one controlled substance analgesic;
(5) receiving opioids totaling more than 90 morphine milligram equivalents per day;
(6) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, requests for specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

G. Upon recognizing any of the above conditions described in Subsection F of 16.10.14.8 NMAC, the practitioner, using professional judgment based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose. These steps may involve counseling the patient on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

H. Practitioners licensed to practice in an opioid treatment program, as defined in 7.32.8 NMAC, shall review a prescription monitoring report upon a patient's initial enrollment into the opioid treatment program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in schedule II, III, IV or V for the purpose of treating opioid use disorder. The practitioner shall document the receipt and review of a report in the patient's medical record.

[16.10.14.8 NMAC - N, 1/20/2003; A, 4/3/2005; A, 9/28/2012; A, 2/14/13; 16.10.14.8 NMAC - Rp, 16.10.14.10 NMAC, 11/30/2016]

16.10.14.9 REGULATIONS FOR THE APPROPRIATE TREATMENT OF PAIN WITH CONTROLLED SUBSTANCES: 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) When prescribing opioids for chronic pain, practitioners shall require urine drug testing when starting opioid therapy and shall use urine drug testing at least every six months to assess for prescribed medications as well as other controlled prescription drugs and illicit drugs.

(8) 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.

[16.10.14.9 NMAC - N, 4/3/2005; A, 9/28/2012; 16.10.14.9 NMAC - Rp, 16.10.14.8 NMAC, 11/30/2016]

16.10.14.10 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 a physician 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.

[16.10.14.10 NMAC - N, 9/28/2012; A, 2/14/13; 16.10.14.10 NMAC - Rp, 16.10.14.9 NMAC, 11/30/2016; A, 2/8/2022]

16.10.14.11 CONTINUING EDUCATION FOR THE PRESCRIBING OF CONTROLLED SUBSTANCES: This section applies to all New Mexico medical board licensees who hold a federal drug enforcement administration registration and a New Mexico controlled substances registration. 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 a New Mexico controlled substances registration, 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 Subsection A of 16.10.14.11 NMAC.

B. Triennial requirements for physicians: Beginning with the July 1, 2014 triennial renewal date,

pursuant to 16.10.4.8 NMAC, 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 a New Mexico controlled substances registration, shall be required to complete and submit five continuing medical education hours. Appropriate courses shall include all of the educational elements described in Paragraph (1) through (5) of Subsection A of 16.10.14.11 NMAC. A licensee may request prior board approval of the applicability of any courses may be requested. 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 of 16.10.14.11 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, 16.10.15.16 NMAC, in addition to the national commission on certification of physician assistants (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 a New Mexico controlled substances registration, shall be required to complete and submit three continuing medical education hours. Appropriate courses shall include all of the educational elements described in Paragraph (1) through (5) of Subsection A of 16.10.14.11 NMAC, or other courses in pain management with controlled substances. A licensee may request prior board approval of the applicability of any courses may be requested. 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 of 16.10.14.11 NMAC 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, 16.10.19.15 NMAC, all New Mexico medical board anesthesiologist assistant licensees who hold a federal drug enforcement administration registration and a New Mexico controlled substances registration, shall be required to complete and submit three continuing medical education hours. Appropriate courses shall include all of the educational elements described in Paragraph (1) through (5) of Subsection A of 16.10.14.11 NMAC, or other courses in pain management with controlled substances. A licensee may request prior board approval of the applicability of any courses may be requested. 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 of 16.10.14.11 NMAC 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 a New Mexico controlled substances registration, shall complete five continuing medical education hours in pain management during the first year of licensure. These 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 of 16.10.11.14.11 NMAC.
[16.10.14.11 NMAC - N, 9/28/2012; A, 2/14/2013; A, 11/30/2016]

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, 9/28/2012]

16.10.14.13 REQUIREMENTS FOR LICENSEES OF THE NEW MEXICO MEDICAL BOARD WHO PRESCRIBE, DISTRIBUTE OR DISPENSE OPIOID ANALGESICS:

A. A health care provider who prescribes, distributes or dispenses an opioid analgesic for the first time to a patient shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist. With respect to a patient to whom an opioid analgesic has previously been prescribed, distributed or dispensed by the health care provider, the health care provider shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist on the first occasion that the health care

provider prescribes, distributes or dispenses an opioid analgesic each calendar year.

B. A health care provider who prescribes an opioid analgesic for a patient shall co-prescribe an opioid antagonist if the amount of opioid analgesic being prescribed is at least a five-day supply. The prescription for the opioid antagonist shall be accompanied by written information regarding the temporary effects of the opioid antagonist and techniques for administering the opioid antagonist. That written information shall contain a warning that a person administering the opioid antagonist should call 911immediately after administering the opioid antagonist.

[16.10.14.13 NMAC - N, 3/24/2020]

HISTORY OF 16.10.14 NMAC: [RESERVED]