

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)
PART 57 MANAGEMENT OF PAIN WITH CONTROLLED SUBSTANCES

16.5.57.1 ISSUING AGENCY: New Mexico Board of Dental Health Care.
[16.5.57.1 NMAC - N, 7/17/2013]

16.5.57.2 SCOPE: This part applies to all New Mexico dental board licensees who hold a federal drug enforcement administration registration.
[16.5.57.2 NMAC - N, 7/17/2013]

16.5.57.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to and in accordance with Section 61-5A-4, NMSA 1978, of the Dental Health Care Act and the Pain Relief Act, Sections 24-2D-1 through 24-2D-6, NMSA 1978.
[16.5.57.3 NMAC - N, 7/17/2013]

16.5.57.4 DURATION: Permanent.
[16.5.57.4 NMAC - N, 7/17/2013]

16.5.57.5 EFFECTIVE DATE: July 17, 2013, unless a later date is cited at the end of a section.
[16.5.57.5 NMAC - N, 7/17/2013]

16.5.57.6 OBJECTIVE: It is the position of the board that dentists have an obligation to treat pain, and that a wide variety of drugs including controlled substances may be prescribed for that purpose. When such controlled substances are used, they should be prescribed in adequate doses and for the appropriate length of time after a thorough dental evaluation has been completed.
[16.5.57.6 NMAC - N, 7/17/2013]

16.5.57.7 DEFINITIONS:

A. “Addiction” means a neurobehavioral syndrome with genetic and environmental influences that result 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.

B. “Accepted guideline” means the most current clinical pain management guideline developed by the American geriatrics society or the American pain society or a clinical pain management guideline based on evidence and expert opinion that has been accepted by the New Mexico medical board.

C. “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.

D. “Chronic pain” means pain that persists after reasonable dental 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. “Drug abuser” means a person who takes a drugs or controlled substances for other than legitimate dental purposes.

G. “Opioid analgesic” means buprenorphine, butorphanol, codeine, hydrocodone, hydromorphone, levorphanol, meperidine, methadone, morphine, nalbuphene, oxycodone, ocymorphone, pentazocine and propoxyphene as well as their brand names, isomers and combinations.

H. “Opioid antagonist” means a drug approved byt 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.

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

J. “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.

K. “Prescription monitoring program (PMP)” 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 is used to support efforts in education, research, enforcement, and abuse prevention.

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

M. “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.

[16.5.57.7 NMAC - N, 7/17/2013; A, 12/14/2019]

16.5.57.8 GUIDELINES: The following regulations shall be used by the board to determine whether a dentist’s prescriptive practices as consistent with the appropriate treatment of pain.

A. The treatment of pain with drugs or controlled substances is a legitimate dental 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 dentist shall complete an evaluation. 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 for or contra-indication against the use of controlled substance.

(2) A dentist 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 dentist 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 dentist 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 or controlled substances 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 controlled substances shall include indications for use.

(6) The management of patients needing chronic pain control requires monitoring by the dentist. The dentist 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. Chronic pain patients shall receive all chronic pain management prescriptions from one dentist and one pharmacy whenever possible.

(7) In addition, a dentist shall consult, when indicated by the patient’s condition, with health care professionals who are experienced in the area of chronic pain control; such professionals need not be those who specialize in pain control.

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

(9) A dentist 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 dentist, the dentist 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 dentist prescribes, distributes or dispenses an opioid analgesic each calendar year.

(10) A dentist 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 911 immediately after administering the opioid antagonist.

C. The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate indication for the treatment prescribed; documented change or persistence of the recognized indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the dentist'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.

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

E. A dentist 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 Dental Health Care Act or board rules.

[16.5.57.8 NMAC - N, 7/17/2013; A, 12/14/2019]

16.5.57.9 DENTISTS TREATED WITH CONTROLLED SUBSTANCES: Dentists who have chronic pain and are being treated with controlled substances 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 controlled substances while continuing to practice.

[16.5.57.9 NMAC - N, 7/17/2013]

16.5.57.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:

The intent of the New Mexico board of dental health care in requiring participation in the PMP is to assist dentists in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals.

A. Any dentist 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 the PMP inquiry and reporting.

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

C. Before a dentist 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 dentist shall review a prescription monitoring report for the patient for the preceding 12 months. When available, the dentist shall review similar reports from adjacent states. The dentist 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 dentist shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a dentist from reviewing prescription monitoring reports with greater frequency than that required by this section.

E. A dentist 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.

F. Upon review of a prescription monitoring report for a patient, the dentist shall identify 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 Paragraph (10) of Subsection F of 16.5.57 NMAC, the dentist shall refer to the guidelines outlined in 16.5.57.8 NMAC [16.5.57.10 NMAC - N, 07/17/2013; A, 3/15/2017]

16.5.57.11 PAIN MANAGEMENT CONTINUING EDUCATION: This section applies to all New Mexico dentists who hold a federal drug enforcement administration registration to prescribe controlled substances. 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 July 17, 2013. Between July 17, 2013 and no later than June 30, 2014, all board licensees who hold a federal drug enforcement administration registration to prescribe controlled substances shall complete no less than three continuing dental or medical education hours in appropriate courses that shall include:

- (1) an understanding of the pharmacology and risks on 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) dentists who have taken continuing education hours in these educational elements

between July 1, 2012 and July 17, 2013 and reviewed this rule, may apply those hours toward the required three continuing education hours described in this section.

B. Triennial requirements: Beginning with the July 1, 2014 triennial renewal date, all New Mexico dentist licensees who hold a federal drug enforcement administration registration shall be required to complete and submit three continuing education hours; these hours shall count toward the 60 continuing education hours required during each triennial cycle. 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 education requirement is subject to board approval. These hours may be earned at any time during the three-year period immediately preceding the triennial renewal date. The three continuing education hours completed prior to July 1, 2014, as defined in Subsection A, may be included as part of the required continuing education hours in pain management in either the triennial cycle in which those hours are completed or the triennial cycle immediately thereafter.

C. Requirements for new licensees: All New Mexico dental licensees who hold a federal drug enforcement administration registration, whether or not the New Mexico license is the licensee's their first license, shall complete three continuing education hours in pain management during the first year of licensure. These three continuing education hours completed prior to the first renewal may be included as part of the hours required in Subsection B of this section.

D. The continuing education requirements of this section shall be included in the total continuing education requirements as set forth in 16.5.10 NMAC. [16.5.57.11 NMAC - N, 7/17/2013; A, 1/11/2015]

16.5.57.12 NOTIFICATION: In addition to the notice of procedures set forth in the State Rules Act Chapter 14, Article 4, NMSA 1978, the board shall separately notify the following persons of the Pain Relief Act and Part 57 of the New Mexico dental board rule;

- A.** health care practitioner's under its jurisdiction; and
- B.** a health care practitioner being investigated by the board in relation to the practitioner's pain management services.

[16.5.57.12 NMAC - N, 7/17/2013]

HISTORY OF 16.5.57 NMAC: [RESERVED]