**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**
**CHAPTER 21 PODIATRISTS**
**PART 9 MANAGEMENT OF PAIN WITH CONTROLLED SUBSTANCES**

**16.21.9.1 ISSUING AGENCY:** Regulation and Licensing Department, NM Board of Podiatry.
[16.21.9.1 NMAC - N, 11/1/2013]

**16.21.9.2 SCOPE:** This part applies to all New Mexico licensed podiatrists who hold a federal drug enforcement administration registration.
[16.21.9.2 NMAC - N, 11/1/2013]

**16.21.9.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to and in accordance with the Podiatry Act, Sections 61-8-1 through 61-8-17 NMSA 1978 and the Pain Relief Act, Sections 24-2D-1 NMSA through 24-2D-6.
[16.21.9.3 NMAC - N, 11/1/2013]

**16.21.9.4 DURATION:** Permanent.
[16.21.9.4 NMAC - N, 11/1/2013]

**16.21.9.5 EFFECTIVE DATE:** November 1, 2013, unless a later date is cited at the end of a section.
[16.21.9.5 NMAC - N, 11/1/2013]

**16.21.9.6 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.
[16.21.9.6 NMAC - N, 11/1/2013]

**16.21.9.7 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.
[16.21.9.7 NMAC - N, 11/1/2013]

**16.21.9.8 HEALTH CARE PRACTITIONER'S PRESCTIPTIVE PRACTICES:** 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 Podiatry Act or board rules.

[16.21.9.8 NMAC - N, 11/1/2013]

**16.21.9.9 PODIATRIC PHYSICIAN TREATED WITH OPIATES:** Podiatric physicians who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by an MD or DO 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.

[16.21.9.9 NMAC - N, 11/1/2013]

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

**A.** A podiatrist 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 podiatrist 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.

**F.** Upon review of a prescription monitoring report for a patient, the practitioner 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 twelve 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 Subparagraph F of 16.21.9 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 including reporting of health care providers to their licensing board if prevailing prescribing standards are being deviated from. 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.
[16.21.9.10 NMAC - N, 11/01/13; A, 12/30/2016]

**16.21.9.11 PAIN MANAGEMENT CONTINUING EDUCATION:** This section applies to all New Mexico board of podiatry licensees.

**A. Immediate requirements effective January 2, 2014.** Beginning January 2, 2014 and then for each annual renewal cycle, all New Mexico board of podiatry licensees shall complete no less than two continuing medical education hours in appropriate courses:

**(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)** courses may also include a review of this rule (16.21.9 NMAC); the applicability of such courses toward fulfillment of the continuing medical education requirement is subject to New Mexico board of podiatry approval; podiatrists who have taken CME in these educational elements between January 1, 2013 and December 31, 2014 may apply those hours toward the required two CME described in this section.

**B. Requirements for new licensees.** All New Mexico board of podiatry licensees, whether or not the New Mexico license is their first license shall complete two continuing medical education hours in pain management during the first year of licensure and then for each annual renewal cycle.

**C.** The continuing education requirements of this section are included in the sixteen hours needed for renewal.
[16.21.9.11 NMAC - N, 11/1/2013]

**16.21.9.12 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 the New Mexico podiatry board rule, 16.21.9 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.
[16.21.9.12 NMAC - N, 11/1/2013]

**HISTORY OF 16.21.9 NMAC: [RESERVED]**