

This is an amendment to 16.12.9 NMAC, Sections 2, 3, 6, 7, 8, adding new Sections 9, 10, 11 and renumbering and amending Section 12, effective 11-20-12.

16.12.9.2 SCOPE: This rule applies to all advanced practice nurses, including certified nurse practitioners, certified registered nurse anesthetists, and clinical nurse [specialist] specialists with prescriptive authority.
[16.12.9.2 NMAC - N, 02-17-06; A, 11-20-12]

16.12.9.3 STATUTORY AUTHORITY: Section 61-3-1 *et seq.*, authorized the board of nursing to regulate the practice of nursing in the state and the Pain Relief Act, sections 24-2D-1 through 24-2D-6.
[16.12.9.3 NMAC - N, 02-17-06, A, 11-20-12]

16.12.9.6 OBJECTIVE: It is the position of the board that certified nurse practitioners, certified registered nurse anesthetists and clinical nurse [specialist] specialists with prescriptive authority 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 length of time] after a thorough [medical] evaluation has been completed.
[16.12.9.6 NMAC - N, 02-17-06; A, 11-20-12]

16.12.9.7 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 generally time limited.

~~[A.]~~ **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.

~~[B.]~~ **C. “Chronic pain”** means [a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated] pain that persists after reasonable 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 the 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.

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

~~[D.]~~ **F. “Pain”** means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation and damage, which could include acute, persistent or chronic pain.

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

H. “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 are used to support efforts in education, research, enforcement and abuse prevention.

I. “Therapeutic purpose” means the use of pharmaceutical and non-pharmaceutical treatments and the spectrum of available modalities that conforms substantially to accepted guidelines for pain management.

~~[F.]~~ **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.

[16.12.9.7 NMAC - N, 02-17-06; A, 11-20-12]

16.12.9.8 [GUIDELINES] RULES: The following ~~[guidelines with]~~ rules shall be used by the board to determine whether a ~~[certified nurse practitioner or clinical nurse specialist’s]~~ health care practitioner’s prescriptive practices are consistent with the appropriate treatment of pain.

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

B. Pain management for patients with substance use disorders should include a contractual agreement, the use of drug screens prior to treatment with opiates and during the course of treatment to identify actual drugs being consumed and to compare with patients self reports. If concerns about misuse are identified, the patient will be referred for appropriate consultation, and scheduled for re-evaluation at appropriate time intervals.

~~[B.]~~ **C.** 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 history and 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 substances 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 well as the spectrum of available modalities for therapeutic purposes, in the evaluation and management of pain. They shall consider an integrative approach to pain management specialists including but not limited to an acupuncturist, chiropractor, doctor of oriental medicine, exercise physiologist, massage therapist, pharmacist, physical therapist, psychiatrist, psychologist or other advanced practice registered nurse.

~~[(2)]~~ (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 should include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

~~[(3)]~~ (4) The practitioner shall provide education and discuss the risks and benefits of using controlled substances with the patient ~~[and/or]~~ or surrogate or guardian, and shall document this in the record.

~~[(4)]~~ (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 should be recorded. ~~[Patients with a history of substance abuse or who are in an environment posing a high risk for misuse or diversion of drugs (e.g., living with a drug abuser, living or working in a place where drugs are available) may require special consideration]~~ Prescriptions for opioids shall include indications for use. For chronic noncancer 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 noncancer pain patients shall receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible.

~~[(5)]~~ (6) The management of patients needing chronic pain control requires monitoring by the attending ~~[and/or]~~ or the consulting practitioner. The practitioner shall periodically review the course of treatment for chronic noncancer pain, the patient's state of health, and any new information about the etiology of the chronic noncancer pain at least every six months. In addition, a practitioner should 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. Consultation should occur early in the course of long-term treatment, and at reasonable intervals during continued long-term treatment for assessment of benefit and need, ~~[It is especially important, when treating addicts for legitimate pain apart from their addiction, to obtain a contractual agreement with the patient, appropriate consultation, and to set a schedule for re-evaluation of appropriate time intervals.]~~ at least every six months. Drug screening is recommended and should be conducted when other factors suggest an elevated risk of misuse or diversion.

~~[(6)]~~ (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.]~~ **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.

~~[D.] E.~~ The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection as a guiding principle.

~~[E.] F.~~ A practitioner who appropriately ~~[prescribe]~~ prescribes controlled substances and who ~~[follow]~~ 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 Nursing Practice Act, board rules and Pain Relief Act (24-2 D, 1 to 24-2 D, 6 NMSA 1978).

[16.12.9.8 NMAC - N, 02-17-06, A, 11-20-12]

16.12.9.9 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS: The intent of the NM board of nursing 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 nursing care and services with the need to impede illegal and harmful activities involving these pharmaceuticals.

A. A health care provider who holds a federal drug enforcement administration registration and licensure to prescribe opioids shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

B. Upon prescribing, ordering, administering or dispensing a controlled substance, the practitioner shall obtain and review a prescription monitoring report covering at least a one year time period or another state's report, where applicable and available. The practitioner shall be aware of a person currently:

- (1) receiving opiates from multiple prescribers;
- (2) receiving opiates for more than twelve consecutive weeks;
- (3) receiving more than one controlled substance analgesic;
- (4) receiving a new prescription for any long-acting controlled substance analgesic formulation, including oral dosage forms and transdermal (e.g. fentanyl) or methadone;
- (5) exhibiting potential for abuse or misuse of opiates (i.e. over-utilization, early refills, appears overly sedated or intoxicated upon presentation, or an unfamiliar patient requesting an opiate by specific name, street name, color, or identifying marks, or paying cash when the patient has prescription insurance).

C. Upon recognizing any of the above, the practitioner, using professional judgment, shall take appropriate steps to avoid or resolve the potential problem. These steps may include requesting and reviewing additional controlled substance prescription monitoring reports or another state's report if applicable and available, or consulting with a pain management specialist or addiction treatment specialist or counseling the patient, which may include termination of treatment. The practitioner shall document steps taken to resolve the potential problem, which may include termination from treatment.

D. After obtaining an initial prescription monitoring report on a patient, the practitioner shall use professional judgment based on prevailing standards of practice in deciding the frequency of requesting and reviewing further prescription monitoring reports or other state's report on that patient. Prescription monitoring reports shall be requested and reviewed a minimum of once every six months during the continuous use of opioids for each established patient. The practitioner shall document the review of these reports.

[16.12.9.9 NMAC - N, 11-20-12]

16.12.9.10 NON-CANCER PAIN MANAGEMENT CONTINUING EDUCATION: Any health care provider with a DEA registration and licensure that permits prescribing opioids, shall obtain continuing education on the management of non-cancer pain. These practitioners shall be required to obtain five CE of the 15 CE currently required every two years in pharmacology to include a review of these rules (16.12.9 NMAC) for management of non-cancer pain, an understanding of the pharmacology and risks of controlled substances, a basic awareness of the problems of abuse, addiction and diversion, and awareness of state and federal regulations for the prescription of controlled substances.

[16.12.9.10 NMAC - N, 11-20-12]

16.12.9.11 NOTIFICATION: The board shall notify the following persons of the Pain Relief Act and Part 9 of the New Mexico nursing board rule: 16.12.9 NMAC. The board shall notify the following persons of the Pain Relief Act and rules:

- (1) health care providers under its jurisdiction; and
- (2) a health care provider being investigated by the board in relation to the provider's pain management services.

[16.12.9.11 NMAC - N, 11-20-12]

~~[16.12.9.9]~~ 16.12.9.12 ADVANCED PRACTICE NURSES, REGISTERED NURSES, AND LICENSED PRACTICAL NURSES TREATED WITH OPIATES: Advanced practice nurses, registered nurses, licensed practical nurses who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by a physician, CRNA, CNP, CNS pain specialist and must have a complete, independent neuropsychological evaluation, as well as clearance from their practitioner, before returning to or continuing in practice. In addition, they must remain under the care of a physician, CRNA, CNP or CNS for as long as they remain on opiates while continuing to practice.

[16.12.9.12 NMAC - Rn & A, 16.12.9.9 NMAC; 11-20-12]