

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR

SENATE BILL 159

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

AN ACT

RELATING TO HEALTH CARE; MANDATING PROCEDURES RELATING TO THE
PRESCRIBING AND DISPENSING OF CERTAIN PRESCRIPTIONS FOR OPIOID
MEDICATIONS; CREATING AN OPIOID MEDICATION PRESCRIBING LIMITS
COUNCIL; AMENDING SECTIONS OF CHAPTER 61 NMSA 1978 TO REQUIRE
ADOPTION OF RULES RELATED TO OPIOID MEDICATION PRESCRIBING AND
REFILL LIMITS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME
SECTION OF LAWS IN LAWS 2003.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the New Mexico Drug, Device
and Cosmetic Act is enacted to read:

"[NEW MATERIAL] OPIOID MEDICATION--DOCUMENTED, INFORMED
CONSENT REQUIRED--PATIENT EDUCATION--PRESCRIBING AND DISPENSING
PROCEDURES.--

A. Before issuing a prescription for any opioid

.189521.5

underscored material = new
[bracketed material] = delete

1 medication for the first time to a patient, a practitioner
2 shall obtain documented, informed consent from:

3 (1) the patient for whom the practitioner
4 wishes to prescribe the opioid medication, if the patient is an
5 adult;

6 (2) the patient's parent, guardian or legal
7 representative, if the patient is a minor;

8 (3) the patient's guardian or legal
9 representative, if the patient is an adult who has been judged
10 to be incompetent to provide informed consent; or

11 (4) the patient's surrogate appointed pursuant
12 to Section 24-7A-5 NMSA 1978.

13 B. In the process of obtaining documented, informed
14 consent pursuant to Subsection A of this section, a
15 practitioner shall discuss with the patient or the patient's
16 parent, legal guardian or legal representative the risks and
17 benefits of using opioid medication and shall ensure that the
18 patient or the patient's parent, legal guardian or legal
19 representative is provided with written materials containing
20 current, factual information on the risks associated with using
21 opioids and on the safe use of opioids.

22 C. A practitioner is not required to obtain
23 documented, informed consent from a patient if the practitioner
24 writes a prescription for an opioid medication that the
25 practitioner has previously prescribed to that patient.

1 D. Notwithstanding any other provision of law,
2 consent and counseling are not required pursuant to Subsections
3 A through C of this section when health care decisions are made
4 pursuant to the provisions of Sections 24-10-1 through 24-10-4
5 NMSA 1978.

6 E. When a patient who is a minor seeks to fill or
7 refill a prescription for an opioid medication by presenting
8 the prescription to a dispenser, or when that patient seeks to
9 obtain a filled opioid medication prescription from a
10 dispenser, the minor patient shall be accompanied by the
11 patient's parent, guardian or legal representative.

12 F. A practitioner shall retain a copy of the
13 documented, informed consent obtained pursuant to Subsection A
14 of this section for a period of time that the board shall
15 designate by rule.

16 G. A practitioner who treats a non-cancer patient
17 with a Schedule II or Schedule III opioid medication for a
18 period greater than thirty days shall review a board
19 prescription drug monitoring report for that patient as defined
20 by the licensing board with authority over the practitioner.
21 The practitioner's licensing board operating pursuant to
22 Chapter 61 NMSA 1978 shall enforce the provisions of this
23 subsection.

24 H. The provisions of this section shall not apply
25 to any procedure or treatment for a minor that does not require

.189521.5

1 parental consent.

2 I. Violations of the provisions of this section
3 shall be referred to the violating practitioner's licensing
4 board and shall not be subject to the penalties provided
5 pursuant to Section 26-1-26 NMSA 1978.

6 J. The provisions of this section shall not apply
7 to a practitioner who is a veterinarian.

8 K. For the purposes of this section:

9 (1) "adult" means an individual who is:

10 (a) over eighteen years of age; or

11 (b) under eighteen years of age and
12 emancipated;

13 (2) "dispenser" means a person who delivers an
14 opioid medication to the opioid medication's ultimate user, but
15 "dispenser" does not mean:

16 (a) a licensed hospital pharmacy that
17 distributes opioid medications for the purpose of inpatient
18 hospital care;

19 (b) a practitioner or other authorized
20 person who directly administers an opioid medication to a
21 patient;

22 (c) a wholesale distributor of a
23 Schedule II, III, IV or V controlled substance included in the
24 Controlled Substance Act; or

25 (d) a health facility that the

.189521.5

1 department of health licenses as a clinic, urgent care or
2 emergency facility that dispenses no more than four dosage
3 units to an individual patient within a twenty-four-hour
4 period;

5 (3) "emancipated" means the status of being
6 between sixteen years of age and eighteen years of age and:

7 (a) married;

8 (b) on active duty in the armed forces;

9 or

10 (c) having been declared by court order
11 to be emancipated;

12 (4) "minor" means an individual under the age
13 of eighteen who is not emancipated;

14 (5) "opioid medication" means a substance
15 that:

16 (a) binds to and stimulates the opioid
17 receptors on the surface of the cell;

18 (b) is specifically indicated to treat
19 acute pain, chronic pain or cancer pain, cough suppression or
20 diarrhea, or for opioid replacement therapy or hospice care;

21 (c) is a dangerous drug; and

22 (d) is a Schedule II, III, IV or V
23 controlled substance included in the Controlled Substances Act;

24 (6) "prescription drug monitoring report"
25 means a report generated by the prescription drug monitoring

.189521.5

1 program operated by the board;

2 (7) "Schedule II opioid medication" means an
3 opioid medication listed in Schedule II of the Controlled
4 Substances Act; and

5 (8) "Schedule III opioid medication" means an
6 opioid medication that is listed in Schedule III of the
7 Controlled Substances Act."

8 SECTION 2. A new section of the New Mexico Drug, Device
9 and Cosmetic Act is enacted to read:

10 "[NEW MATERIAL] OPIOID MEDICATION PRESCRIBING LIMITS
11 COUNCIL--MEMBERSHIP--DUTIES.--

12 A. The "opioid medication prescribing limits
13 council" is created for the purpose of developing opioid
14 medication prescribing and refill limits for health care
15 providers in order to reduce the misuse of prescription opioid
16 medication.

17 B. The council consists of at least eighteen
18 members, all of whom shall be appointed by the secretary of
19 health. The membership of the council shall include:

20 (1) the secretary of health or the secretary's
21 designee;

22 (2) a representative of each of the following
23 entities:

24 (a) the New Mexico medical board;

25 (b) the board of nursing;

- 1 (c) the board of pharmacy;
- 2 (d) the board of osteopathic medical
- 3 examiners;
- 4 (e) the board of optometry;
- 5 (f) the board of podiatry;
- 6 (g) the New Mexico board of dental
- 7 health care;
- 8 (h) a statewide medical association;
- 9 (i) a statewide association of nurse
- 10 practitioners;
- 11 (j) a statewide association of
- 12 pharmacists;
- 13 (k) a statewide association of
- 14 osteopathic physicians;
- 15 (l) a statewide association of
- 16 optometrists;
- 17 (m) a statewide association of
- 18 podiatrists; and
- 19 (n) a statewide association of dentists;
- 20 (3) a pain management specialist; and
- 21 (4) two patient advocates.

22 C. The secretary of health or the secretary's
23 designee shall chair the council.

24 D. The council shall meet regularly at the call of
25 the chair.

.189521.5

1 E. By September 1, 2012, the council shall develop
2 recommendations on prescribing and refill limits for opioid
3 medications that are consistent for all seven licensing boards
4 represented on the council. The recommendations on prescribing
5 and refill limits shall be more stringent than those
6 promulgated by the federal drug enforcement administration and
7 no less stringent than those of the New Mexico medical board.

8 F. The council shall terminate on December 31,
9 2012.

10 G. For the purposes of this section, "opioid
11 medication" means a substance that:

12 (1) binds to and stimulates the opioid
13 receptors on the surface of the cell;

14 (2) is specifically indicated to treat acute
15 pain, chronic pain or cancer pain, cough suppression or
16 diarrhea or for opioid replacement therapy or hospice care;

17 (3) is a dangerous drug; and

18 (4) is a Schedule II, III, IV or V controlled
19 substance included in the Controlled Substances Act."

20 **SECTION 3.** Section 61-2-6 NMSA 1978 (being Laws 1973,
21 Chapter 353, Section 5, as amended) is amended to read:

22 "61-2-6. ORGANIZATION--MEETINGS--COMPENSATION--POWERS AND
23 DUTIES.--

24 A. The board shall annually elect a [~~chairman~~]
25 chair, a vice [~~chairman~~] chair and a secretary-treasurer; each

.189521.5

1 shall serve until [~~his~~] a successor is elected and qualified.

2 B. The board shall meet at least annually for the
3 purpose of examining candidates for licensure. Special
4 meetings may be called by the [~~chairman~~] chair and shall be
5 called upon the written request of a majority of the board
6 members. A majority of the board members currently serving
7 constitutes a quorum.

8 C. Members of the board may be reimbursed as
9 provided in the Per Diem and Mileage Act but shall receive no
10 other compensation, perquisite or allowance.

11 D. The board shall:

12 (1) administer and enforce the provisions of
13 the Optometry Act;

14 (2) adopt, publish and file, in accordance
15 with the Uniform Licensing Act and the State Rules Act, all
16 rules [~~and regulations~~] for the implementation and enforcement
17 of the provisions of the Optometry Act;

18 (3) adopt and use a seal;

19 (4) administer oaths and take testimony on
20 matters within the board's jurisdiction;

21 (5) keep an accurate record of meetings,
22 receipts and disbursements;

23 (6) keep a record of examinations held,
24 together with the names and addresses of persons taking the
25 examinations and the examination results. Within thirty days

.189521.5

1 after an examination, the board shall give written notice to
2 each applicant examined of the results of the examination as to
3 the respective applicant;

4 (7) certify as passing each applicant who
5 obtains a grade of at least seventy-five percent on each
6 subject upon which ~~[he]~~ the applicant is examined; ~~[providing]~~
7 provided that an applicant failing may apply for re-examination
8 at the next scheduled examination date;

9 (8) keep a book of registration in which the
10 name, address and license number of licensees shall be
11 recorded, together with a record of license renewals,
12 suspensions and revocations;

13 (9) grant, deny, renew, suspend or revoke
14 licenses to practice optometry in accordance with the
15 provisions of the Uniform Licensing Act for any cause stated in
16 the Optometry Act;

17 (10) develop and administer qualifications for
18 certification for the use of topical ocular pharmaceutical
19 agents and oral pharmaceutical agents as authorized in Section
20 61-2-10.2 NMSA 1978, including minimum educational requirements
21 and examination, as required by Section 61-2-10 NMSA 1978 and
22 provide the board of pharmacy with an annual list of
23 optometrists certified to use topical ocular pharmaceutical
24 agents and oral pharmaceutical agents as authorized in Section
25 61-2-10.2 NMSA 1978; and

.189521.5

1 (11) provide for the suspension of an
 2 optometrist's license for sixty days upon a determination of
 3 use of pharmaceutical agents without prior certification in
 4 accordance with Section 61-2-10 NMSA 1978, after proper notice
 5 and an opportunity to be heard before the board.

6 E. By December 1, 2012, the board shall adopt rules
 7 relating to the prescribing and refilling of prescriptions of
 8 opioid medications that are consistent with the recommendations
 9 that the opioid medication prescribing limits council has made
 10 pursuant to Section 2 of this 2012 act. As used in this
 11 subsection, "opioid medication" means a substance that:

12 (1) binds to and stimulates the opioid
 13 receptors on the surface of the cell;

14 (2) is specifically indicated to treat acute
 15 pain, chronic pain or cancer pain, cough suppression or
 16 diarrhea or for opioid replacement therapy or hospice care;

17 (3) is a dangerous drug; and

18 (4) is a Schedule II, III, IV or V controlled
 19 substance included in the Controlled Substances Act."

20 SECTION 4. Section 61-3-10 NMSA 1978 (being Laws 1968,
 21 Chapter 44, Section 7, as amended by Laws 2003, Chapter 276,
 22 Section 4 and by Laws 2003, Chapter 307, Section 7) is amended
 23 to read:

24 "61-3-10. POWERS--DUTIES.--

25 A. The board:

.189521.5

1 ~~[A.]~~ (1) shall adopt and revise such rules
2 ~~[and regulations]~~ as may be necessary to enable it to carry
3 into effect the provisions of the Nursing Practice Act and to
4 maintain high standards of practice;

5 ~~[B.]~~ (2) shall prescribe standards and approve
6 curricula for educational programs preparing persons for
7 licensure under the Nursing Practice Act;

8 ~~[C.]~~ (3) shall provide for surveys of
9 educational programs preparing persons for licensure under the
10 Nursing Practice Act;

11 ~~[D.]~~ (4) shall grant, deny or withdraw
12 approval from educational programs for failure to meet
13 prescribed standards, if a majority of the board concurs in the
14 decision;

15 ~~[E.]~~ (5) shall provide for the examination,
16 licensing and renewal of licenses of applicants;

17 ~~[F.]~~ (6) shall conduct hearings upon charges
18 relating to discipline of a licensee or nurse not licensed to
19 practice in New Mexico who is permitted to practice
20 professional registered nursing or licensed practical nursing
21 in New Mexico pursuant to a multistate licensure privilege as
22 provided in the Nurse Licensure Compact or the denial,
23 suspension or revocation of a license in accordance with the
24 procedures of the Uniform Licensing Act;

25 ~~[G.]~~ (7) shall cause the prosecution of all

1 persons, including firms, associations, institutions and
 2 corporations, violating the Nursing Practice Act and have the
 3 power to incur such expense as is necessary therefor;

4 [H.] (8) shall keep a record of all
 5 proceedings;

6 [I.] (9) shall make an annual report to the
 7 governor;

8 [J.] (10) shall appoint and employ a qualified
 9 registered nurse, who shall not be a member of the board, to
 10 serve as executive officer to the board, who shall define the
 11 duties and responsibilities of the executive officer, except
 12 that the power to grant, deny or withdraw approval for schools
 13 of nursing or to revoke, suspend or withhold any license
 14 authorized by the Nursing Practice Act shall not be delegated
 15 by the board;

16 [K.] (11) shall provide for such qualified
 17 assistants as may be necessary to carry out the provisions of
 18 the Nursing Practice Act. Such employees shall be paid a
 19 salary commensurate with their duties;

20 [L.] (12) shall, for the purpose of protecting
 21 the health and well-being of the [~~citizens~~] residents of New
 22 Mexico and promoting current nursing knowledge and practice,
 23 adopt rules [~~and regulations~~] establishing continuing education
 24 requirements as a condition of license renewal and shall study
 25 methods of monitoring continuing competence;

.189521.5

1 [M.] (13) may appoint advisory committees
2 consisting of at least one member who is a board member and at
3 least two members expert in the pertinent field of health care
4 to assist it in the performance of its duties. Committee
5 members may be reimbursed as provided in the Per Diem and
6 Mileage Act;

7 [N.] (14) may adopt and revise rules [~~and~~
8 ~~regulations~~] designed to maintain an inactive status listing
9 for registered nurses and licensed practical nurses;

10 [O.] (15) may adopt rules and regulations to
11 regulate the advanced practice of professional registered
12 nursing and expanded practice of licensed practical nursing;

13 [P.] (16) shall license qualified certified
14 nurse practitioners, certified registered nurse anesthetists
15 and clinical nurse specialists;

16 [Q.] (17) shall register nurses not licensed
17 to practice in New Mexico who are permitted to practice
18 professional registered nursing or licensed practical nursing
19 in New Mexico pursuant to a multistate licensure privilege as
20 provided in the Nurse Licensure Compact; and

21 [R.] (18) shall adopt rules [~~and regulations~~]
22 establishing standards for authorizing prescriptive authority
23 to certified nurse practitioners, clinical nurse specialists
24 and certified registered nurse anesthetists.

25 B. By December 1, 2012, the board shall adopt rules

1 relating to the prescribing and refilling of prescriptions of
2 opioid medications that are consistent with the recommendations
3 that the opioid medication prescribing limits council has made
4 pursuant to Section 2 of this 2012 act. As used in this
5 subsection, "opioid medication" means a substance that:

6 (1) binds to and stimulates the opioid
7 receptors on the surface of the cell;

8 (2) is specifically indicated to treat acute
9 pain, chronic pain or cancer pain, cough suppression or
10 diarrhea or for opioid replacement therapy or hospice care;

11 (3) is a dangerous drug; and

12 (4) is a Schedule II, III, IV or V controlled
13 substance included in the Controlled Substances Act."

14 SECTION 5. Section 61-5A-10 NMSA 1978 (being Laws 1994,
15 Chapter 55, Section 10, as amended) is amended to read:

16 "61-5A-10. POWERS AND DUTIES OF THE BOARD AND
17 COMMITTEE.--

18 A. In addition to any other authority provided by
19 law, the board and the committee, when designated, shall:

20 ~~[A.]~~ (1) enforce and administer the provisions
21 of the Dental Health Care Act;

22 ~~[B.]~~ (2) adopt, publish, file and revise, in
23 accordance with the Uniform Licensing Act and the State Rules
24 Act, all rules as may be necessary to:

25 ~~{+}~~ (a) regulate the examination and

.189521.5

1 licensure of dentists and, through the committee, regulate the
2 examination and licensure of dental hygienists;

3 [~~(2)~~] (b) provide for the examination
4 and certification of dental assistants by the board;

5 [~~(3)~~] (c) provide for the regulation of
6 dental technicians by the board;

7 [~~(4)~~] (d) regulate the practice of
8 dentistry and dental assisting and, through the committee,
9 regulate the practice of dental hygiene; and

10 [~~(5)~~] (e) provide for the regulation and
11 licensure of non-dentist owners by the board;

12 [~~(6)~~] (3) adopt and use a seal;

13 [~~(D)~~] (4) administer oaths to all applicants,
14 witnesses and others appearing before the board or the
15 committee, as appropriate;

16 [~~(E)~~] (5) keep an accurate record of all
17 meetings, receipts and disbursements;

18 [~~(F)~~] (6) grant, deny, review, suspend and
19 revoke licenses and certificates to practice dentistry, dental
20 assisting and, through the committee, dental hygiene and
21 censure, reprimand, fine and place on probation and stipulation
22 dentists, dental assistants and, through the committee, dental
23 hygienists, in accordance with the Uniform Licensing Act for
24 any cause stated in the Dental Health Care Act;

25 [~~(G)~~] (7) grant, deny, review, suspend and

1 revoke licenses to own dental practices and censure, reprimand,
 2 fine and place on probation and stipulation non-dentist owners,
 3 in accordance with the Uniform Licensing Act, for any cause
 4 stated in the Dental Health Care Act;

5 ~~[H.]~~ (8) maintain records of the name,
 6 address, license number and such other demographic data as may
 7 serve the needs of the board of licensees, together with a
 8 record of license renewals, suspensions, revocations,
 9 probations, stipulations, censures, reprimands and fines. The
 10 board shall make available composite reports of demographic
 11 data but shall limit public access to information regarding
 12 individuals to their names, addresses, license numbers and
 13 license actions or as required by statute;

14 ~~[I.]~~ (9) hire and contract for services from
 15 persons as necessary to carry out the board's duties;

16 ~~[J.]~~ (10) establish ad hoc committees whose
 17 members shall be appointed by the chair of the board with the
 18 advice and consent of the board or committee and shall include
 19 at least one member of the board or committee as it deems
 20 necessary for carrying on its business;

21 ~~[K.]~~ (11) have the authority to pay per diem
 22 and mileage to individuals who are appointed by the board or
 23 the committee to serve on ad hoc committees;

24 ~~[L.]~~ (12) have the authority to hire or
 25 contract with investigators to investigate possible violations

.189521.5

1 of the Dental Health Care Act;

2 [M.] (13) have the authority to issue
3 investigative subpoenas prior to the issuance of a notice of
4 contemplated action for the purpose of investigating complaints
5 against dentists, dental assistants and, through the committee,
6 dental hygienists licensed under the Dental Health Care Act;

7 [N.] (14) have the authority to sue or be sued
8 and to retain the services of an attorney at law for counsel
9 and representation regarding the carrying out of the board's
10 duties;

11 [O.] (15) have the authority to create and
12 maintain a formulary, in consultation with the board of
13 pharmacy, of medications that a dental hygienist may prescribe,
14 administer or dispense in accordance with rules the board has
15 promulgated; and

16 [P.] (16) establish continuing education or
17 continued competency requirements for dentists, certified
18 dental assistants in expanded functions, dental technicians
19 and, through the committee, dental hygienists.

20 B. By December 1, 2012, the board shall adopt rules
21 relating to the prescribing and refilling of prescriptions of
22 opioid medications that are consistent with the recommendations
23 that the opioid medication prescribing limits council has made
24 pursuant to Section 2 of this 2012 act. As used in this
25 subsection, "opioid medication" means a substance that:

.189521.5

- 1 (1) binds to and stimulates the opioid
2 receptors on the surface of the cell;
- 3 (2) is specifically indicated to treat acute
4 pain, chronic pain or cancer pain, cough suppression or
5 diarrhea or for opioid replacement therapy or hospice care;
- 6 (3) is a dangerous drug; and
- 7 (4) is a Schedule II, III, IV or V controlled
8 substance included in the Controlled Substances Act."

9 SECTION 6. Section 61-6-5 NMSA 1978 (being Laws 1973,
10 Chapter 361, Section 2, as amended) is amended to read:

11 "61-6-5. DUTIES AND POWERS.--

12 A. The board shall:

13 ~~[A.]~~ (1) enforce and administer the provisions
14 of the Medical Practice Act, the Physician Assistant Act, the
15 Anesthesiologist Assistants Act, the Genetic Counseling Act,
16 the Impaired Health Care Provider Act, the Polysomnography
17 Practice Act and the Naprapathic Practice Act;

18 ~~[B.]~~ (2) adopt, publish and file, in
19 accordance with the Uniform Licensing Act and the State Rules
20 Act, all rules for the implementation and enforcement of the
21 provisions of the Medical Practice Act, the Physician Assistant
22 Act, the Anesthesiologist Assistants Act, the Genetic
23 Counseling Act, the Impaired Health Care Provider Act, the
24 Polysomnography Practice Act and the Naprapathic Practice Act;

25 ~~[C.]~~ (3) adopt and use a seal;

.189521.5

1 [~~D.~~] (4) administer oaths to all applicants,
2 witnesses and others appearing before the board, as
3 appropriate;

4 [~~E.~~] (5) take testimony on matters within the
5 board's jurisdiction;

6 [~~F.~~] (6) keep an accurate record of all its
7 meetings, receipts and disbursements;

8 [~~G.~~] (7) maintain records in which the name,
9 address and license number of all licensees shall be recorded,
10 together with a record of all license renewals, suspensions,
11 revocations, probations, stipulations, censures, reprimands and
12 fines;

13 [~~H.~~] (8) grant, deny, review, suspend and
14 revoke licenses to practice medicine and censure, reprimand,
15 fine and place on probation and stipulation licensees and
16 applicants in accordance with the Uniform Licensing Act for any
17 cause stated in the Medical Practice Act, the Impaired Health
18 Care Provider Act and the Naprapathic Practice Act;

19 [~~I.~~] (9) hire staff and administrators as
20 necessary to carry out the provisions of the Medical Practice
21 Act;

22 [~~J.~~] (10) have the authority to hire or
23 contract with investigators to investigate possible violations
24 of the Medical Practice Act;

25 [~~K.~~] (11) have the authority to hire a

1 competent attorney to give advice and counsel in regard to any
 2 matter connected with the duties of the board, to represent the
 3 board in any legal proceedings and to aid in the enforcement of
 4 the laws in relation to the medical profession and to fix the
 5 compensation to be paid to such attorney; provided, however,
 6 that such attorney shall be compensated from the funds of the
 7 board;

8 [~~L.~~] (12) establish continuing medical
 9 education requirements for licensed physicians and continuing
 10 education requirements for physician assistants;

11 [~~M.~~] (13) establish committees as it deems
 12 necessary for carrying on its business;

13 [~~N.~~] (14) hire or contract with a licensed
 14 physician to serve as medical director and fulfill specified
 15 duties of the secretary-treasurer;

16 [~~O.~~] (15) establish and maintain rules related
 17 to the management of pain based on review of national standards
 18 for pain management; and

19 [~~P.~~] (16) have the authority to waive
 20 licensure fees for the purpose of medical doctor recruitment
 21 and retention.

22 B. By December 1, 2012, the board shall adopt rules
 23 relating to the prescribing and refilling of prescriptions of
 24 opioid medications that are consistent with the recommendations
 25 that the opioid medication prescribing limits council has made

.189521.5

1 pursuant to Section 2 of this 2012 act. As used in this
2 subsection, "opioid medication" means a substance that:

3 (1) binds to and stimulates the opioid
4 receptors on the surface of the cell;

5 (2) is specifically indicated to treat acute
6 pain, chronic pain or cancer pain, cough suppression or
7 diarrhea or for opioid replacement therapy or hospice care;

8 (3) is a dangerous drug; and

9 (4) is a Schedule II, III, IV or V controlled
10 substance included in the Controlled Substances Act."

11 SECTION 7. Section 61-8-6 NMSA 1978 (being Laws 1977,
12 Chapter 221, Section 6, as amended) is amended to read:

13 "61-8-6. BOARD ORGANIZATION--MEETINGS--COMPENSATION--
14 POWERS AND DUTIES.--

15 A. The board shall hold a regular meeting at least
16 annually and shall elect annually a [~~chairman~~] chair, vice
17 [~~chairman~~] chair and secretary-treasurer from its membership,
18 each of whom shall serve until [~~his~~] a successor is selected
19 and qualified.

20 B. The board shall hold a minimum of one
21 examination for licensure each year in the month of June or
22 July at a place and at a time designated by the board. Notice
23 of the examination shall be given to all applicants at least
24 thirty days prior to the date of the examination.

25 C. Special meetings may be called by the [~~chairman~~]

1 chair and shall be called upon the written request of any three
2 board members. Notice of all meetings shall be made in
3 conformance with the Open Meetings Act.

4 D. Members of the board may be reimbursed as
5 provided in the Per Diem and Mileage Act, but shall receive no
6 other compensation, perquisite or allowance.

7 E. The board shall:

8 (1) administer and enforce the provisions of
9 the Podiatry Act;

10 (2) adopt, publish and file, in accordance
11 with the Uniform Licensing Act and the State Rules Act, all
12 rules for the implementation and enforcement of the provisions
13 of the Podiatry Act;

14 (3) adopt and use a seal;

15 (4) conduct hearings, administer oaths and
16 take testimony on [~~any~~] matters within the board's
17 jurisdiction;

18 (5) keep an accurate record of its meetings,
19 receipts and disbursements;

20 (6) keep a record of licensure examinations
21 held, together with the names and addresses of persons taking
22 the examinations and the examination results. Within forty-
23 five days after [~~any~~] an examination, the board shall give
24 written notice to each applicant examined of the results of the
25 examination as to the respective applicant;

.189521.5

1 (7) certify as passing each applicant who
2 obtains a passing score, as defined by board rule, on
3 examinations administered or approved by the board;

4 (8) keep records of registration in which the
5 name, address and license number of licensed podiatrists are
6 recorded, together with a record of license renewals,
7 suspensions and revocations;

8 (9) grant, deny, renew, suspend or revoke
9 licenses to practice podiatry or take other actions provided in
10 Section 61-1-3 NMSA 1978 in accordance with the provisions of
11 the Uniform Licensing Act for any cause stated in the Podiatry
12 Act;

13 (10) adopt and promulgate rules setting
14 standards of preliminary and professional qualifications for
15 the practice of podiatry;

16 (11) adopt and promulgate rules and prepare
17 and administer examinations for the licensure and regulation of
18 podiatric assistants as are necessary to protect the public.
19 The rules shall include definitions and limitations on the
20 practice of podiatric assistants, qualifications for applicants
21 for licensure, an initial license fee in an amount not to
22 exceed two hundred fifty dollars (\$250) and a renewal fee not
23 to exceed one hundred dollars (\$100) per year, provisions for
24 the regulation of podiatric assistants and provisions for the
25 suspension or revocation of licenses;

.189521.5

1 (12) determine by rule all qualifications and
2 requirements for applicants seeking licensure as podiatrists or
3 podiatric assistants; and

4 (13) adopt rules and prepare and administer
5 examinations for applicants seeking licensure as foot and ankle
6 radiation technologists.

7 F. By December 1, 2012, the board shall adopt rules
8 relating to the prescribing and refilling of prescriptions of
9 opioid medications that are consistent with the recommendations
10 that the opioid medication prescribing limits council has made
11 pursuant to Section 2 of this 2012 act. As used in this
12 subsection, "opioid medication" means a substance that:

13 (1) binds to and stimulates the opioid
14 receptors on the surface of the cell;

15 (2) is specifically indicated to treat acute
16 pain, chronic pain or cancer pain, cough suppression or
17 diarrhea or for opioid replacement therapy or hospice care;

18 (3) is a dangerous drug; and

19 (4) is a Schedule II, III, IV or V controlled
20 substance included in the Controlled Substances Act."

21 **SECTION 8.** Section 61-10-5 NMSA 1978 (being Laws 1933,
22 Chapter 117, Section 4, as amended) is amended to read:

23 "61-10-5. BOARD OF EXAMINERS--APPOINTMENT--TERMS--
24 MEETINGS--MEMBERSHIP--EXAMINATIONS.--

25 A. There is created the "board of osteopathic

.189521.5

1 medical examiners". The board shall be administratively
2 attached to the regulation and licensing department. The board
3 consists of five members appointed by the governor; three
4 members shall be regularly licensed osteopathic physicians in
5 good standing in New Mexico, who have been so engaged for a
6 period of at least two years immediately prior to their
7 appointment and who are possessed of all the qualifications for
8 applicants for licensure specified in Section 61-10-8 NMSA
9 1978, and two members shall represent the public. The public
10 members of the board shall not have been licensed as
11 osteopathic physicians, nor shall the public members have any
12 significant financial interest, direct or indirect, in the
13 occupation regulated.

14 B. Board members' terms shall be for five years.
15 The vacancy of the term of a member shall be filled by
16 appointment by the governor to the unexpired portion of the
17 five-year term. A board member whose term has expired shall
18 serve until [~~his~~] a successor is appointed.

19 C. The board shall meet during the first quarter of
20 the fiscal year and shall elect officers for the ensuing fiscal
21 year. The board may hold other meetings as it deems necessary.
22 A majority of the board constitutes a quorum.

23 D. The board shall have and use a common seal and
24 is authorized to make and adopt all necessary rules [~~and~~
25 ~~regulations~~] relating to the enforcement of the provisions of

1 Chapter 61, Article 10 NMSA 1978.

2 E. Examinations shall be made at least twice a year
3 at the time and place fixed by the board. All applicants shall
4 be given written notice of examinations at a reasonable prior
5 date.

6 F. Members of the board shall be reimbursed as
7 provided in the Per Diem and Mileage Act, but shall receive no
8 other compensation, perquisite or allowance, for each day
9 necessarily spent in the discharge of their duties.

10 G. A board member failing to attend three
11 consecutive meetings, either regular or special, shall
12 automatically be removed as a member of the board.

13 H. By December 1, 2012, the board shall adopt rules
14 relating to the prescribing and refilling of prescriptions of
15 opioid medications that are consistent with the recommendations
16 that the opioid medication prescribing limits council has made
17 pursuant to Section 2 of this 2012 act. As used in this
18 subsection, "opioid medication" means a substance that:

19 (1) binds to and stimulates the opioid
20 receptors on the surface of the cell;

21 (2) is specifically indicated to treat acute
22 pain, chronic pain or cancer pain, cough suppression or
23 diarrhea or for opioid replacement therapy or hospice care;

24 (3) is a dangerous drug; and

25 (4) is a Schedule II, III, IV or V controlled

.189521.5

1 substance included in the Controlled Substances Act."

2 SECTION 9. Section 61-11-6 NMSA 1978 (being Laws 1969,
3 Chapter 29, Section 5, as amended) is amended to read:

4 "61-11-6. POWERS AND DUTIES OF BOARD.--

5 A. The board shall:

6 (1) adopt, amend or repeal rules [~~and~~
7 ~~regulations~~] necessary to carry out the provisions of the
8 Pharmacy Act in accordance with the provisions of the Uniform
9 Licensing Act;

10 (2) provide for examinations of applicants for
11 licensure as pharmacists;

12 (3) provide for the issuance and renewal of
13 licenses for pharmacists;

14 (4) require and establish criteria for
15 continuing education as a condition of renewal of licensure for
16 pharmacists;

17 (5) provide for the issuance and renewal of
18 licenses for pharmacist interns and for their training,
19 supervision and discipline;

20 (6) provide for the licensing of retail
21 pharmacies, nonresident pharmacies, wholesale drug
22 distributors, drug manufacturers, hospital pharmacies, nursing
23 home drug facilities, industrial and public health clinics and
24 all places where dangerous drugs are stored, distributed,
25 dispensed or administered and provide for the inspection of the

.189521.5

1 facilities and activities;

2 (7) enforce the provisions of all laws of the
3 state pertaining to the practice of pharmacy and the
4 manufacture, production, sale or distribution of drugs or
5 cosmetics and their standards of strength and purity;

6 (8) conduct hearings upon charges relating to
7 the discipline of a registrant or licensee or the denial,
8 suspension or revocation of a registration or a license in
9 accordance with the Uniform Licensing Act;

10 (9) cause the prosecution of any person
11 violating the Pharmacy Act, the New Mexico Drug, Device and
12 Cosmetic Act or the Controlled Substances Act;

13 (10) keep a record of all proceedings of the
14 board;

15 (11) make an annual report to the governor;

16 (12) appoint and employ, in the board's
17 discretion, a qualified person who is not a member of the board
18 to serve as executive director and define the executive
19 director's duties and responsibilities; except that the power
20 to deny, revoke or suspend any license or registration
21 authorized by the Pharmacy Act shall not be delegated by the
22 board;

23 (13) appoint and employ inspectors necessary
24 to enforce the provisions of all acts under the administration
25 of the board, which inspectors shall be pharmacists and have

.189521.5

1 all the powers and duties of peace officers;

2 (14) provide for other qualified employees
3 necessary to carry out the provisions of the Pharmacy Act;

4 (15) have the authority to employ a competent
5 attorney to give advice and counsel in regard to any matter
6 connected with the duties of the board, to represent the board
7 in any legal proceedings and to aid in the enforcement of the
8 laws in relation to the pharmacy profession and to fix the
9 compensation to be paid to the attorney; provided, however,
10 that the attorney shall be compensated from the money of the
11 board, including that provided for in Section 61-11-19 NMSA
12 1978;

13 (16) register and regulate qualifications,
14 training and permissible activities of pharmacy technicians;

15 (17) provide a registry of all persons
16 licensed as pharmacists or pharmacist interns in the state;

17 (18) adopt rules [~~and regulations~~] that
18 prescribe the activities and duties of pharmacy owners and
19 pharmacists in the provision of pharmaceutical care, emergency
20 prescription dispensing, drug regimen review and patient
21 counseling in each practice setting;

22 (19) adopt, after approval by the New Mexico
23 medical board [~~of medical examiners~~] and the board of nursing,
24 rules and protocols for the prescribing of dangerous drug
25 therapy, including vaccines and immunizations, and the

.189521.5

1 appropriate notification of the primary or appropriate
2 physician of the person receiving the dangerous drug therapy;
3 and

4 (20) have the authority to authorize emergency
5 prescription dispensing.

6 B. The board may:

7 (1) delegate its authority to the executive
8 director to issue temporary licenses as provided in Section
9 61-11-14 NMSA 1978;

10 (2) provide by regulation for the electronic
11 transmission of prescriptions; and

12 (3) delegate its authority to the executive
13 director to authorize emergency prescription dispensing
14 procedures during civil or public health emergencies.

15 C. By December 1, 2012, the board shall adopt rules
16 relating to the prescribing and refilling of prescriptions of
17 opioid medications that are consistent with the recommendations
18 that the opioid medication prescribing limits council has made
19 pursuant to Section 2 of this 2012 act. As used in this
20 subsection, "opioid medication" means a substance that:

21 (1) binds to and stimulates the opioid
22 receptors on the surface of the cell;

23 (2) is specifically indicated to treat acute
24 pain, chronic pain or cancer pain, cough suppression or
25 diarrhea, or for opioid replacement therapy or hospice care;

.189521.5

1 (3) is a dangerous drug; and
2 (4) is a Schedule II, III, IV or V controlled
3 substance included in the Controlled Substances Act."

underscoring material = new
[bracketed material] = delete