AN ACT

RELATING TO PUBLIC HEALTH; ENACTING THE PAIN RELIEF ACT; PROVIDING DISCIPLINARY ACTIONS AND PROHIBITIONS; REQUIRING NOTIFICATION TO HEALTH CARE PROVIDERS; DEFINING THE SCOPE OF THE ACT.

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

Section 1. SHORT TITLE.--This act may be cited as the "Pain Relief Act".

Section 2. DEFINITIONS.--As used in the Pain Relief Act:

A. "accepted guideline" means a care or practice guideline for pain management developed by the American pain society, the American geriatric society, the agency for health care policy, the national cancer pain initiatives or any other nationally recognized clinical or professional association, a speciality society or government-sponsored agency that has developed practice or care guidelines based on original research or on review of existing research and expert opinion whose guidelines have been accepted by the New Mexico board of medical examiners;

B. "board" means the licensing board of a health care provider;

C. "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;

D. "disciplinary action" means any formal action taken by a board against a health care provider, upon a finding of probable cause that the health care provider has

engaged in conduct that violates the Medical Practice Act;

E. "health care provider" means a person licensed or otherwise authorized by law to provide health care in the ordinary course of business or practice of his profession and to have prescriptive authority within the limits of their license;

F. "intractable pain" means a state of pain, even if recurring, in which reasonable efforts to remove or remedy the cause of the pain have failed or have proven inadequate; and

G. "therapeutic purpose" means the use of pharmaceutical and non-pharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management.

Section 3. DISCIPLINARY ACTION--EVIDENTIARY REQUIREMENTS.--

A. No health care provider who prescribes, dispenses or administers medical treatment for the purpose of relieving intractable pain and who can demonstrate by reference to an accepted guideline that his practice substantially complies with that guideline and with the standards of practice identified in Section 4 of the Pain Relief Act shall be subject to disciplinary action or criminal prosecution, unless the showing of substantial compliance with an accepted guideline is rebutted by clinical expert testimony. If no currently accepted guidelines are available, then rules issued by the board may serve the function of such guidelines for purposes of the Pain Relief Act. The board rules must conform to the intent of that act. Guidelines established primarily for purposes

of coverage, payment or reimbursement do not qualify as an "accepted guideline" when offered to limit treatment options otherwise covered within the Pain Relief Act.

B. In the event that a disciplinary action or criminal prosecution is pursued, the board or prosecutor shall produce clinical expert testimony supporting the finding or charge of violation of disciplinary standards or other legal requirements on the part of the health care provider. A showing of substantial compliance with an accepted guideline can only be rebutted by clinical expert testimony.

C. The provisions of this section shall apply to health care providers in the treatment of all patients for intractable pain, regardless of the patients' prior or current chemical dependency or addiction. The board may develop and issue rules establishing standards and procedures for the application of the Pain Relief Act to the care and treatment of chemically dependent individuals.

Section 4. DISCIPLINARY ACTION--PROHIBITIONS.--Nothing in the Pain Relief Act shall prohibit discipline or prosecution of a health care provider for:

A. failing to maintain complete, accurate and current records documenting the physical examination and medical history of the patient, the basis for the clinical diagnosis of the patient and the treatment plan for the patient;

B. writing false or fictitious prescriptions for controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 or Sections 26-1-23 and 30-31-18 NMSA 1978;

C. prescribing, administering or dispensing pharmaceuticals in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 or Sections 26-1-23 and 30-31-18 NMSA 1978; or

D. diverting medications prescribed for a patient to the provider's personal use or to other persons.

Section 5. NOTIFICATION.--The board shall make reasonable efforts to notify health care providers under its jurisdiction of the existence of the Pain Relief Act and inform any health care provider investigated in relation to the provider's practices in the management of pain of the existence of that act.

Section 6. SCOPE OF ACT.--Nothing in the Pain Relief Act shall be construed as expanding the authorized scope of practice of health care providers.