

AN ACT

RELATING TO PAIN MANAGEMENT; AMENDING THE PAIN RELIEF ACT;  
PROVIDING RESPONSIBILITIES FOR THE NEW MEXICO MEDICAL BOARD  
AND OTHER HEALTH PROFESSIONAL LICENSING BOARDS; ESTABLISHING  
CRITERIA FOR CERTAIN ACTIONS; CREATING THE PAIN MANAGEMENT  
ADVISORY COUNCIL.

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

Section 1. Section 24-2D-2 NMSA 1978 (being Laws 1999,  
Chapter 126, Section 2) is amended to read:

"24-2D-2. DEFINITIONS.--As used in the Pain Relief Act:

A. "accepted guideline" means a care or practice  
guideline for pain management developed by a national joint  
commission on accreditation of health care organizations; the  
American pain society; an American geriatrics society; the  
agency for health care research and quality; a national cancer  
pain initiative or any other nationally recognized clinical or  
professional association; or a specialty 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 medical board and by other  
boards of health care providers with prescriptive authority;

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 a 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 provider's respective board's 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 the person's profession and to have prescriptive authority within the limits of the person's license;

F. "pain" means a condition of bodily sensation of serious physical discomfort that requires the services of a health care provider to alleviate, including discomfort that is persistent and chronic in duration; and

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

Section 2. Section 24-2D-3 NMSA 1978 (being Laws 1999, Chapter 126, Section 3) is amended to read:

"24-2D-3. DISCIPLINARY ACTION--EVIDENTIARY

REQUIREMENTS.--

A. A health care provider who prescribes, dispenses or administers medical treatment for the purpose of relieving pain and who can demonstrate by reference to an accepted guideline that the provider's practice substantially complies with that guideline and with the standards of practice identified in Section 24-2D-4 NMSA 1978 shall not be disciplined pursuant to board action or criminal prosecution, unless the showing of substantial compliance with an accepted guideline by the health care provider 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 shall 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 shall only be rebutted by clinical expert testimony.

C. The provisions of this section apply to health care providers in the treatment of pain, regardless of a patient's prior or current chemical dependency or addiction. Each board shall adopt rules establishing standards and procedures for the application of the Pain Relief Act, including the care and treatment of chemically dependent individuals.

D. In an action brought by a board against a health care provider based on treatment of a patient for pain, the board shall consider the totality of the circumstances and shall not use as the sole basis of the action:

- (1) a patient's age;
- (2) a patient's diagnosis;
- (3) a patient's prognosis;
- (4) a patient's history of drug abuse;
- (5) the absence of consultation with a pain specialist; or
- (6) the quantity of medication prescribed or dispensed."

Section 3. A new section of Chapter 24, Article 2D NMSA 1978 is enacted to read:

"PAIN MANAGEMENT ADVISORY COUNCIL CREATED--DUTIES.--

A. The "pain management advisory council" is created and shall be administratively attached to the department of health. Members of the council shall be

appointed by the governor to consist of one representative each from the New Mexico medical board, the board of nursing, the board of pharmacy, the board of osteopathic medical examiners, the board of acupuncture and oriental medicine, the university of New Mexico health sciences center, a statewide medical association, a statewide association of pharmacists, a statewide association of nurse practitioners, a statewide association of certified registered nurse anesthetists and a statewide association of osteopathic physicians; one person who is a consumer health care advocate; and three persons who have no direct ties or pecuniary interest in the health care fields.

B. The council shall meet at least quarterly to review current pain management practices in New Mexico and national pain management standards and educational efforts for both consumers and professionals and shall recommend pain management guidelines for each health care profession licensed in New Mexico with prescriptive authority to its respective board. Members who are not public employees shall receive per diem and mileage as provided in the Per Diem and Mileage Act. Public employee members shall receive mileage from their respective employers for attendance at council meetings."

Section 4. A new section of Chapter 24, Article 2D NMSA 1978 is enacted to read:

"PAIN MANAGEMENT CONTINUING EDUCATION.--A board shall

encourage pain management continuing education for all health care providers who have prescriptive authority and who treat patients with pain."

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

"61-6-5. DUTIES AND POWERS.--The board shall:

A. enforce and administer the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act and the Impaired Health Care Provider Act;

B. adopt, publish and file, in accordance with the Uniform Licensing Act and the State Rules Act, all rules for the implementation and enforcement of the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act and the Impaired Health Care Provider Act;

C. adopt and use a seal;

D. administer oaths to all applicants, witnesses and others appearing before the board, as appropriate;

E. take testimony on matters within the board's jurisdiction;

F. keep an accurate record of all its meetings, receipts and disbursements;

G. maintain records in which the name, address and license number of all licensees shall be recorded, together

with a record of all license renewals, suspensions, revocations, probations, stipulations, censures, reprimands and fines;

H. grant, deny, review, suspend and revoke licenses to practice medicine and censure, reprimand, fine and place on probation and stipulation licensees and applicants in accordance with the Uniform Licensing Act for any cause stated in the Medical Practice Act and the Impaired Health Care Provider Act;

I. hire staff and administrators as necessary to carry out the provisions of the Medical Practice Act;

J. have the authority to hire or contract with investigators to investigate possible violations of the Medical Practice Act;

K. have the authority to hire a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the laws in relation to the medical profession and to fix the compensation to be paid to such attorney; provided, however, that such attorney shall be compensated from the funds of the board;

L. establish continuing medical education requirements for licensed physicians and continuing education requirements for physician assistants;

M. establish committees as it deems necessary for

carrying on its business;

N. hire or contract with a licensed physician to serve as medical director and fulfill specified duties of the secretary-treasurer; and

O. establish and maintain rules related to the management of pain based on review of national standards for pain management."

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