

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 12 NURSING AND HEALTH CARE RELATED PROVIDERS
PART 9 MANAGEMENT OF CHRONIC PAIN WITH CONTROLLED SUBSTANCES

16.12.9.1 ISSUING AGENCY: New Mexico Board of Nursing.
[16.12.9.1 NMAC - N, 2/17/2006]

16.12.9.2 SCOPE: This rule applies to all advanced practice nurses, including certified nurse practitioners, certified registered nurse anesthetists, and clinical nurse specialists with prescriptive authority.
[16.12.9.2 NMAC - N, 2/17/2006; A, 11/20/2012]

16.12.9.3 STATUTORY AUTHORITY: Section 61-3-1 NMSA 1978 *et seq.*, authorized the board of nursing to regulate the practice of nursing in the state and the Pain Relief Act, Subsections D of Sections 24-2-1 through 24-2-6 NMSA 1978.
[16.12.9.3 NMAC - N, 2/17/2006, A, 11/20/2012]

16.12.9.4 DURATION: Permanent
[16.12.9.4 NMAC - N, 2/17/2006]

16.12.9.5 EFFECTIVE DATE: February 17, 2006, unless a later date is cited at the end of a section.
[16.12.9.5 NMAC - N, 2/17/2006]

16.12.9.6 OBJECTIVE: It is the position of the board that certified nurse practitioners, certified registered nurse anesthetists and clinical nurse 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 after a thorough evaluation has been completed.
[16.12.9.6 NMAC - N, 2/17/2006; A, 11/20/2012]

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.

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.

C. “Chronic pain” means 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.

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

F. “Nursing Facility” means a long term care facility in which the patient is a current fulltime resident and whose medications are solely administered and managed by the facility.

G. “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.

H. “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.

I. “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.

J. “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.

K. “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, 2/17/2006; A, 11/20/2012; A, 9/12/2017]

16.12.9.8 RULES: The following rules shall be used by the board to determine whether an advanced practice nurse’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 nursing 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. Pain management for patients 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.

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) An advanced practice nurse 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 and supporting diagnostic documentation or contra-indication against the use of controlled substances.

(2) An advanced practice nurse 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.

(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.

(4) If the patient’s pain relief plateaus on controlled substance analgesic(s), then the treatment plan should include an evaluation of continuing or tapering the controlled substance therapy.

(5) The practitioner shall provide education and discuss the risks and benefits of using controlled substances with the patient or surrogate or guardian, and shall document this in the record.

(6) Complete and accurate records of care provided and drugs prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, and prescribed dosage should be recorded. Prescriptions for opioids shall include indications for use. For chronic non-cancer 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 non-cancer pain patients shall receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible.

(7) 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 non-cancer pain, the patient’s state of health, and any new information about the etiology of the chronic non-cancer pain at least every three 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. Drug screening is expected and should be conducted when other factors suggest an elevated risk of misuse or diversion.

(8) If, in a practitioner's 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.

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 advanced practice nurse'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 as a guiding principle.

F. An advanced practice nurse 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 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, 2/17/2006, A, 11/20/2012; A, 9/12/2017]

16.12.9.9 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS: The intent of the New Mexico board of nursing in requiring participation in the PMP is to assist advanced practice nurses in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals.

A. Any advanced practice nurse 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. An advanced practice nurse may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While an advanced practice nurse's delegate may obtain a report from the state's prescription monitoring program, the advanced practice nurse 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 an advanced practice nurse 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 an advanced practice nurse from reviewing prescription monitoring reports with greater frequency than that required by this section.

E. An advanced practice nurse 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 advanced practice nurse 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 12 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 paragraph F, the practitioner, using professional judgement 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. 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.

H. Practitioners licensed to practice in an opioid treatment program, as defined in 7.32.8 NMAC, shall review a prescription monitoring report upon a patient's initial enrollment into the opioid treatment program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in schedule II, III, IV or V for the purpose of treating opioid use disorder. The practitioner shall document the receipt and review of a report in the patient's medical record.

[16.12.9.9 NMAC - N, 11/20/2012; A, 9/12/2017]

16.12.9.10 NON-CANCER PAIN MANAGEMENT CONTINUING EDUCATION: Any advanced practice registered nurse (APRN) with a drug enforcement agency (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 contact hours~~[CE of the 15 CE currently required every two years in pharmacology]~~ to include, but not limited to, 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. These five contact hours will be in lieu of five of the 15 contact hours currently required every two years in pharmacology.

[16.12.9.10 NMAC - N, 11/20/2012; A, 9/12/2017]

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, 11/20/2012]

16.12.9.12 ADVANCED PRACTICE NURSES, REGISTERED NURSES, AND LICENSED PRACTICAL NURSES TREATED WITH OPIATES: Advanced practice nurses, registered nurses, licensed practical nurses, certified hemodialysis technicians, and certified medication aides 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 clearance from their practitioner, before returning to or continuing in practice and must remain under the care of a physician, CRNA, CNP or CNS for as long as they remain on opiates and continue to practice. The treating physician, CRNA, CNP or CNS may, at her or his discretion, order a neuropsychological evaluation to help determine clearance for practice.

[16.12.9.12 NMAC - Rn & A, 16.12.9.9 NMAC; 11/20/2012; A, 01/19/2015]

HISTORY OF 16.12.9 NMAC: [RESERVED]