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AN ACT

RELATING TO PAIN MANAGEMENT; AMENDING THE PAIN RELIEF ACT;
CHANGING THE NAME AND COMPOSITION OF THE PAIN MANAGEMENT
ADVISORY COUNCIL; REQUIRING CONTINUING EDUCATION FOR
NON-CANCER PAIN MANAGEMENT.

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, as amended) is amended to read:

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

A. "accepted guideline" means the most current
clinical pain management guideline developed by the American
geriatrics society or the American pain society or a clinical
pain management guideline based on evidence and expert
opinion that has been accepted by the New Mexico medical
board;

B. "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;

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

D. "chronic pain" means pain that persists after
reasonable medical efforts have been made to relieve the pain
or its cause and that continues, either continuously or

1 episodically, for longer than three consecutive months.

2 "Chronic pain" does not include pain associated with a
3 terminal condition or with a progressive disease that, in the
4 normal course of progression, may reasonably be expected to
5 result in a terminal condition;

6 E. "clinical expert" means a person who by reason
7 of specialized education or substantial relevant experience
8 in pain management has knowledge regarding current standards,
9 practices and guidelines;

10 F. "disciplinary action" means any formal action
11 taken by a board against a health care provider, upon a
12 finding of probable cause that the health care provider has
13 engaged in conduct that violates the board's practice act;

14 G. "health care provider" means a person licensed
15 or otherwise authorized by law to provide health care in the
16 ordinary course of business or practice of the person's
17 profession and who has prescriptive authority within the
18 limits of the person's license;

19 H. "pain" means acute and chronic pain; and

20 I. "therapeutic purpose" means the use of
21 pharmaceutical and non-pharmaceutical medical treatment that
22 conforms substantially to accepted guidelines for pain
23 management."

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

1 "24-2D-3. DISCIPLINARY ACTION--EVIDENTIARY
2 REQUIREMENTS.--

3 A. A health care provider who prescribes,
4 dispenses or administers medical treatment for the purpose of
5 relieving pain and who can demonstrate by reference to an
6 accepted guideline that the provider's practice substantially
7 complies with that guideline and with the standards of
8 practice identified in Section 24-2D-4 NMSA 1978 shall not be
9 disciplined pursuant to board action or criminal prosecution,
10 unless the showing of substantial compliance with an accepted
11 guideline by the health care provider is rebutted by clinical
12 expert testimony. If no currently accepted guidelines are
13 available, then rules issued by the board may serve the
14 function of such guidelines for purposes of the Pain Relief
15 Act. The board rules shall conform to the intent of that
16 act. Guidelines established primarily for purposes of
17 coverage, payment or reimbursement do not qualify as an
18 "accepted guideline" when offered to limit treatment options
19 otherwise covered within the Pain Relief Act.

20 B. In the event that a disciplinary action or
21 criminal prosecution is pursued, the board or prosecutor
22 shall produce clinical expert testimony supporting the
23 finding or charge of violation of disciplinary standards or
24 other legal requirements on the part of the health care
25 provider. A showing of substantial compliance with an

1 accepted guideline shall only be rebutted by clinical expert
2 testimony.

3 C. The provisions of this section apply to health
4 care providers in the treatment of pain, regardless of a
5 patient's prior or current chemical dependency or addiction.
6 Each board shall adopt rules establishing standards and
7 procedures for the application of the Pain Relief Act,
8 including pain management for patients with substance use
9 disorders.

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

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

23 SECTION 3. Section 24-2D-5 NMSA 1978 (being Laws 1999,
24 Chapter 126, Section 5) is amended to read:

25 "24-2D-5. NOTIFICATION.--The board shall notify the

1 following persons of the Pain Relief Act and accepted
2 guidelines:

3 A. health care providers under its jurisdiction;
4 and

5 B. a health care provider being investigated by
6 the board in relation to the provider's pain management
7 practices."

8 SECTION 4. Section 24-2D-5.1 NMSA 1978 (being Laws
9 2005, Chapter 140, Section 4) is amended to read:

10 "24-2D-5.1. PAIN MANAGEMENT CONTINUING EDUCATION.--A
11 board shall require non-cancer pain management continuing
12 education as determined by its rules for health care
13 providers under the board's jurisdiction who hold a federal
14 drug enforcement administration registration and licensure to
15 prescribe opioids."

16 SECTION 5. Section 24-2D-5.2 NMSA 1978 (being Laws
17 2005, Chapter 140, Section 3) is amended to read:

18 "24-2D-5.2. PRESCRIPTION DRUG MISUSE AND OVERDOSE
19 PREVENTION AND PAIN MANAGEMENT ADVISORY COUNCIL CREATED--
20 DUTIES.--

21 A. The "prescription drug misuse and overdose
22 prevention and pain management advisory council" is created
23 and shall be administratively attached to the department of
24 health. Members of the council shall be appointed by the
25 governor to consist of one representative each from the

1 department of health, the New Mexico medical board, the board
2 of nursing, the board of pharmacy, the board of osteopathic
3 medical examiners, the board of acupuncture and oriental
4 medicine, the New Mexico board of dental health care, the
5 board of chiropractic examiners, the university of New Mexico
6 health sciences center, a statewide medical association, a
7 statewide association of pharmacists, a statewide association
8 of nurse practitioners, a statewide association of certified
9 registered nurse anesthetists and a statewide association of
10 osteopathic physicians; one person who is a pain management
11 specialist; one person who is a consumer health care
12 advocate; and one person who has no direct ties or pecuniary
13 interest in the health care field.

14 B. The council shall meet at least quarterly to
15 review the current status of prescription drug misuse and
16 overdose prevention and current pain management practices in
17 New Mexico and national prescription drug misuse and overdose
18 prevention and pain management standards and educational
19 efforts for both consumers and professionals. The council
20 shall also recommend pain management and clinical guidelines.
21 Members who are not public employees shall receive per diem
22 and mileage as provided in the Per Diem and Mileage Act.
23 Public employee members shall receive mileage from their
24 respective employers for attendance at council meetings."