

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 366

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO PRESCRIPTION DRUGS; AMENDING A SECTION OF THE NEW
MEXICO DRUG, DEVICE AND COSMETIC ACT TO PROVIDE FOR COMBINING
FILLS.

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

SECTION 1. Section 26-1-16 NMSA 1978 (being Laws 1967,
Chapter 23, Section 16, as amended) is amended to read:

"26-1-16. DANGEROUS DRUGS--CONDITIONS FOR SALE--
PRESCRIPTION [~~REFILLING~~] FILLS--LIMITATIONS.--

A. It is unlawful for [~~any~~] a person to sell,
dispose of or possess any dangerous drugs, except:

(1) manufacturers, wholesalers or
distributors, their agents or employees licensed by the board
to ship dangerous drugs into the state; or

(2) distributors, wholesalers, hospitals,

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underscored material = new
[bracketed material] = delete

1 nursing homes, clinics or pharmacies and other authorized
2 retailers of dangerous drugs in this state licensed by the
3 board, and appropriate records of dangerous drugs receipt and
4 disposition are kept. These records shall be open to
5 inspection by any enforcement officer of this state.

6 B. Practitioners licensed in this state may
7 prescribe, provide samples of and dispense any dangerous drug
8 to a patient where there is a valid practitioner-patient
9 relationship. A record of all such dispensing shall be kept
10 showing the date the drug was dispensed and bearing the name
11 and address of the patient to whom dispensed. It is the duty
12 of every licensed physician, dentist, veterinarian, pharmacist
13 or person holding a limited license issued under Subsection B
14 of Section 61-11-14 NMSA 1978, when dispensing any dangerous
15 drug, to mark on the dispensing container the name of the
16 patient, the date dispensed, the name and address of the person
17 dispensing the drug, the name and strength of the drug,
18 expiration date where applicable, adequate directions for use
19 and the prescription number when applicable. All official
20 compendium requirements for the preservation, packaging,
21 labeling and storage of dangerous drugs are applicable where
22 drugs are held for dispensing to the public, whether by a
23 pharmacy, clinic, hospital or practitioner.

24 C. Pharmacists are prohibited from selling or
25 disposing of ~~[any]~~ a dangerous drug except on prescription of a

1 practitioner and except as such sale or possession is
2 authorized under Subsection A of this section. It is the duty
3 of all pharmacists to keep an accurate record of all disposals,
4 which record shall be open to inspection by ~~[any]~~ an
5 enforcement officer of this state.

6 D. No enforcement officer ~~[having]~~ who, by virtue
7 of office, has knowledge ~~[by virtue of his office]~~ of ~~[any]~~ a
8 prescription, order or record shall divulge such knowledge
9 except in connection with a prosecution or proceeding in court
10 or before a licensing or registration board or officer, to
11 which prosecution or proceeding the person to whom such
12 prescriptions, orders or records relate is a party.

13 E. It is unlawful, except as otherwise authorized
14 under Subsection A of this section or the Controlled Substances
15 Act and except for the college of pharmacy of the university of
16 New Mexico or a public health laboratory, for ~~[any]~~ a person to
17 possess any dangerous drug unless such substance has been
18 dispensed to ~~[him]~~ the person either directly by a practitioner
19 or on a prescription.

20 F. All records required to be kept under the
21 provisions of the New Mexico Drug, Device and Cosmetic Act
22 shall be preserved for a period of three years, provided that
23 records requirements do not apply to the administration of a
24 drug to a patient upon whom the practitioner personally
25 attends, and provided that records of controlled substances

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1 shall be kept in accordance with the provisions of the
2 Controlled Substances Act.

3 G. ~~[No prescription may be lawfully refilled:~~

4 ~~(1) if it is marked by the issuing
5 practitioner as not to be refilled;~~

6 ~~(2) when the practitioner indicates a specific
7 number of refills or a specific period of time, on the original
8 prescription calling for a dangerous drug, it may be refilled
9 the number of times or for the period of time indicated;~~

10 ~~provided, the date of refill, the initials of the pharmacist
11 refilling the prescription and the amount of drug dispensed, if
12 it differs from the amount called for on the original
13 prescription, is recorded on the original prescription;~~

14 ~~provided, a prescription issued for drugs controlled by the
15 Controlled Substances Act shall comply with that act] A
16 prescription shall not be filled:~~

17 (1) as a refill if it is marked by the issuing
18 practitioner to indicate that the prescription is not to be
19 refilled;

20 (2) except in compliance with the provisions
21 of the Controlled Substances Act if the drug is a controlled
22 substance;

23 (3) unless the fill is made in accordance with
24 the provisions of this section; and

25 ~~[+3)]~~ (4) when the practitioner does not

1 indicate [~~refill~~] fill instructions on the original
2 prescription calling for a dangerous drug, unless:

3 (a) the practitioner is contacted
4 orally, by telephone [~~telegraph~~] or other means of
5 communication for instruction; and

6 (b) if authorization to [~~refill~~] fill is
7 given the pharmacist, the following information will be
8 immediately transferred to the original prescription: 1) date;
9 2) name of person authorizing the [~~refill~~] fill; 3)
10 pharmacist's initials; and 4) amount dispensed if different
11 [~~than~~] from the amount indicated on the original prescription.

12 [~~(4) when the practitioner indicates on the~~
13 ~~original prescription calling for dangerous drugs that it may~~
14 ~~be refilled "prn", the pharmacist may refill it within the~~
15 ~~limits of the dosage directions for a period of twelve months,~~
16 ~~provided the date of refilling and the initials of the~~
17 ~~pharmacist are recorded on the original prescription. At the~~
18 ~~expiration of the twelve-month period, the practitioner must be~~
19 ~~contacted for a new prescription; provided that this is not to~~
20 ~~be construed to apply to those drugs regulated by the~~
21 ~~Controlled Substances Act; and~~

22 (5) ~~the board may adopt and promulgate~~
23 ~~regulations to permit the use of computer systems for the~~
24 ~~storage and retrieval of prescriptions, records for the purpose~~
25 ~~of refilling prescriptions, receipt records, drug distribution~~

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1 ~~records, drug withdrawals from stock, drug compounding records,~~
2 ~~drug disposition records and drug disposal records.]~~

3 H. Nothing in this section shall prevent the owner
4 of livestock or [~~his~~] the owner's consignee or their employees
5 to be in possession of drugs for their use in performing
6 routine, accepted livestock management practices in the care of
7 livestock belonging to the owner, and the drugs are labeled as
8 being restricted to animal use only; provided, that if such
9 drugs bear the legend: "CAUTION: federal law restricts this
10 drug to use by or on the order of a licensed veterinarian", the
11 drugs may be used or distributed only as provided in Subsection
12 A of Section 26-1-15 NMSA 1978.

13 I. When, on the original prescription calling for a
14 dangerous drug that is not a controlled substance, a
15 practitioner indicates a specific number of fills or a specific
16 period of time during which a prescription may be filled, a
17 drug may be filled the number of times or for the period of
18 time that the prescription indicates if the following
19 information is provided with the prescription:

20 (1) the date of fill;

21 (2) the initials of the pharmacist filling the
22 prescription; and

23 (3) the amount of drug dispensed, if it
24 differs from the amount called for on the original
25 prescription.

1 J. A pharmacist may dispense a quantity not to
2 exceed a ninety-day supply of a dangerous drug by combining
3 valid fills when:

4 (1) an indication on the prescription or label
5 does not specifically prohibit a combined fill; and

6 (2) the dangerous drug to be filled is not a
7 controlled substance.

8 K. When the practitioner indicates on the original
9 prescription calling for dangerous drugs that it may be filled
10 "prn", the pharmacist may fill it within the limits of the
11 dosage directions for a period of twelve months, provided the
12 date of filling and the initials of the pharmacist are recorded
13 on the original prescription. At the expiration of the twelve-
14 month period, the practitioner must be contacted for a new
15 prescription; provided that this is not to be construed to
16 apply to those drugs regulated by the Controlled Substances
17 Act.

18 L. The board may adopt and promulgate regulations
19 to permit the use of computer systems for the storage and
20 retrieval of prescriptions, records for the purpose of filling
21 prescriptions, receipt records, drug distribution records, drug
22 withdrawals from stock, drug compounding records, drug
23 disposition records and drug disposal records.

24 M. As used in this section, "fill" means a
25 dispensing of a drug for the first time or as a refill."

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