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HOUSE BILL 848

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Danice Picraux

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO PAIN MANAGEMENT; AMENDING THE PAIN RELIEF ACT;
PROVIDING RESPONSIBILITIES FOR THE NEW MEXICO BOARD OF MEDICAL
EXAMINERS; ESTABLISHING CRITERIA FOR CERTAIN ACTIONS; CREATING
THE PAIN MANAGEMENT ADVISORY COUNCIL; MAKING AN APPROPRIATION.

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 the American pain
society, the American ~~[geriatric]~~ geriatrics society, the
agency for health care ~~[policy]~~ research and quality, the
national cancer pain initiatives or any other nationally
recognized clinical or professional association, a ~~[speciality]~~

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1 specialty society or government-sponsored agency that has
2 developed practice or care guidelines based on original
3 research or on review of existing research and expert opinion
4 whose guidelines have been accepted by the New Mexico board of
5 medical examiners and other boards of health care providers
6 with prescriptive authority;

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

9 C. "clinical expert" means a person who by reason
10 of specialized education or substantial relevant experience in
11 pain management has knowledge regarding current standards,
12 practices and guidelines;

13 D. "disciplinary action" means ~~any~~ a formal
14 action taken by a board against a health care provider, upon a
15 finding of probable cause that the health care provider has
16 engaged in conduct that violates the Medical Practice Act;

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

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

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

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

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

11 "24-2D-3. DISCIPLINARY ACTION-- EVIDENTIARY
12 REQUIREMENTS. --

13 A. No health care provider who prescribes,
14 dispenses or administers medical treatment for the purpose of
15 relieving [~~intractable~~] pain, and who can demonstrate by
16 reference to an accepted guideline that his practice
17 substantially complies with that guideline and with the
18 standards of practice identified in Section [~~4 of the Pain~~
19 ~~Relief Act~~] 24-2D-4 NMSA 1978, shall be subject to disciplinary
20 action or criminal prosecution, unless the showing of
21 substantial compliance with an accepted guideline is rebutted
22 by testimony of at least two unaffiliated clinical [expert
23 ~~testimony. If no currently accepted guidelines are available,~~
24 ~~then] experts prior to initiation of the action. Rules issued~~
25 by the board may serve the function of such guidelines for

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1 purposes of the Pain Relief Act. The board rules [~~must~~] shall
2 conform to the intent of that act. Guidelines established
3 primarily for purposes of coverage, payment or reimbursement do
4 not qualify as an "accepted guideline" when offered to limit
5 treatment options otherwise covered within the Pain Relief Act.

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

13 C. The provisions of this section [~~shall~~] apply to
14 health care providers in the treatment of [~~all patients for~~
15 ~~intractable~~] pain, regardless of [~~the patients'~~] a patient's
16 prior or current chemical dependency or addiction. [~~The~~] Each
17 board [~~may~~] shall develop [~~and issue~~] rules establishing
18 standards and procedures for the application of the Pain Relief
19 Act to the care and treatment of chemically dependent
20 individuals.

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

25 (1) a patient's age;

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

8 Section 3. Section 61-6-5 NMSA 1978 (being Laws 1973,
9 Chapter 361, Section 2, as amended) is amended to read:

10 "61-6-5. DUTIES AND POWERS. --The board shall:

11 A. enforce and administer the provisions of the
12 Medical Practice Act, the Physician Assistant Act and the
13 Impaired [~~Physician~~] Health Care Provider Act;

14 B. adopt, publish and file, in accordance with the
15 Uniform Licensing Act and the State Rules Act, all rules and
16 regulations for the implementation and enforcement of the
17 provisions of the Medical Practice Act, the Physician Assistant
18 Act and the Impaired [~~Physician~~] Health Care Provider Act;

19 C. adopt and use a seal;

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

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

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

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1 G. keep a record of all examinations held, together
2 with the names and addresses of all persons taking the
3 examinations and the examination results, and at the earliest
4 date possible give written examination results to each
5 applicant examined;

6 H. certify as passing each applicant who obtains a
7 passing grade indicating successful completion of each subject
8 upon which he is examined;

9 I. maintain records in which the name, address and
10 license number of all licensees shall be recorded, together
11 with a record of all license renewals, suspensions,
12 revocations, probations, stipulations, censures, reprimands and
13 fines;

14 J. grant, deny, review, suspend and revoke licenses
15 to practice medicine and censure, reprimand, fine and place on
16 probation and stipulation physicians in accordance with the
17 Uniform Licensing Act for any cause stated in the Medical
18 Practice Act;

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

21 L. have the authority to hire or contract with
22 investigators to investigate possible violations of the Medical
23 Practice Act;

24 M. have the authority to hire a competent attorney
25 to give advice and counsel in regard to any matter connected

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1 with the duties of the board, to represent the board in any
2 legal proceedings and to aid in the enforcement of the laws in
3 relation to the medical profession and to fix the compensation
4 to be paid to such attorney; provided, however, that such
5 attorney shall be compensated from the funds of the board
6 ~~[including those provided for in Section 61-6-28 NMSA 1978];~~

7 N. establish continuing medical education
8 requirements for physicians and continuing education
9 requirements for physician assistants; ~~[and]~~

10 O. establish committees as it deems necessary for
11 carrying on its business;

12 P. establish pain management guidelines, review
13 national standards for pain management and annually update
14 those guidelines; and

15 Q. require pain management continuing medical
16 education for all practitioners."

17 Section 4. ~~[NEW MATERIAL]~~ PAIN MANAGEMENT ADVISORY
18 COUNCIL CREATED-- DUTIES. --

19 A. The "pain management advisory council" is
20 created in the office of the governor. The council consists of
21 one representative each from the New Mexico board of medical
22 examiners, the board of nursing, the board of pharmacy, the
23 board of osteopathic medical examiners, the board of
24 acupuncture and oriental medicine, the university of New Mexico
25 health sciences center, a statewide medical association, a

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1 statewide association of pharmacists, a statewide association
2 of nurse practitioners, a statewide association of osteopathic
3 physicians, one person who is a consumer health care advocate
4 and three persons who have no direct ties or pecuniary interest
5 in the health care fields.

6 B. The council shall meet at least quarterly to
7 review current pain management practices in New Mexico and
8 national pain management standards and educational efforts for
9 both consumers and professionals and shall recommend pain
10 management guidelines for each health care profession licensed
11 in New Mexico to respective boards of professionals with
12 prescriptive authority.

13 Section 5. APPROPRIATION. --Twenty-five thousand dollars
14 (\$25,000) is appropriated from the general fund to the office
15 of the governor for expenditure in fiscal year 2004 for the
16 purpose of supporting the work of the pain management advisory
17 council. Any unexpended or unencumbered balance remaining at
18 the end of fiscal year 2004 shall revert to the general fund.