



NEW MEXICO MEDICAL BOARD

Overview of Prescribing, Substance Abuse and Investigations

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NEW MEXICO DEA PRACTITIONER DIVERSION AWARENESS CONFERENCE
(PDAC).

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About the Board

Member	Location	Title
Steven M. Jenkusky, M.D.	Albuquerque	Chair
Peter Beaudette, MD	Albuquerque	Vice Chair
Jennifer Anderson, Esq.	Albuquerque	Public Member
Karen Carson, M.D.	Roswell	Physician Member
James Spence, M.D.	Farmington	Physician Member
Eric Anderson, MD	Santa Fe	Physician Member
Mark Unverzagt, MD	Albuquerque	Physician Member
Charles D. Otero, P.A.	Clovis	Physician Assistant Member
Buffie Saavedra	Santa Fe	Public Member

About the Board

- ▶ The New Mexico Medical Board was established by the State Legislature "in the interest of the public health, safety and welfare and to protect the public from the improper, unprofessional, incompetent and unlawful practice of medicine."
- ▶ Relevant Governing Statutes:
 - ▶ Medical Practice Act
 - ▶ Impaired Health Care Provider Act
 - ▶ Pain Relief Act
 - ▶ Uniform Licensing Act

About the Board

Licensing and regulation of:

- ▶ Physicians
- ▶ Physician assistants
- ▶ Anesthesiology assistants
- ▶ Genetic counselors
- ▶ Polysomnographic technologists
- ▶ Physician supervisors of pharmacist clinicians
- ▶ Doctors of Naprapathy
- ▶ Naturopathic Doctors

License Types:

- ▶ Medical
- ▶ Telemedicine
- ▶ Post-graduate (resident)
- ▶ Public service
- ▶ Temporary (camp and temporary teaching)
- ▶ Federal emergency

Licensees with Prescriptive Authority

- ▶ Physicians
- ▶ Physician Assistants
- ▶ Naturopathic Doctors – Will have limited prescriptive authority

Medical Practice Act – Violations

NMSA 1978, § 61-6-15 (D) **“Unprofessional Conduct”** Includes:

- ▶ Habitual or excessive use of intoxicants or drugs (D)(7);
- ▶ Gross negligence in the practice of a licensee (D)(12);
- ▶ Incompetence to practice as a licensee (D)(13);
- ▶ The prescribing, administering or dispensing of narcotic, stimulant or hypnotic drugs for other than accepted therapeutic purposes (D)(17);
- ▶ Conduct likely to harm the public (D)(18);
- ▶ Repeated similar negligent acts (D)(19);
- ▶ Injudicious prescribing, administering or dispensing of a drug or medicine (D)(26)

Impaired Healthcare Provider Act

- ▶ NMSA 1978, §61-7-1 through 61-7-12:
 - ▶ Applies to any board or department that licenses, registers or certifies health care providers
 - ▶ License can be restricted, suspended or revoked in the case of a licensee's inability to practice safely by reason of mental or physical illness or substance abuse
 - ▶ Outlines process for licensing boards to use if they have reasonable cause to believe a healthcare provider is unable to practice safely
 - ▶ Involves evaluation by an examining committee – 3 healthcare providers
 - ▶ Gives licensing boards ability to summarily suspend the license of a healthcare provider if they do not comply with an examining committee evaluation

Pain Relief Act

- ▶ NMSA 1978, § 24-2D-1 through 24-2D-6:
 - ▶ Applies to licensing boards of healthcare providers with prescriptive authority
 - ▶ Defines “acute” and “chronic” pain
 - ▶ Requires boards to use clinical expert testimony if bringing disciplinary action against a licensee in their treatment of pain in patients
 - ▶ Requires boards to adopt regulations pertaining to the treatment of pain
 - ▶ Created the “Prescription Drug Misuse and Overdose Prevention and Pain Management Advisory Council”

Prescribing Controlled Substances

- ▶ Board Regulation found at 16.10.14 NMAC governs the prescribing of controlled substances in the treatment of chronic pain and other conditions:
 - ▶ Prescribing for appropriate doses and durations and after a thorough medical evaluation (must be medically justified)
 - ▶ PMP Requirements:
 - ▶ Practitioners holding a Federal DEA Registration must register with PMP through Board of Pharmacy
 - ▶ Must pull a patient's PMP before prescribing for the first time (4 days or more) and must pull once every three months thereafter for continuous prescribing.
 - ▶ MUST BE DOCUMENTED IN MEDICAL RECORD
 - ▶ Review: Is Patient receiving opioids from multiple prescribers, receiving benzos and opioids concurrently; receiving opioids for more than 12 consecutive weeks, receiving more than one substance analgesic, receiving more than 90 MMEs daily, exhibiting misuse or abuse?
 - ▶ Exceptions to Requirement

Prescribing Controlled Substances - Cont'd

- ▶ Appropriate Treatment of Pain With Controlled Substances
 - ▶ These regulations are used by the Board to determine whether a licensee's prescriptive practices are consistent with the appropriate treatment of pain (Standard of Care)
 - ▶ Requires complete physical examination with psych eval and pain status; employment of screening tools and use of other treatment modalities/referrals; written treatment plan; documented discussion of risks and benefits of using controlled substances; controlled substance agreement with patient; urine drug screening at least every 6 months.
 - ▶ Does not preclude treatment of patients with addiction who have legitimate pain
 - ▶ Utilized by Board Investigators, Experts, Prosecutor and Board

Licensees Being Treated With Opiates

- ▶ Under Board Regulation 16.10.14.10 NMAC:
- ▶ Licensees/Applicants who are being treated for chronic pain with opiates are required to:
 - ▶ Be evaluated by a pain specialist
 - ▶ Obtain a neuropsychological evaluation
 - ▶ Obtain clearance from their treating physician before returning to or continuing in practice
 - ▶ Licensees who fail to comply with this Regulation may face disciplinary action by Board

Complaints/Investigations

- ▶ Complaints can come to the board via:
 - ▶ Patients or family members, healthcare professionals, employers, DEA, other law enforcement agencies, pharmacists, other licensing boards, review of certain reports and data
 - ▶ Public Complaints
 - ▶ Board Initiated Complaints
- ▶ Complaints are reviewed prior to initiating an investigation for jurisdiction and allegations being made
- ▶ Results of investigation presented to a subcommittee of board members who make a recommendation for action to the Board as a whole
- ▶ Statute of Limitations: Two years from date Board learns of incident
- ▶ Confidentiality of Complaints/Investigations

Types of Investigations

The following are common allegations against a licensee or applicant for licensure that are cause for investigation:

- Injudicious Prescribing and/or self treatment, treatment of family members
- Incompetency to Practice
- Gross Negligence or Repeated Patterns of Negligence
- Sexual Misconduct
- Disruptive Behavior

Types of Investigations - cont'd

- **Impairment**
- Adverse Licensure Action Taken by Another Licensing Jurisdiction
- Violation of a Board Stipulation
- Obtaining a Fee by Fraud
- Unlicensed Practice
- Falsification of Medical Records
- Conduct Unbecoming

All of the above are actual violations of the Medical Practice Act and can lead to disciplinary action being taken by the Board.

Can I make an anonymous complaint?

- ▶ Example: Certain patients of Dr. X are presenting their controlled substance prescriptions to the pharmacy and my staff is concerned about the dangerous combination of the medications being prescribed. This pharmacy wants to file a complaint with the Board against this doctor as we believe his patients may be at risk, but I don't want my name involved for fear of retaliation. Can I make an anonymous complaint?
 - ▶ Yes. Anonymous complaints are fairly common for us, especially in prescribing cases, and we will initiate a board complaint off of this information. Any information provided to us in order to investigate properly assists us greatly, e.g., names of patients you are specifically concerned about.

Investigation Triggers – Controlled Substance Prescribing

- ▶ The Board will initiate an investigation into a licensee's prescribing of controlled substances if one or more of the following is noted from data regularly received by Board:
 - ▶ licensee is prescribing the “holy trinity” (opioid, benzo and carisoprodol);
 - ▶ licensee is prescribing a concerning combination of opioids and benzos (and we still look at number of tablets being prescribed - #2400 tablets per month is a red flag);
 - ▶ licensee is not accessing a Patient's PMP pursuant to Board Regulation;
 - ▶ licensee is connected to 2 or more patient prescription overdose deaths during a three year period:
 - ▶ Prescription does not need to cause the death of the patient, but could be a contributing factor in the patient's death
 - ▶ Board tracks overdose deaths through receipt of OMI data

Investigating Prescribing Cases

- ▶ Investigating injudicious prescribing cases:
 - ▶ Sources of information provided to Board by DEA, OMI, Pharmacy Board/Pharmacist, or another healthcare practitioner
 - ▶ Requires evaluation of Prescriber's PMP to choose patient population to include in case
 - ▶ Requires the subpoenaing and summarizing of patient medical records, PMP records (both patient and practitioner), OMI records, and can involve collaborating with DEA, other law enforcement, Pharmacy Board, etc.
 - ▶ Hiring Experts to review and opine on standard of care and compliance with Board Regulations and Pain Act
 - ▶ Investigation and subsequent prosecution of these cases is costly! Requires both substantial financial and staff resources
 - ▶ Board Concern: Investigations can be lengthy – will there be additional overdose deaths during investigation?

What discipline might the Board take against my license?

- ▶ Non-Reportable Actions:

- ▶ No action - close case
- ▶ Close case with an advisory letter - generally for minor offenses; can include costs

- ▶ Reportable Actions:

- ▶ Reprimand, fine, stipulated license, suspension, revocation, summary suspension

Reportable actions reported to NPDB, AMA, FSMB, DEA, HHS OIG (federal), etc!!

Examples of Resources Utilized

- ▶ PMP Compliance Letters – Regular outreach to licensees who are pulling less than 50% of required PMPs prior to prescribing
- ▶ Academic Detailing – One-on-one training through Dept. of Health
- ▶ Project ECHO – Provides access to specialty care in rural areas by providing front-line physicians with the knowledge and support they need to manage patients with complex conditions. Partners these physicians with mentors through UNM.
- ▶ CPEP Courses and Educational Plan/Monitoring
- ▶ Adoption of Benzodiazepine Prescribing Guidelines – Effective 02/2018
Download from Website at www.nmmb.state.nm.us

Summary of Board Investigations

INVESTIGATIONS	FY18	FY19	
Number of complaints received	319	356	
Number of complaints closed within the fiscal year	254	252	includes carryover from the previous FY
Number of cases referred to Prosecutor	55	88	
Number of cases with action relating to prescribing issues	9	10	

Summary of Board Disciplinary Activity

Description	FY17	FY18	FY19
NCAs issued	8	15	21
Hearings	7	7	7
Dismissals	0	0	0
Summary Suspensions	5	7	2
Revocations	8	3	5
Stipulations	44	11	22
Voluntary Surrender	5	15	12

Summary of Board Disciplinary Activity

Description	FY17	FY18	FY19
Withdraw application	7	12	9
Denied application	1	1	0
Agreed orders	56	42	37
Reprimand	17	15	12
IPC Assessment*	2	0	0
Restored Licenses	8	22	7
MTP Stipulation	16	16	10

*Impaired Physician Committee

Examples of Basis for Discipline

- ▶ Practicing without a license
 - ▶ Don't forget to renew your license!
- ▶ Injudicious Prescribing/treating family/self prescribing
- ▶ Adverse licensure action taken by another licensing jurisdiction
- ▶ Incompetency
- ▶ Interaction with other healthcare practitioners, patients and others that could adversely affect patient care (disruptive behavior)
- ▶ Violation of Stipulation

And more basis for discipline...

- ▶ Patient Abandonment
- ▶ Ethics Violations
- ▶ Aiding and Abetting the Unlicensed practice of medicine
- ▶ Medical Records Issues
- ▶ Misrepresentation on Application/Renewal Application
- ▶ Sexual Boundaries
- ▶ Excessive use of alcohol or drugs
- ▶ Gross Negligence or a repeated pattern of negligence

New Reporting Requirements effective September 17, 2018

- ▶ Impaired, incompetent, disruptive or unethical colleagues must be reported.
 - ▶ Reporter must have a good faith basis for believing that the public health and safety may be at risk
 - ▶ Reports are confidential and may be made anonymously
 - ▶ Submission of a false or a malicious report may result in disciplinary action against the reporter
 - ▶ Public health and safety is our goal

New Reporting Requirements effective September 17, 2018-continued

- ▶ Self-reporting required of a licensee or applicant with any mental, or physical illness, substance abuse of drugs or alcohol that affects the licensee's ability to practice medicine with reasonable skill or safety to patients.
- ▶ Self-reporting information is confidential but may subject the licensee or applicant to action to ensure public safety.
- ▶ Conforms with new questions on the application which now only ask about current conditions that affect licensee's ability to practice safely.

New Mexico Health Professionals Wellness Program (Formerly know as MTP)

- ▶ The New Mexico Health Professionals Wellness Program (HPWP) provides CONFIDENTIAL services statewide for health professionals with substance abuse, mental health, physical health impairment and workplace issues. HPWP was started, as MTP, in 1986, by the New Mexico Medical Society's Physician Aid Committee (PAC).
- ▶ HPWP is a non-profit organization with a voluntary board of directors and paid staff.
- ▶ Services can be accessed by either voluntarily (self-referred) or via mandatory referral (licensing board or employer) routes.
- ▶ Services include assessments, treatment referrals, treatment planning and monitoring.

Can I access HPWP privately without the Board or anyone else knowing?

- ▶ Yes. Any NM MD/PA may utilize the services of HPWP without HPWP disclosing to NMMB your utilization or condition
- ▶ We encourage licensees to utilize these services.
- ▶ Only if the licensee becomes a danger to himself or others- generally through a relapse that impairs one's ability to practice medicine- would NMMB be informed

Professionals HPWP Will Work with

- ▶ Physicians - MD and DO
- ▶ Medical students and Residents
- ▶ Dentists
- ▶ Podiatrists
- ▶ Nurses (just drug screen monitoring)
- ▶ Physician assistants
- ▶ Psychologists
- ▶ Pharmacists
- ▶ Veterinarians
- ▶ Other health professionals, students

Outcomes

- ▶ Current enrollment for MD/PA's:
 - ▶ Mandatory: 42
 - ▶ Voluntary: 18
 - ▶ Current referrals: 10
- ▶ Success rate 85% on annual basis
- ▶ Why so high?
 - ▶ Clients have a lot to lose
 - ▶ Close monitoring

How to Contact HPWP

- ▶ Just call them
- ▶ It is confidential if the affected individual calls and sets up an assessment.
- ▶ The NMMB is not notified, unless once the client is engaged in the program, they show signs of impairment that may affect patient care.

- ▶ **The HPWP offices: 11930 Menaul NE Suite 110, Albuquerque, NM 87112**
- ▶ **Phone: 800-431-0090 or 505-271-0800, after hours 505-857-3833**
- ▶ **Monday through Thursday 8am to 11:45am 1:15pm to 5 pm, Friday 8 am to 1:30 pm**

#1 Question asked by licensees?

- ▶ Can I prescribe meds to myself or my family?

Well....

- ▶ Only if emergent and for the shortest term possible to self or family
- ▶ You need to have complete medical records as this is a patient encounter
- ▶ And we might ask for those records one day!

Warning: Your Pharmacist will turn you in if you repeatedly prescribe to self or family member!

Thank you for all you do!