



Ultra Health[®]

March 29, 2020

Via Email and Hand Delivery to:

Medical Cannabis Advisory Board

Re: Petition in connection with the determination of an adequate supply

Dear Medical Cannabis Advisory Board Member,

On behalf of the petitioner, Ultra Health, 255 Camino Don Tomas, Bernalillo, N.M., 87004, we respectfully submit the following petition for your consideration. This submission includes all required sections defined by the Department of Health, to the extent that it does not include material specifically required for a petition related to a newly requested qualifying medical condition. The petition is submitted in accordance with NMSA 1978 §26-2B-6(E). The index of materials are as follows (due to the length of attachments, electronic links have been provided):

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Introduction

In connection with NMSA 1978 §26-2B-6(E), the statute specifically authorizes the Medical Cannabis Advisory Board the authority to review and recommend quantities of cannabis to constitute an adequate supply. Concurrently, with the authority to make such determinations or recommendations, it would be prudent for the Medical Cannabis Advisory Board to review the number of needed plants in production, the policies related to adequate supply or propose actions to fulfill any recommendations to satisfy the recommendations by the Medical Cannabis Advisory Board in achieving adequate supply.

We hereby petition the Medical Cannabis Advisory Board to make appropriate recommendations to ensure the successful maintenance of an adequate supply for the 83,000+ patients enrolled in the program. To simply recommend a purchase or possession limit of cannabis to be maintained by an individual patient enrollee but to not balance that defined need with supporting policy recommendations would fall short of the purpose of the Lynn and Erin Compassionate Use Act of allowing for the beneficial use of medical cannabis.

As you are aware, licensed cannabis producers were recently deemed to be providers of an essential service in connection with the COVID-19 outbreak. We fully intend to maintain the trust placed in our medical cannabis industry. But we remain concerned about the most critical and urgent need to fully address adequate supply and the cultivation/production requirements to achieve uninterrupted supply of three months as mandated by statute. We implore your immediate consideration, particularly in light of the COVID-19 outbreak and its anticipated ongoing negative impact on the wellbeing of our enrollees.

Availability of Medicine in the Regulated Market

I. DEMONSTRABLE UPWARD GROWTH TREND

As an essential health service, we are monitoring on an hourly and daily basis patient demand to ensure there is no interruption in available medicine. We just concluded another week ending March 22, 2020, with activities increasing nearly 10% from the previous week alone and nearly 50% increase weekly since the beginning of the year. This unprecedented growth is no longer a surge but a demonstrable and established upward trend.

Upon further analysis, this trend does not appear to be due to hoarding but instead due to an increase in both the number of consumers and the quantities being purchased per transaction. Keep in mind, as more patients stay home as recommended by the NMDOH, calming anxiety is critical at this time, as anxiety and the related sense of isolation is an understandable and expected part of the pandemic effect.

Note that medical cannabis markets in other states are experiencing similar surges in consumption. Pennsylvania and New Jersey had waits as long as [three hours](#) and medical cannabis sales increased nationwide over 20%. The impending shortage is being exacerbated in New Mexico by the overly restrictive plant limit on licensed cannabis producers. We have a unique and precious opportunity to do what's right and limit the impact on this industry by immediately allowing producers to grow more plants.

II. ERRORS IN REPORTING

To make matters worse, the amount of usable flower & bud (usable flower to be sold to patients) in inventory that the NMDOH has previously reported does not exist. The most recently published quarterly report issued by the MCP (February 20, 2020 and available on the Department's website) reported 6,248,514 grams of usable flower & bud in stock as of December 31, 2019. The over 6.2 million grams of flower equates to nearly 14,000 pounds of flower and on its own would be more than half of the amount of flower & bud sold to patients in the entire year of 2019.

Unfortunately, it is clear that number was wrong. The overstated amount is made up substantially by three producers (PurLife, RGreenleaf and Sandia Botanicals), accounting for over 65% of the entire total 6.2 million grams of inventory reported, or a total of 3,919,955 grams. The three producers erroneously accounted on average 1,306,655 grams each while the other 31 producers reported an average in stock of 48,944 grams. This huge 2,570% variance should have alerted the NMDOH to the obvious reporting errors being created.

In fact, one of the producers communicated with NMDOH about the error and asked for a correction. Sandia Botanicals had 801,700 grams included in the total inventory at year end, which is over 60 times what they sell in a quarter and more than their total amount sold throughout the 2019 year. The NMDOH simply reported the wrong number which was actually a percentage number. The originally submitted report by Sandia Botanicals indicates their year end number as 4,479 grams and not 801,700

grams. The variance is too large for anyone to reasonably think that the NMDOH calculated inventory number was even possible.

The other two producers variances are on an even greater scale of distortion than the obvious Sandia Botanical inventory reporting flaw. PurLife had reported over 1.9 million grams at year end which accounted for nearly one-third of the total inventory reported for the industry and nearly six times what they reported selling in the same quarter. Keep in mind, the PurLife number is being aggregated by the MCP as usable “flower and bud,” but the producer has confirmed that it is NOT only flower & bud but other plant material, including trim and kief. In reality, they estimate they have “300 to 400 pounds of usable flower.” Even if you pushed that number to 400 pounds to be extra generous and error in favor of more and not less inventory on hand, there would still be no more than 181,600 grams in stock for PurLife, a far cry from the 1.9 million useable flower aggregated by the NMDOH to report a total of 6.2 million grams available in the industry.

With regard to RGreenleaf (RGO), it is the same impact of misreporting and combining usable flower/bud with trim or other amounts of biomass. You may have recently noticed that RGO stopped operations at their Nob Hill location and curtailed business hours at other locations. This action is consistent with other operators who are also reducing hours and limiting the amount of strains due to “likely inventory concerns.” Consistent with the two previous material errors, it would not take much inspection by the state to determine that RGO did not have at year-end or possess today 1.1 million grams of usable flower & bud while only reporting zero grams of available trim (not usable/shelvable flower & bud).

The worst case and most generous assumption is to assign RGreenleaf an industry high of 500 lbs or 227,000 grams of usable flower & bud. By correcting for the huge misstatements on Sandia, PurLife, and RGO and making additional *material* (variance greater than 10%) adjustments where the MCP grabbed the wrong line item for “flower and bud” (such as Better Daze should be 121,000 NOT 623,000; CG Corrigan 71,000 NOT 107,000; Seven Clover 118,000 NOT 166,000; Southwest Wellness 23,000 NOT 186,000) results in a much different reality of the situation.

The total at year end and for the quarter would be approximately 1.9 million grams in inventory of flower & bud. This number compares reasonably to the first three quarters of 1.3 million for Q1, 1.8 million for Q2, and 2.5 million for Q3 (still has RGO inflated number) respectively. The 6.2 million grams of inventory at year end was simply wrong,

as was the “over 5 million grams” of inventory testimony provided orally during the legislative session, and the “roughly 7 million unsold units at the end of 2019” (as available flower & bud to be sold to patients) as provided by the MCP to the NM Political Report ([published](#) March 21, 2020). Realistically, we had less than 2 million grams of usable flower & bud at year end, which is less than 23 grams per enrollee, or about 8.8 days in supply statewide. [230 grams / 90 days = 2.6 grams per day; 23 grams / 2.6 per day = 8.8 days]

In conclusion, NMDOH should not simply rely on self-reported “usable cannabis” or “in stock” figures because errors do exist in self reporting. Nor should NMDOH be absolved for tabulating numbers without proper care and concern. These errors and inconsistencies extend further to inventory management on BioTrack. NMDOH nor BioTrack has mandated any form of standardization within inventory management, so it is not responsible to just ‘grab’ numbers and make representation without appropriate inspection. Keep in mind, while the licensed cannabis producers are the operators who most utilize BioTrack, there remain differences in how they access and utilize the system.

We acknowledge this lack of standardization creates several issues with validating how much supply is actually in stock. Providers’ inventory management differs greatly due to the size of their operation and the types of medicines they produce. Without clear standardization, it becomes increasingly difficult to calculate how much medicine is available for patients in the aggregate. Furthermore, reporting inconsistencies such as the examples stated above become more prevalent in the absence of clear and direct standardization.

We need to get this right. There is not the usable flower & bud that the NMDOH would like to believe. Nor should the NMDOH be assuring the patient community of usable flower & bud inventory that does not exist. We should remain conservative and certain, exercising due inspection. If we are to disagree, or to err, the responsible position is to take the appropriate actions that are more protective of the most favorable outcome for our patients. Now is not the time to rely on ‘guesstimates’ and long standing biases.

III. GROW CYCLES AND IMMEDIATE RELIEF

The average life cycle of the cannabis plant is around 14-16 weeks, not including the seedling phase. Drying, curing and testing can take an additional 30 days before the flower is usable. It is a common misconception that the flower is cultivated, harvested,

and shelf-ready in a matter of 12 short weeks, yielding nearly a pound of material per plant. While shorter life cycles are possible and preferable, yield per plant will decrease. Due to the limited plant count in New Mexico, producers grow in longer cycles, producing larger plants with higher yields. Increased plant count will allow us to immediately change strategies to growing in shorter cycles, harvesting more plants at a faster rate, and decreasing the amount of time it takes to make usable flower accessible to patients.

It is undeniable that patients will be consuming more cannabis throughout this pandemic period. Reducing stress and calming anxieties are critical at this time and medical cannabis is the solution for many patients. As stated in the public health emergency order dated March 19, 2020, pharmacies and dispensaries alike cannot simply limit the amount of cannabis patients can purchase. In fact, we should do the very opposite seeing as cannabis is the only medicine with supply wholly produced in-state. Patients' need for greater access at a lower cost has never been more pronounced, and the only way to achieve this is to eliminate the current plant count for licensed cannabis producers.

Many New Mexicans are not fortunate enough to be considered essential services or to be able to work from home. Therefore, many New Mexicans have and will be laid off due to the current economic climate and the public health emergency orders requiring that all non-essential services be closed during the duration of the order – a period that could extend as long as 18 months if the Federal assumptions are correct. Nearly 32,000 New Mexicans have [filed](#) for unemployment in the last week, and claims across the United States are estimated to surpass [3.3 million](#) filings. Claims reached as high as 60,000 filings in New Mexico during the Great Recession, indicating that thousands more New Mexicans may be in need of unemployment benefits in the future.

It is critical that cannabis producers be allowed to cultivate more plants during this time. With more plants and greater supply, production costs will fall and those savings will be passed on to the patients. Colorado's average price per gram is \$3.28 while New Mexico's is \$10.26. At the current level of production and price per gram, it would cost a New Mexico patient approximately \$2,400 to purchase their full 230 units. That price is simply inaccessible for the majority of New Mexico patients, especially during the COVID-19 outbreak.

IV. REGIONAL ANALYSIS

Available medicine in the regulated market in New Mexico is also an urgent matter because the state has been historically operating with far fewer plants than other programs allow. This February, patient enrollment in New Mexico’s program officially [outpaced](#) Colorado’s medical cannabis patient enrollment. While New Mexico’s program reported 82,147 patients enrolled for February 2020, Colorado reported 81,893 patients as of February 29, 2020.

Although patient enrollment is comparable, the number of plants cultivated in the program differ by more than 10 times. For about 82,000 patients, Colorado allowed 286,299 plants to be in production in 2019. For about the same number of enrollees, New Mexico’s program only allowed 26,098 plants to be in production in 2019. This does not indicate Colorado patients need more medicine than New Mexican patients. This simply indicates New Mexico continues to lag behind more robust medical cannabis programs and has failed to adequately serve patient needs. The issue of patients’ access to medicine has been exacerbated by the COVID-19 outbreak and patients need immediate relief.

State - Medical Only Activity	Colorado	New Mexico
Enrolled Patients (Feb. 2020)	81,893	82,177
Sales (2019)	\$338.5M	\$129.3M
Pounds of cannabis sold (2019)	210,730*	21,939
Plants in Production (2019)	286,299	26,098
Plants per Patient	3.5	0.3
Purchase Limits (90 days)	180 oz	8 oz
Average Price Per Gram	\$3.28	\$10.26
Sales Tax on Medical Cannabis?	NO	YES

V. HEEDING FEDERAL WARNINGS

During this time, organizations within government, the private sector, and individual consumers should take federal guidelines and warnings into consideration.

In a March 13, 2020 [report](#), the U.S. Government has outlined several key factors in facing the COVID-19 pandemic, including an assumed timeline of 18 months or longer for the pandemic to dissipate. Furthermore, the report has also predicted supply chain and transportation impacts that will result in shortages for the public sector, private sector, and individual consumers themselves (Page 4).

The report also included critical considerations defined as “key elements of information that planners must take into account when developing a plan” and should be addressed when planning for COVID-19 (Page 5). Critical considerations relevant to New Mexico’s medical cannabis program include:

- “Response to COVID-19 must involve vertical and horizontal integration between federal interagency partners at the headquarters and regional levels with (state, local, tribal and territorial) public health, emergency management officials, and the private sector.”
 - The Medical Cannabis Program and licensed providers need to work proactively together to minimize the negative effects of COVID-19 on the patient population.
- “Critical resources need to be prioritized and directed to meet evolving demands to maximize mission effectiveness.”
 - As previously stated under the growth trend section, patient needs are evolving and we need to mobilize critical resources, including increased plant cultivation, to maximize the effectiveness of New Mexico’s COVID-19 response plan.
- “Federal supply chain management should include prioritization and redirection of essential critical resources to meet evolving demands to facilitate USG mission effectiveness, public health, and safety.”
 - Unfortunately, the Medical Cannabis Program cannot depend on the federal supply chain to prioritize and direct resources to meet the evolving needs of patients, therefore requiring licensed providers’ willingness to step up to the plate to promote public health and safety during the COVID-19 outbreak.

- “Revisions in the scenarios, modeling, and projections used to inform planning, and consequent changes in planning, should be made to accommodate changes in knowledge about COVID-19 characteristics affecting the parameters used for modeling.”
 - The Medical Cannabis Program needs to revise cultivation regulations, patient purchase limits, and other regulations in accommodating changes in knowledge about COVID-19 and its effects on supply, patient access, employment, and more.

VI. SUMMARY

The Medical Cannabis Program has a unique opportunity to provide for patient needs during this trying time, and the solution lies within New Mexico and its cannabis providers willingness to step up to the plate. We cannot look to the Federal government to solve the issue of adequate supply during the COVID-19 outbreak. However, we can show leadership and resolve our own supply needs within the state, a privilege many industries do not have.

We respectfully request the Medical Cannabis Advisory Board to recommend the immediate suspension or substantially raising the current plant count limit to allow cannabis providers to meet increased patient needs due to the long term shortages in the medical cannabis marketplace, the recent surge in activity, and the CDC’s 30-day supply recommendation. Increased patient needs will be met by immediately allowing producers to substantially increase plants while focusing on much shorter cultivation cycles to enhance harvestable plants and less reliance on outdoor or the traditional 14 to 16 week cultivation cycle. With more plants on a shorter cycle, the industry will reap a quicker harvest turnover which will result in medicine reaching patients faster.

Closing

We appreciate the hard decisions and choices being made each day as we collectively deal with this pandemic. On a broader economic and societal level, what we are doing now is likely bad policy. But it may also be the best policy available, at least for a very short term. Prudence and responsiveness are valuable commodities being sought from the MCP, the NMDOH and the Medical Cannabis Advisory Board to immediately recognize the changes needed today.

We fully respect and understand that every decision may not work ideally. But in those cases, like New Mexico's medical cannabis program, where we have clear objective guidance, knowledge and ability to minimize the damage to our vulnerable neighbors, families and friends we implore you to review these requested needed changes with an open mind and heart to doing the right thing as immediately as possible.



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