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**Final Decision Regarding Advisory Board Report and Recommendations from  
Meeting of November 4, 2016****I. Decision:**

I have reviewed the recommendations of the Medical Cannabis Advisory Board contained in their report, which was based on the Advisory Board's findings at a public hearing held on November 4, 2016.

Having reviewed the Advisory Board's recommendations and the materials submitted, and in consideration of the purpose of the Lynn and Erin Compassionate Use Act to provide relief from pain and suffering associated with debilitating medical conditions, I am taking the following actions with regard to the petition and the recommendations submitted to the Department of Health ("Department").

**A. Recommendation Regarding Opiate Use Disorder**

The Medical Cannabis Advisory Board considered a petition to add Opiate Dependence to the list of medical conditions qualifying for enrollment in the New Mexico Medical Cannabis Program. The Advisory Board recommended, by a vote of 5-1, that Opiate Use Disorder as defined in the DSM-V be recommended for inclusion in the list of conditions qualifying for enrollment in the Medical Cannabis Program.

I am declining to adopt the Advisory Board's recommendation to add Opiate Dependence and/or Opiate Use Disorder to the list of qualifying conditions. While there have been anecdotal reports of some individuals experiencing a reduction in opiate usage among persons using cannabis for other qualifying conditions, there appears to be little if any medical literature that actually addresses the effect of cannabis usage on persons with a diagnosed opiate use disorder. The Petition in this case includes abstracts from various medical journals, as well as from other articles discussing medical studies. Most of the articles cited in the Petition concern the effect of cannabinoids on chronic pain, and do not specifically address opioid use or opioid addiction. Of particular note, the JAMA report (October 1, 2015) while making an interesting association, provides limited causality and is not evidence within which to make sound policy decisions. Chronic pain is already an approved condition for enrollment in the Medical Cannabis Program. This fact alone does not demonstrate that cannabis is an effective treatment for opiate use disorder or its symptoms. No medically credible evidence has been presented supporting this Petition and it appears that no human studies were offered in support of the use of cannabis for treatment of opioid dependence.

There have been some animal-based studies indicating that cannabinoids may be useful in attenuating the reward effect of opioids and modulating opioid cravings. While those studies are promising, they are by no means conclusive, and other studies have indicated that cannabis may

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be detrimental for persons who consume opiates. For example, in a written decision declining to approve marijuana for treatment of addiction to opiates date July 1 of last year, the State of Maine's Department of Health and Human Services noted an article from 2005 (*Fattore et al. in Neuropharmacology*) which found that heroin and cannabinoid antagonists both reinstated heroin-seeking behavior in rats. In a recent comprehensive review of human-based studies regarding the health effects of marijuana, the National Academies of Sciences (NAS) also referenced a study (*Whiteside and colleagues in the Journal of Adolescent Health, 2016*) of 120 adolescents aged 12 to 18 years who were seen in a trauma center or an emergency department for injury, which found that preinjury cannabis use was an independent predictor of continued prescription opioid use up to 12 months after discharge. The report noted that the NAS committee did not identify a good- or fair-quality systematic review that reported on the association between cannabis use and the rates and use patterns of opioids.

Opiate abuse and dependence are serious issues in the United States, and they are of continuing concern in the state of New Mexico. While I share the Advisory Board's concern about opioid use and its costs, I cannot say with confidence that the use of cannabis for treatment of opioid dependence and its symptoms would be either safe or effective. Also, I am concerned that utilizing one addictive substance to treat dependence on another without reliable medical evidence and human research studies is problematic at best considering our current opiate epidemic. For each of these reasons, I am declining to adopt the Advisory Board's recommendation.

#### **B. Recommendation Regarding Neurodegenerative Dementia**

The Medical Cannabis Advisory Board considered a petition to add Alzheimer's disease to the list of medical conditions qualifying for enrollment in the New Mexico Medical Cannabis Program. The Advisory Board recommended, by a vote of 5-0 (with one abstention), that "Neurodegenerative Dementias" be recommended for inclusion in the list of conditions qualifying for enrollment in the Medical Cannabis Program. No discussion of the Advisory Board's reasoning was included within its written report. The report references a similar petition that was heard by the Advisory Board in April of 2014, and that the Advisory Board recommended at that time in favor of adding Neurodegenerative Dementias to the list of qualifying conditions. At that time, the former Cabinet Secretary, Retta Ward, declined to adopt the Advisory Board's recommendation, citing concerns regarding the breadth of the diagnosis of neurodegenerative dementia, the lack of significant medical studies concerning the effects of cannabis on persons with the diagnosis, the vulnerability of persons with the diagnosis and the potential for drug diversion, and the difficulty of evaluating the efficacy and ensuring its safety for persons with the diagnosis. I share the concerns raised by Secretary Ward and add that the Advisory Board has not provided any subsequent evidence to change that determination. I am also concerned about the potential for adverse drug interactions among persons who take other medications to address dementia.

In terms of the available medical literature, it is evident that there is few if any human-based clinical studies regarding the effects of cannabis usage on persons in this population, a fact that the petition acknowledges. Most studies referenced in the petition do not address the use of cannabis to alleviate symptoms of Alzheimer's disease in human patients, but rather consist of

studies of cells in a laboratory setting, limited experiments on rodents, computer simulations, etc. The lack of significant medical literature on the subject was reflected in the National Academies of Sciences' recent review, which stated that "the current limited evidence does not support a therapeutic effect of cannabinoids" for treatment of symptoms associated with dementia. The NAS review concluded that "there is limited evidence that cannabinoids are ineffective treatments for improving the symptoms associated with dementia."

For the reasons stated, I am declining to approve either Neurocognitive Dementia or Alzheimer's Disease for inclusion in the list of conditions qualifying for participation in the Medical Cannabis Program.

**C. Request for the Department to Permit Certification of Patient-Applicants via Telemedicine**

The Medical Cannabis Advisory Board heard a request for the Department to modify its rules to permit certifications of medical cannabis patient-applicants to be conducted via telemedicine. The Advisory Board recommended that the Cabinet Secretary "determine what requirements [the Department] needs to allow providers to do Telemedicine evaluations of patients for the conditions eligible for enrollment".

Department rule 7.34.3.10(I) NMAC states that, "[i]n order to certify a patient's application, a practitioner must have an actual physician-client relationship with the applicant or qualified patient, and shall conduct an in-person physical or mental evaluation of the applicant or qualified patient prior to issuing a certification." Telemedicine refers to the use of telecommunication (telephonic and video technology, for example) to provide health care services from a distance. Thus, as the Department rule is written, a medical certification for an individual's enrollment in the New Mexico Medical Cannabis Program cannot be based on telemedicine, but must be the result of an in-person evaluation.

There are several benefits to requiring an in-person evaluation in this context. First, it is important to recognize the differences between the Medical Cannabis Program and ordinary prescriptive medicine. Prescriptions are made for limited periods of time or for limited quantities of a given medication, and patients must return to their prescribing physician before their prescription is renewed. In the Medical Cannabis Program, certifications are made once annually. No prescription is rendered for cannabis, and so the only limitation of the quantity of cannabis that is used by a given patient is the limit identified in Department rule for a 90-day period. There is no assurance in the Medical Cannabis Program that patients will continue to visit with their certifying practitioner regarding their consumption of cannabis and its effect on their qualifying condition. There is much less oversight of the use of cannabis within the Medical Cannabis Program than is the case with respect to prescription medications, and allowing telemedicine to be used for conducting evaluations for annual certifications could further erode the already limited contact that patients have with certifying practitioners.

In-person evaluations also have benefits with respect to the diagnosis and treatment of medical conditions. For example, in-person evaluations can in some circumstances allow greater opportunity to accurately diagnose the source of a patient's complaint.

The request asserts that there are too few certifying practitioners who practice in rural areas of the state. Based on the number of certifying practitioners and the variety of locations where they practice, it has not been the experience of the Department of Health that certifying practitioners are not available in rural areas. In fact, the number of certifying practitioners continues to increase as the Medical Cannabis Program grows. For the reasons stated, I am declining at this time to commit to adopting telemedicine as a means of conducting patient-applicants' annual evaluations.

**D. Request for the Department to Increase Plant Count Limit for Licensed Non-Profit Producers**

The Medical Cannabis Advisory Board was created by statute at NMSA 1978, § 26-2B-6. The stated role of the Advisory Board is to:

- A. review and recommend to the department for approval additional debilitating medical conditions that would benefit from the medical use of cannabis;
- B. accept and review petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis;
- C. convene at least twice per year to conduct public hearings and to evaluate petitions, which shall be maintained as confidential personal health information, to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis;
- D. issue recommendations concerning rules to be promulgated for the issuance of the registry identification cards; and
- E. recommend quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and primary caregivers.

Department rule 7.34.2.9 NMAC states that “the advisory board may accept and review petitions from any individual or association of individuals requesting the addition of a new medical condition, medical treatment or disease for the purpose of participating in the medical cannabis program and all lawful privileges under the act.” “Petitioner” is defined at 7.34.2.7(II) NMAC as “any New Mexico resident or association of New Mexico residents petitioning the advisory board for the inclusion of a new medical condition, medical treatment, or disease to be added to the list of debilitating medical conditions that qualify for the use of cannabis”.

The request to increase the plant count limit for licensed nonprofit medical cannabis producers is not a petition within the terms of the statute or the rule, and also does not fall within the stated responsibilities of the Advisory Board. Accordingly, I am declining to address the request or the Advisory Board's recommendation concerning it.

**II. Closing**

In closing, I would like to thank the individuals who submitted petitions for consideration. I would also once again like to thank the Advisory Board for its work and support of this program, which has provided relief to thousands of people suffering from debilitating medical conditions.

A handwritten signature in blue ink, appearing to read "Lynn Gallagher", written over a horizontal line.

Lynn Gallagher  
Cabinet Secretary

6/6/17

Date