

Report & Recommendations to the New Mexico Secretary of Health

From the Medical Cannabis Advisory Board (MCAB) to the New Mexico Department of Health Medical Cannabis Program (NMDOH MCP)

From a Public Hearing on Monday November 16, 2020 9:00 am to 12:30 pm

Report prepared by Stephanie Richmond PA-C, Chair for the Medical Cannabis Advisory Board.

A public hearing of the Medical Cannabis Advisory Board to the New Mexico Department of Health Medical Cannabis Program was conducted via web-based platform from 9:00 am to 12:30 pm on Monday, November 16, 2020.

A. Call to Order, Introductory Comments, Board Member Introductions

Stephanie Richmond, PA-C called the meeting to order at 9:03

Board members present

1. Arielle Bauers, CNM, CNP Certified Nurse Midwife and Psychiatric Mental Health Practitioner
2. Jean-Paul Dedam, MD Family Medicine and Medical Acupuncture
3. Rachel Goodman, MD, FACOG Obstetrics and Gynecology
4. Courtney Marquez, PA-C Medical oncology
5. Davin Quinn, MD Psychiatry
6. Stephanie Richmond, PA-C Family Medicine
7. Traci White PharmD, PhC

A quorum was established as 7/9 members present

Present representing the Department of Health

1. Gary French, MD Director of the Medical Cannabis Program
2. Dominick Zurlo, MD Director of the Medical Cannabis Program
3. Elizabeth Jensen, Health Educator Medical Cannabis Program
4. Chris Woodward, JD, Office of the General Counsel
5. Martinik Gonzales, Licensing and compliance manager for the Medical Cannabis Program
6. Amanda Sundberg, Health Program Manager Medical Cannabis Program

B. Nomination and Election of a New Chairperson and Alternate Chairperson

Stephanie Richmond PA-C self-nominated to be the chairperson and Arielle Bauers seconded motion, all board members approved

Jean-Paul Dedam self-nominated to be the alternate chairperson and Stephanie Richmond seconded motion, all board members approved

C. Medical Cannabis Program Update

Dominick Zurlo Medical Cannabis Program Director

Medical cannabis has been included in current public health orders as an essential service due the COVID pandemic to ensure access to medical cannabis. Dr. Zurlo stated that there are 100,021 active patients enrolled as of October 2020. This is a 27% increase over the last year. At the end of the 3rd quarter 2019, there were 77,168 patients were enrolled and 98,507 at the end of the 3rd quarter 2020.

The supply of product for 3rd quarter 2020: 51,250 plants licensed, 30,264 mature plants, 21,279 harvested plants. This is 40 % increase over the same quarter from 2019 when 15,145 plants were harvested. There is still the possibility for Licensed non-profit producer (LNPP) to grow approximately 21, 000 more plants than were in production at the end of the 3rd quarter 2020. At the end of the 3rd quarter 2020, the LNPP had 5,774,625 grams of flower and bud in stock with 3,617,266 units of cannabis derived products in stock. For comparison, at end of 3rd quarter in 2019, approximately 3,888,000 grams of flower and bud were in stock. The cannabis derived products were not accounted for in the same manner during 3rd quarter 2019. This is 48.5% increase in flower and bud over the same time period in 2019. The program continues to process applications, meet the 30 day requirement for approval or denial of the application, and mail in the additional 5 days. The program also continues to ensure LNPP license renewal, reviewed amendments, and relicense manufacturers and review amendments. Due to COVID concerns, the Department has conducted site visits virtually and in person when safe and appropriate. They are also working with Biotrack THC so that patients and providers could submit applications online and will be available soon.

Allen Plymale, MD, RPH, PHC, PharmD joined as a MCAB panelist.

D. Review of Proposed Rule Changes

Dominick Zurlo Medical Cannabis Program Director

Dr. Zurlo gave a synopsis of the proposed rule changes for 7.34.4.28 Reciprocity and it is included as an attachment, along with the Summary of Medical Cannabis Program Rule Amendments to 7.34.4.28. The proposed rule changes would not allow a New Mexico participant of the program to also participate as a reciprocal patient. It defines a non-resident and requires that the participant's place of residence is the same as the place of cannabis program enrollment. It further defines a New Mexico resident and that a member of New Mexico Indian nation, tribe or pueblo that is participating in that cannabis program may participate as a reciprocal patient. The proposed reciprocal limit is 230 units in one year. The LNPP is required to compare the proof of authorization of participation in the form of a government issued card or document to the patient's government id and verify that it is consistent. This info is to be tracked in a database and prevent duplicate enrollment for the same patient.

The MCAB expressed agreement with closing the loophole in the current rules to prevent double dipping. The MCAB expressed concern about the quantity limits for the reciprocal patients and sites patients that are in New Mexico that may not have access to enough of the medicine. The MCAB discussed several instances of reciprocal patients living in New Mexico for longer than 90 days and that they may not have access to enough of the medicine due to the limits. These reciprocal patients may have been displaced by COVID, are college students or snowbirds.

Dr. Zurlo confirmed that the current rules for the reciprocal limit is for 230 grams in three months and that reciprocal patients cannot apply for higher quantity limits. He also indicates that the rule changes would reduce fraud, decrease the burden on the LNPP of verification of enrollment, and to prevent a patient bypassing medical care to have access the cannabis and potentially mask other symptoms.

Kenneth Corazza, RPh PhC joined

Motion: Kenneth Corazza moved that the MCAB approve these rule changes.

Stephanie Richmond proposes that we wait to vote in order to address quantity limits that are also on the schedule for today. Ariele Bauers agrees.

Kenneth Corraza withdraws his motion.

Stephanie Richmond motions to table the proposed rule changes and Allen Plymale seconds the vote to table.

Board action: Table the vote on the Reciprocity rule amendments

E. Petitions from the Public

1) 2019-008 Add ADHD ADD Anxiety Disorder and Tourette's

The petitioner Jason Barker provides new information that there is an increase in the diagnosis related to COVID pandemic and that a list of other states are included in the petition that allow the diagnosis.

The MCAB questions the petitioner for clarification regarding the inclusion of all three or just one of the diagnosis and the intent was for all three diagnosis to be included. The MCAB is concerned that cannabis can have a deleterious effect on attention and concentration and may not be ideal for ADHD. However, a small study included in the petition indicates improvement by decreasing activity as anandamide in the brain striatum will decrease the overall activity and could offset the couch lock phenomenon and improve the cognitive score. Anandamide does decrease dopamine transport function, which is similar to approved stimulant treatment for ADHD. These medications have the same effect as cannabis to decrease the dopamine in the brain. Another 2005 study cites indicates that THC can decrease hyperactivity in mice. We do not know what causes ADHD and it may be due to multiple different conditions, some of which could be benefited by cannabis. In adults, some scientific evidence indicates that it can be beneficial and should be included. The MCAB is concerned about the inclusion of children for this diagnosis as studies have shown cannabis can affect their neurodevelopment.

Motion: Davin Quinn moved that the diagnosis of ADHD, ADD, Anxiety and Tourette's be added to the list of conditions eligible for enrollment in the New Mexico Medical Cannabis Program. He moved that there be a modification to include adults only for all three diagnosis. Rachel Goodman seconds the motion.

Voting in favor of the motion with modification: Bauers, Corazza, Dedam, Goodman, Marquez, Plymale, Quinn, Richmond, White

Board action: By a vote of 9-0, the MCAB recommends to the Secretary of Health that ADHD, ADD, Anxiety and Tourette's be added to the list of conditions eligible for enrollment in the New Mexico Medical Cannabis Program with the modification that it be for adults only.

- 2) 2019-009 Substance Abuse Disorder (To include alcohol use disorder, tobacco use disorder, stimulant use disorder, hallucinogen use disorder, and opioid use disorder)

The petitioner Jason Barker states that although the overdose rate has declined for prescription narcotics, there has been an increase in the overdose from illicit substances. The death rate increased by 13% from 2018 to 2019. Methamphetamine overdose has increased 44% and fentanyl has also increased. The current petition has been modified from past petitions for Substance Abuse Disorder in order to include tobacco, stimulant and hallucinogens. Opioid Use Disorder is already included as a qualifying diagnosis.

The MCAB recognizes that the Substance Use Disorder is broad and requires a multifaceted treatment approach to ensure patients are getting both the medication and counseling services needed to prevent harmful outcomes. The use of medical cannabis for Substance Use Disorder with a harm reduction model would be beneficial due to the decreased addiction potential of medical cannabis. Also, there are no defined medications that are used in the treatment of stimulant and hallucinogen use disorder and cannabis has a role to alleviate symptoms of withdrawal. This is also consistent with the purpose of the Lynn and Erin Compassionate Use Act. There is concern for the sole use of cannabis for alcohol withdrawal, which can cause a glutamatergic surge resulting in seizures. Alcohol use disorder is different than the stimulant and hallucinogen use disorder and there are several formal alcohol detoxification programs with established protocols and medical supervision.

Motion: Davin Quinn motions to include Substance Use Disorder with the modification to include tobacco, hallucinogens and stimulant disorder and excludes alcohol use disorder. Jean-Paul Dedam seconds the motion.

Voting in favor of the motion with modification: Bauers, Corazza, Dedam, Goodman, Marquez, Plymale, Quinn, Richmond, White

Board action: By a vote of 9-0, the MCAB recommends to the Secretary of Health that Substance Use Disorder be added to the list of conditions eligible for enrollment in the New Mexico Medical Cannabis Program with the modification that it includes tobacco, hallucinogen and stimulant disorder and excludes alcohol use disorder.

- 3) 2019-010 Medical Cannabis Therapy for Seizure in Animals

The petitioner Jason Barker states that a medical cannabis card would be issued to a person as a qualified caregiver in order to provide to the animal with seizures. The Doctors of Veterinary Medicine are allowed to discuss cannabis as an option under current laws of the New Mexico Board of Veterinary Medicine. The use of medical cannabis improves the quality of life for the animal. The inclusion of medical cannabis could also reduce the toxicity of hemp intake that has been seen in other states.

The MCAB expresses concern about the inclusion of this diagnosis. The Doctors of Veterinary Medicine are not currently exempt from criminal and civil penalties as a prescriber of medical cannabis. This would require a statute change for the inclusion of DVM. Therefore, the current petition proposes that a medical provider of humans approve the medical cannabis for the owner as a caregiver of the animal with seizures. This could set a precedent for an increase of animal diagnosis and therefore affect the adequate supply of patients that are already enrolled in the program. At this time, the MCAB is also not aware of the stance of the New Mexico Veterinary Board. Also, there is no other state precedent at this time. The MCAB is compassionate about the health and wellbeing of animals. However, there are many questions in regards to including this diagnosis.

Motion: Stephanie Richmond moves to table the petition and Rachel Goodman seconds.

Voting in favor of the motion: Bauers, Corazza, Dedam, Goodman, Marquez, Plymale, Quinn, Richmond, White

Board action: By a vote of 9-0, the MCAB tabled the petition until the next hearing.

- 4) 2020-002 with supporting with supporting documents – MCAB Petition Adequate Supply
03.29.2020

The petitioner Kylie Safa summarizes information included in the petition in regards to the quantities allowed in other states with a medical cannabis program. She notes that all of the surrounding states have a higher purchase limit than New Mexico. She also references results of a survey conducted by Research and Polling, Inc. on behalf of NMDOH indicating patient response that 48% would purchase more cannabis in a 90 day period. A higher purchase limit would also allow all patients to have access to the medication. Currently, patients with a personal production license have the potential of a higher quantity of cannabis than those without. She proposes that there is an increase to 420 units, or 15 ounces, of dried usable cannabis plant material.

The MCAB would like to ensure that patients have access to the medication to ensure uninterrupted availability, as outlined in the LECUA for adequate supply. The MCAB would also like to protect the program and prevent patients from going outside the program to obtain medication. A more robust purchase limit would encourage retention in the program. The department provided the MCAB with information that 50 enrolled patients have reached the limit and that 500 patients came within 5 grams of the limit. Patients also have the ability to apply for a higher quantity of 12 ounces in 90 days with their provider asking for a unit increase by submitting a letter to the department. The department receives approximately 10 letters a week for unit increase, about 40 in a month and about 100-150 patients are approved for varying amounts over a 90-day period. The higher purchase amount would address the patients that are applying for higher quantities and prevent any additional barriers that require the patient and provider to submit for a higher quantity to the department. There is also a need for a higher quantity as indicated by the unit increase letters received by the department. The MCAB recognizes that the financial cost of the cannabis is a barrier. A lower cost of the medication would also

improve access to the medication. The cost per gram in New Mexico is three times the amount in Colorado. The higher supply could help to reduce cost and increase variety, a need expressed by patients in the survey. Although there is concern of diversion with a higher quantity limit, it is unfair to assume that patients are criminal. The MCAB finds that this petition is a compromise between the regulation required by the department and access of the medication to the patients.

Motion: Davin Quinn moves to approve the quantity limits of 420 units in 90 days for an adequate supply. The motion was seconded Jean-Paul Dedam and Rachel Goodman

Voting in favor of the motion: Bauers, Dedam, Goodman, Marquez, Plymale, Quinn, Richmond, White

Voting against the motion: Corazza

Board action: By a vote of 8-1, the MCAB recommends to the Secretary of Health the approval of quantity limits of 420 units in 90 days for an adequate supply.

5) 2020-010 MCAB Petition in Connection with the determination adequate supply

The petitioner Duke Rodriguez addresses the MCAB by giving some historical context in regards to this petition. A similar petition was approved in 11-2016 by the MCAB and denied in 2017 by the Secretary of Health. He also referenced a 2018 ruling by Judge Thompson that included: i) language in statute must prevail over department regulation and the DOH may not overrule the LECUA of adequate supply by the restrictive plant count regulation ii) Plant count is for regulatory purposes only and that the regulation defeats the purpose of the act by limiting adequate supply iii) DOH reference to federal intervention may not be the basis of plant count limit iv) compared to other states, plant count is an outdated concept v) DOH impermissibly reads into its statute its style of regulation that impedes on its statutory mandate for adequate supply. Mr. Rodriguez mentions that in 2016 and 2018 there were approximately 70,000 cardholders and had effectively ½ of 1 plant per patient. Currently, there are approximately 51,000 licensed plants in production and now over 100,000 participants. The supply now is no different than 2015. He discusses regional analysis of Colorado, Oklahoma, Nevada and Utah and many of these states do not have a plant count. In particular, Colorado licenses 9 plants per medical patient and Utah's system is based on square feet and currently 10 growers have the ability to grow 100,000 plants per facility for a total of 1 million plants. A higher plant count would promote more variety and lower cost.

The MCAB was advised that there are currently 34 licensed growers and that allowing for more licenses would still require a higher plant count. There is also a delay from seed to harvest of 120 days. The department advised that there are approximately 21,000 plants not being grown that producers are licensed to grow. Mr. Rodriguez states that the barriers preventing this from happening include permitting, construction. The department indicates that the adequate supply continues to grow and recently cannabis product availability was greater than 9 million units for a one-day time period. Mr. Rodriguez indicates that membership is increasing by 27% and transactions are increasing by 65%. He refers to the petition in regards to the discrepancies in reporting of adequate supply. The MCAB queried the board if the removal of a plant count would be detrimental to the medical cannabis program. The

department responded that there would be an increased need for more regulations and compliance officers in order to ensure the safety of production. The MCAB expressed concerns about the recurrent need to address the issue of the plant count and that there will always be a delay with access to adequate supply due to the 120 day production time.

Motion: Rachel moves to approve the petition and to eliminate the plant count. Ariele Bauers seconds. Before the approval of the motion, Davin Quinn adds that he has concerns about an unlimited plant count and that the increase would require more regulation and that this may not be possible in a pandemic. Ken Corazza agrees with Davin Quinn, but the sound cut out on his entire response. Rachel expresses concerns about always being behind with the plant count and stresses the importance of needing adequate supply and lower cost with more variety. Stephanie Richmond indicates that there are several ongoing concerns from the board and that due to time constraints of the current meeting, we should table until our next meeting. The motion to table was seconded by Ken Corazza.

Voting in favor of the motion: Bauers, Corazza, Dedam, Goodman, Marquez, Plymale, Quinn, Richmond, White

The chairperson moved to table the Reciprocity amendments until the next meeting.

F. Announcement of Public meeting

The next meeting for the MCAB will be held on 12-9-2020 from 9:00am to 12:00pm. The meeting will be conducted via web-based platform and a new agenda and instructions on how to join will be posted on the Medical Cannabis Program website.

G. **Public comment:** comments were taken from the public

H. **Adjournment of the meeting:** The public hearing was adjourned at 12:30pm

I. Attachments

- 1) 7.34.4.28 Reciprocity
- 2) Summary of Medical Cannabis Program Rule Amendments to 7.34.4.28
- 3) 2019-008 Add ADHD ADD Anxiety Disorder and Tourette's
- 4) Letter to Cannabis Board
- 5) 2019-009 Substance Use Disorder
- 6) 2010-010 Medical cannabis therapy for seizure in animals
- 7) 2020-002 MCAB Petition adequate supply 03.29.2020 with supporting documents, including survey
- 8) 2020-001 MCAB Petition in Connection with the determination of adequate supply

Stephanie Richmond PA-C Chair, New Mexico Medical Cannabis Advisory Board
11-16-2020