

**From:** [Chris Mechels](#)  
**To:** [Apodaca, Sheila, DOH](#)  
**Cc:** [Heather Ferguson](#); [New Mexico Foundation for Open Government](#); [Chris Goad](#); [Mim Chapman](#); [stcyr, peter](#); [Haywood, Phaedra](#); [Amanda Martinez](#); [Proctor, Jeff](#)  
**Subject:** [EXT] Mechels comment #6 on NMAC 7-1-30 Rules Hearing  
**Date:** Wednesday, July 22, 2020 10:55:37 PM

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Dear Ms. Apodaca,

This is the sixth of a number of comments on this hearing.

It concerns even more procedural violations of the Rules Act, sufficient to cancel the Rules Hearing. Details follow.

First, and a central issue, is that Rules Act information is NO LONGER a part of the SunshinePortal, since they "took down" the Portal on 8 July. I reported this to, via email, and you apparently did nothing. I finally contacted the Portal folks, and told them the import of what they had done, that "Posting" Rules information on the Portal was required under the Rules Act. After a couple of days, they patched together the current arrangement, which links to Rules information, but IS NOT part of the Portal. Check it out at; [ssp.nm.gov](http://ssp.nm.gov)

This means that even though you began posting information on the "Portal" again after about a 5 day lapse, you were not posting it, as required, on the SunshinePortal, because the Rules Making is NO LONGER a part of the Portal. You must, per the Rules Act, post a good deal of information on the Portal, but you can't, because the Portal no longer includes Rules Act information. This error is not of your making of course, but the New Mexico Government has made it impossible to comply with the Rules Act, and this must be fixed. Until it is fixed it is legally impossible to comply with the Rules Act. The failure of you, and the Dept of Health, and other Departments, was in allowing the SunshinePortal folks to make this error. This was NOT an act of God, it was a failure of governance.

This can't be resolved at this time, so this hearing should be canceled.

Second, the actions of the Secretary of Health, Ms. Kunkel, seem deplorable, and illegal. It seems she took advantage of the March 2020 declaration of a "State of Emergency", to create four "Emergency" Rules. This allows NO INPUT from the public, and no notification, and the result can be very ugly, like the NMAC 7.1.30 under consideration. The only Fair and Reasonable way to evaluate the content of this Rule is against what a "reasonable" rule would look like. Such a "reasonable" is at hand, NMAC 7.1.2, which could actually be used, as is, to process the PHERA concerns. Comparing the two rules we find that 7.1.30 is a "stripped down" version of 7.1.2. What is "stripped out" are all the appellant rights, leaving the appellant NO CHANCE to prevail. This reflects very poorly on Ms. Kunkel, who has chosen an illegal process, which bars public input, to install a hearing procedure which leaves the appellant with NO CHANCE to prevail, or to appeal the outcome. I believe Ms. Kunkel is guilty of Malfeasance, and that she should be prosecuted, and should forfeit her performance bond, for violating our laws, and willfully depriving her "constituents" of their rights.

That this criminal behavior by Ms. Kunkel is not unusual, is born out in the records. She used not one but FOUR emergency rule makings in March. Two of them involved changing the minimum age of hire from 18 to 17 years of age. Failure to do so, Ms. Kunkel declared, would "cause an imminent peril to the public health, safety or welfare". What an outright lie, which

she does not support, simply declares. Malfeasance!! The use of Emergency Rulemaking ought to be rare, as it puts the public at great risk, as the current 7.1.30 demonstrates so well. Looking to the records; in the seven years prior to Ms. Kunkel's appointment there were NO Emergency Rulemakings in the Dept of Health, and an average of seven (7) in the whole state government. In 2019, there were 23 Emergency Rulemakings, with two of those by Ms. Kunkel. In 2020, to date, 20 Emergency Rulemakings with six by Ms. Kunkel. Clearly she has no regard for our laws, or our rights.

Extending these tendencies of Ms. Kunkel, it should make us wonder about her leading the Covid efforts. Her penchant for operating "in the dark", with illegal Emergency Rulemakings, and creating a 7.1.30 which denies all rights to the appellant, when 7.1.2 could have been used, with slight modifications. All these tendencies seem on display with her handling of Covid also.

I have long experience with NM Rulemaking, since 2014, mostly at the LEA Board. It was a brutal struggle, with some success. They chose to simply STOP rulemaking, though the law required it, as they found it inconvenient, and it took too long. Like Kunkel's use of Emergency Rulemaking, as its faster, and eliminates that "pesky" public input. It took 3 years, and a lawsuit, to get the LEA back to rulemaking, and even yet their curriculum is illegal. Three years of ILLEGAL CERTIFICATIONS of police officers by the LEA Board. A cloud over NM police training which persists. It may take a lawsuit to address Ms. Kunkel's mischief.

Ms. Kunkel, like many others, and the LEA Board, simply "can't be bothered" to follow our laws, and does not respect our rights. It is good that she is retiring, but has she left a culture of corruption?? That question should trouble us, and the Governor. I wonder if it does.

Rulemaking is always interesting, as it brings out the worst, and occasionally the best. in management. Rulemaking exists to protect the right of citizens to be involved in creating the laws that affect them. Too many managers, including Ms. Kunkel, seem to resent that public input, and violate both the Rules Act law, and the process itself. Power corrupts, and must be constrained, but who's to constrain it?? New Mexico ranks dead last in most measures of government, because of the Kunkels, who violate our laws and our rights.

If the Rules Act is followed NMAC 7.1.30 will be abandoned, due to many violations of the Rules Act, and the failure to describe its content as what it is, a direct attack on the rights of the appellant. Now we are left to wonder about the integrity of the Hearing Officer, who was, after all, chosen by Kunkel. We will soon find out.

Regards,

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