

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RICHARD RUBIN,

Plaintiff,

vs.

STEVEN JENKUSKY, M.D.;
NEW MEXICO MEDICAL BOARD,
STEVEN WEINER, M.D., Chairman,
LINDA HART, Executive Director,
DAN RUBIN, Prosecutor;
NEW MEXICO DEPARTMENT OF HEALTH,
LINDA GORGOS, M.D., former Medical Director,

Defendants.

**COMPLAINT OF VIOLATION OF CONSTITUTIONAL AND STATUTORY
RIGHTS AND IMMUNITY AND PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW RICHARD RUBIN, and submits his Complaint and Petition alleging that Dr. Steven Jenkusky, the New Mexico Medical Board, and the New Mexico Department of Health violated his constitutional and statutory rights and immunity when they suspended his license to practice medicine without a hearing even though he was acting in full compliance with New Mexico's Lynn and Erin Compassionate Use Act in certifying applicants for the New Mexico Medical Cannabis Program.

The Parties:

1. **Richard Rubin** is 60-year-old New Mexico resident who had been employed and licensed as a Physician's Assistant for 19 years when his license to practice medicine was suddenly suspended by the New Mexico Medical Board without a hearing.

2. **Steven Jenkusky, M.D.**, is a psychiatrist and member of the New Mexico Medical Board. In February, 2012, Dr. Jenkusky submitted a complaint against Mr. Rubin to the Medical Board about “his practice around facilitating patients of other providers obtaining medical marijuana licenses, especially when they are not his patients.”

3. The **New Mexico Medical Board** is a legislatively authorized Board that acts under the provisions of the New Mexico Medical Practice Act., § 61-6-1, et seq. and the New Mexico Uniform Licensing Act, § 61-1-1, et seq.

4. **Steven Weiner, M.D.**, is the Chairman of the Medical Board; **Linda Hart** is the Executive Director. **Dan Rubin** is the Medical Board’s prosecutor.¹

5. **The New Mexico Department of Health** is a department of the State of New Mexico that includes the State’s Medical Cannabis Program.

6. **Linda Gorgos, M.D.**, was the Medical Director of the Infectious Disease Bureau, Public Health Division of the New Mexico Department of Health. Dr. Gorgos was responsible for approving or denying medical certifications for patients applying for the Medical Cannabis Program.

Jurisdiction:

7. Jurisdiction of the Court is found in original federal question jurisdiction of the court and this case is brought under 42 U.S.C. § 1983, for violations of the laws and Constitutions of the State of New Mexico and the United States.

¹ Dan Rubin, prosecutor, and Richard Rubin, P.A. (suspended) are not related.

The Law:

Marijuana as a Controlled Substance:

8. The federal Controlled Substances Act defines marijuana as a Schedule I drug. According to the federal law marijuana is a highly abused drug with no known medical use. Penalties under federal law for any use, possession, dispensing, or growing marijuana are severe.

9. The New Mexico Controlled Substances Act (CSA) also defines “marijuana” as a Schedule I controlled substance.

10. Federal and State provisions for medical practitioners (defined as those holding DEA licenses to prescribe controlled substances) to prescribe controlled substances do not include Schedule I drugs, which may not be lawfully prescribed or used.

11. The New Mexico CSA does, however, except marijuana from Schedule I and includes it in Schedule II “only for the purposes enumerated in the . . . Lynn and Erin Compassionate Use Act.” § 30-31-6(E) and § 30-31-7.

Cannabis as a Beneficial Medicine

12. The purpose of the Lynn and Erin Compassionate Use Act, § 26-2B-2, is “to allow the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments.”

13. The Act provides that a “qualified patient” is a person “who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification.” § 26-2B-3(G).

14. “Written certification” means:

a statement in a patient’s medical records or a statement signed by a patient’s practitioner that, in the practitioner’s professional opinion, the patient has a debilitating medical condition and the practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the patient.

§ 26-2B-3(H).

Statutory Immunity

15. In order to carry out its beneficial purposes, the Compassionate Use Act provides immunity from both criminal and civil penalties for patients, providers, and medical practitioners. In particular:

A practitioner shall not be subject to arrest or prosecution, penalized in any manner or denied any right or privilege for recommending the medical use of cannabis or providing written certification for the medical use of cannabis pursuant to the Lynn and Erin Compassionate Use Act.

§ 26-2B-4 (E).

The Right to a Hearing

16. The New Mexico and United States Constitutions protect the right to a hearing both before and after a State denies or restricts an individual’s substantial property interest, such as a license to practice medicine.

17. The New Mexico Uniform Licensing Act required “notice and an opportunity to be heard, before the board (had) authority to take any action which would result in . . . suspension of a license. . . .” § 61-1-3.

18. The Board was required to “serve upon the licensee a written notice” prior to “taking any action” to suspend a license. The notice was supposed to specifically describe the “rights of persons entitled to hearing.”

19. The New Mexico Medical Practices Act provides that the Medical Board may summarily suspend a license without a hearing,“ but only:

if the board finds that evidence in its possession indicates that the licensee: poses a clear and immediate danger to the public health and safety if the licensee continues to practice.

Facts:

20. From the inception of the New Mexico Medical Cannabis Program, Richard Rubin has been an advocate of the use of marijuana to treat a variety of medical and psychological conditions. Rubin has spoken publicly at DOH meetings and has unsuccessfully petitioned to add additional “medical conditions” for cannabis use for consideration by the Program’s Medical Advisory Board.

21. In December, 2011, Richard Rubin was working part-time at Zia Health and Wellness in Albuquerque, a business that assists people seeking certification to use medical marijuana under the provisions of the State’s Medical Cannabis Program (“MCP”). Rubin had contracted with Zia Health and Wellness to review, evaluate, and appropriately certify applicants for the MCP.

22. Mr. Rubin correctly and professionally evaluated the patients who sought his written certification; he carefully reviewed the patients’ medical records, discussed use, risks, and benefits, and only issued certifications after documenting the patients’ “debilitating medical conditions” and assuring that the use of cannabis “would likely outweigh the health risks for the patient(s).”

23. On December 23, 2011, Dr. Linda Gorgos, wrote to Dr. Weiner, the Chairman of the Medical Board, to inform him and the Medical Board that:

Mr. Rubin was identified by a community physician as potentially completing medical certifications for the NM Medical Cannabis Program in the absence of a clinical evaluation. Mr. Rubin has been sent the enclosed letter to clarify acceptable practices under our program.

24. Dr. Gorgos failed to inform Mr. Rubin about the complaint by a “community physician” against him. She also failed to warn him that he was being accused of “potentially completing medical certifications . . . in the absence of a clinical evaluation.”

25. Mr. Rubin complied with all the rules and provisions of the Medical Cannabis Program and the suggestions of Dr. Gorgos; he did not complete any certifications “in the absence of a clinical visit,” nor did any certification take place “by mail or electronic means.”

26. On February 7, 2012, Richard Rubin was asked to certify a new patient who had previously been diagnosed with PTSD, and who had secured an initial certification for cannabis use from another medical provider.

27. In order to properly complete the certification and documentation, Mr. Rubin needed confirmation and a copy of the patient’s PTSD diagnosis. Attempting to secure that documentation, Mr. Rubin contacted Pete Carmany, Dr. Jenkusky’s assistant.

28. According to Mr. Carmany, “Mr. Rubin requested a recent progress note with the patient’s diagnosis and my supervising physician’s signature.” Mr. Carmany advised Rubin that he and Dr. Jenkusky were:

unaware of (the patient’s) participation in the (Medical Cannabis) program and that our practice had chosen not to participate in assisting patients with PTSD to

obtain Medical Marijuana *as there is little evidence to support its use in the treatment of this condition.*²

29. On February 9, 2012, after a brief telephone conversation with Richard Rubin,

Dr. Jenkusky made his Complaint against Richard Rubin:

Beside the issue of Mr. Rubin intruding in the care of one of our clinic patients and promoting non-evidenced based care that could harm this patient, the state Medical Cannabis Program requires a caregiver to fill out the form. If Mr. Rubin is filling out these forms, while stating he is not a caregiver, but is accepting payment (in cash) for these services, he may be engaging in an unethical practice.

As his licensing body, I would like to make a formal complaint to the board about his practice around facilitating patients of other providers obtaining medical marijuana licenses, especially when they are not his patients. He may be falsifying documents, claiming he is their provider and may be practicing without physician supervision.

EXHIBIT 1.

30. The Medical Board's investigator wrote to Mr. Rubin on February 21, 2012, advising him of Dr. Jenkusky's complaint against him "alleging you certifying non-patients for medical marijuana; falsifying patient medical records; and practicing without a supervising physician." The Board requested "a written response from you to address the allegations."

31. According to Ms. Dieterich:

When this case [investigation] is complete, the case will be presented to a complaint committee for review. The complaint committee will then make a recommendation to the Board, and the full Board will determine what action, if any, to take in this case. Once the Board has reached a final determination, you will be notified in writing. The Board's investigation material is confidential and not available for public inspection unless the matter goes to hearing.

² This is the contention of some physicians and psychiatrists that is vigorously challenged by many patients, advocates, and other psychiatrists who firmly believe marijuana has widespread medical benefits and beneficial effects.

32. Plaintiff submitted his formal response on March 7, 2012. On May 12, 2012, and on May 17, 2012, he supplemented his response. **EXHIBIT 2.**

33. On May 17, 2012, without any notice to Mr. Rubin, written or verbal, the Medical Board met and acted to:

Summarily Suspend (Richard Rubin's) physician assistant's license to practice medicine based on him being an immediate danger to the public and to simultaneously issue a Notice of Contemplated Action based on, but not limited to, conduct unbecoming; conduct likely to deceive the public; use of a deceptive statement in a document connected with the practice of medicine; manifest incapacity to practice; obtaining a fee by misrepresentation; interaction with other healthcare providers that could interfere with patient care; and practicing without physician supervision.

EXHIBIT 3, at p. 3.

34. The Summary Suspension Order (which was "received" by the Medical Board on May 14, 2012) was signed by Dr. Weiner on May 17, 2012. The Order states that:

the Board pursuant to Sec. 61-6-15.1(A)(1) has reason to believe that Respondent poses a clear and immediate danger to the public health and safety if the Respondent continues to practice; AND GOOD CAUSE APPEARING. . .

IT IS HEREBY ORDERED that Respondent's New Mexico license to practice as a physician assistant is hereby **SUSPENDED** until further Order of the Board.

EXHIBIT 4.

35. The Notice of Contemplated Action (NCA), written by Lynn Hart, the Medical Board's Executive Director, was not produced until May 29, 2012. The NCA was the first Notice given to Richard Rubin of the actual allegations against him.

36. The Board's Notice of Contemplated Action alleges that:

beginning sometime in 2011, Respondent [Richard Rubin] prescribed marijuana for numerous persons. . . . without first establishing that he was the 'primary

caregiver' for any of these persons³ . . . or otherwise first establishing a physician-patient relationship as required pursuant to the CUA (Compassionate Use Act)."⁴

37. The Notice of Contemplated Action adds that:

In addition to violating the CUA, the above allegations, if proven, would constitute a violation of Section 30-21-20(B) of the New Mexico Criminal Code which proscribes intentional trafficking of a substance designated as a Schedule I Controlled Substance, including marijuana, which is designated as a Schedule I controlled substance pursuant to Section 30-31-6(C)(10).

EXHIBIT 5, at p. 2.

38. Neither the Medical Board or the Department of Health have produced or presented any evidence of misconduct by Richard Rubin.

WHEREFORE, based on the foregoing facts, Plaintiff states the following claims and causes of action:

COUNT 1

BREACH OF STATUTORY IMMUNITY

39. The allegations in the preceding paragraphs are incorporated as if fully set out herein.

40. Richard Rubin is entitled to the immunity expressly and specifically provided in the Lynn and Erin Compassionate Use Act:

A practitioner shall not be subject to arrest or prosecution, penalized in any manner or denied any right or privilege for recommending the medical use of

³ "Primary Caregiver" is a term defined in the Medical Cannabis Program rules. It has nothing to do with medical practitioners.

⁴ Nothing in the Lynn and Erin Act requires "first establishing a physician-patient relationship" in order to certify patients.

cannabis or providing written certification for the medical use of cannabis pursuant to the Lynn and Erin Compassionate Use Act.

41. Richard Rubin was doing precisely what the law immunizes; Defendants did not at any time acknowledge, inform him, or act upon his absolute right to immunity.

42. Because Plaintiff was entitled to statutory immunity, the prosecution and suspension of his license was void from the start and the Medical Board lacked jurisdiction to discipline him for “recommending the medical use of cannabis” and “providing written certification for the medical use of cannabis.”

COUNT 2

DENIAL OF DUE PROCESS AND EQUAL PROTECTION OF LAW

43. The allegations in the preceding paragraphs are incorporated as if fully set out herein.

44. Plaintiff had a protected property interest in his license to practice medicine which could not be lawfully removed by action under color of law without due process.

45. Prior to giving notice and an opportunity to be heard, Dr. Jenkusky and the Medical Board acted on Dr. Jenkusky’s complaint and suspended Richard Rubin’s license. Two weeks later the Board notified Rubin of the charges against him and gratuitously stated that he could request a hearing.

46. The Board summarily suspended Rubin’s license at its meeting on May 17, 2012, alleging that he is “an immediate danger to the public. . . likely to deceive the public,” incapable of practicing medicine, misrepresenting to obtain a fee, and engaging in “interaction with other healthcare providers that could interfere with patient care.”

47. There is no evidence whatsoever to support the Board's charges and it is impossible to comprehend how Richard Rubin's certifications to the Department of Health for State-approved medical cannabis use could *possibly* cause "an immediate danger to the public."

48. Working as a physician's assistant was Richard Rubin's chosen occupation and career, which Defendants wrongfully terminated without giving Rubin any opportunity to be heard.

49. Defendants singled out Richard Rubin for "prosecution," primarily because he was an advocate for the medical uses of cannabis who was actively engaged in the process of certifying applicants for the State's Medical Cannabis Program.

50. Defendants have violated Plaintiff's rights to due process and equal protection of law.

COUNT 3

DEFAMATION PER SE

51. Each preceding allegation is incorporated as if fully set out herein.

52. Defendants made and published false and injurious allegations and suspended Richard Rubin's license to practice medicine without any process or evidence of misconduct or failure to comply with any actual rules, regulations, or policies of the Medical Board, the Pharmacy Board, or the Medical Cannabis Program.

53. Despite the extreme and controversial nature of the charges, Defendants disregarded Mr. Rubin's statutory immunity and summarily punished him by deeming him "a clear and immediate danger to the public health and safety if [he] continues to practice."

54. Rubin did not demonstrate any “manifest incapacity to practice,” nor can the Board claim that he did.”

55. By falsely alleging criminality, publicly denouncing Richard Rubin in connection with his certification of cannabis program applicants, and falsely stating that he was a threat to the public safety without any reasonable basis for that contention, Defendants defamed Mr. Rubin without any right or privilege to do so.

56. By their conduct described herein, Defendants acted with complete and utter disregard for the actual professional qualifications, competence, and abilities of Richard Rubin, even though he had been a physician’s assistant for almost twenty years.

COUNT 4

MALICIOUS ABUSE OF PROCESS

57. Each preceding allegation is incorporated as if fully set out herein.

58. Dr. Jenkusky and the Board made unfounded allegations of misconduct against Mr. Rubin without probable cause or any evidence to support the charges.

59. Dan Rubin, Linda Hart, and Linda Gorgos “prosecuted” Mr. Rubin without just cause or evidence to support their allegations.

60. Defendants failed to acknowledge Plaintiff’s immunity.

61. Defendants knowingly, maliciously, and unconstitutionally convicted Richard Rubin of the false charges leveled against him by summarily suspending him without affording the right to a hearing.

62. Defendants are liable to Plaintiff for damages caused by Defendants’ intentional and malicious abuse of their own process.

COUNT 5

INFLICTION OF EMOTIONAL DISTRESS

63. The allegations in the preceding paragraphs are incorporated as if fully set out herein.

64. By their conduct described herein Defendants have intentionally engaged in retaliatory and defamatory conduct so extensive as to be beyond the bounds of acceptable conduct and so extreme as to be intolerable.

65. Defendants' refusal to acknowledge the immunity enjoyed by Mr. Rubin, failure to provide a pre-deprivation hearing, and efforts to prosecute Richard Rubin and hold him to a new and more exacting standard of practice have caused severe damage and distress.

66. Defendants are liable for the damages proximately caused and resulting from their misconduct and violations of law and constitutional rights.

COUNT 6

WRONGFUL INTERFERENCE WITH PAST, PRESENT AND PROSPECTIVE RELATIONSHIPS

67. The allegations in the preceding paragraphs are incorporated as if fully set out herein.

68. By the time the Board summarily suspended his license Mr. Rubin had successfully certified over 500 patients for the Medical Cannabis Program.

69. On June 18, 2012, the Department of Health wrote to about 95 applicants with pending certifications notifying them that "Pursuant to Department of Health regulation and the Lynn and Erin Compassionate Use Act, Mr. Rubin has been prohibited from certifying patients for admission to the New Mexico Medical Cannabis Program."

70. As described further herein, Defendants have wrongfully interfered with Richard Rubin's present and prospective future personal and professional relationships.

COUNT 7

ADMINISTRATIVE CONSPIRACY

71. Each preceding allegation is incorporated as if fully set out herein.

72. Defendants all knew that the law provided absolute immunity to Richard Rubin thereby freeing him of any prosecution or other penalty for his actions in recommending or certifying patients for the use of medical cannabis.

73. Starting in December, 2011, or before, Defendants Steven Jenkusky, Linda Hart, Linda Gorgos, Steven Weiner, Dan Rubin, and others at the DOH and Medical Board met, planned, communicated, and conspired with one another and others for the purpose of administratively disciplining Richard Rubin for alleged misconduct in certifying patients for medical cannabis use.

74. These persons, collectively and in various combinations, agreed upon and carried out their plans to deny Richard Rubin the ability to certify patients for medical cannabis by suspending his license without a hearing and setting aside his entitlement to absolute immunity as if it were worthless.

75. The Medical Board was biased and prejudiced against Richard Rubin and his certification of patients from the start; the Board is not fair, neutral or independent.

76. In this case, Defendants have successfully conspired to punish Richard Rubin, suspend his license to practice medicine, and preclude his cannabis-related activities for years,

all without affording constitutional due process and discarding the legislatively mandated immunity for all Mr. Rubin's cannabis-certifying activities.

COUNT 8

FRAUDULENT INDUCEMENT

77. Each preceding allegation is incorporated as if fully set out herein.

78. The Medical Board's prosecutor, Dan Rubin, informed Richard Rubin that he was sympathetic and would arrange the best possible resolution of the case with him.

79. Dan Rubin fraudulently advised Richard Rubin that the Board had strong "evidence" to support its charges, threatened prosecution on criminal charges, and omitted to advise Richard of either his constitutional rights or his right to statutory immunity.

80. Despite the absence of any evidence of wrongdoing, Defendants threatened Richard Rubin with serious criminal charges if he did not agree to a "settlement," knowing he was not represented by a lawyer, not knowledgeable in legal matters, and not aware of his entitlement to immunity.

81. As a New Mexico attorney negotiating with a non-attorney who was unrepresented and clearly not knowledgeable about his rights or the immunity provided by law, Dan Rubin's conduct was unethical and irresponsible.

82. All the documents leading up to the "Stipulated Order" – a (proposed) Stipulated Order, an Unopposed Joint Motion for Stipulated Order, an Unopposed Joint Motion for Stay, and a second (proposed) Stipulated Order were all drafted by Dan Rubin, and signed by Richard Rubin with no knowledge or information about the "evidence" or lack of evidence against him or his right to absolute immunity.

83. The Stipulated Order, including a four-year prohibition on certifying medical cannabis patients, is the result of wrongful and fraudulent misrepresentations, coercion, and denials of constitutional and statutory rights and immunity, and should be set aside.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

- A. Declaratory, injunctive, equitable, and compensatory relief for violations of due process and equal protection rights; declaratory and compensatory relief for defamation, interference, illegal and unconstitutional defamation and malicious abuse of process;
- B. Declaratory, injunctive, and equitable relief to reinstate Plaintiff's license to practice medicine and make Plaintiff whole;
- C. Declaratory, injunctive, and equitable relief concerning the issues, rights, duties, obligations and immunities of Plaintiff and Defendants' disregard of those rights and immunities;
- D. Injunctive or Extraordinary relief; nominal damages, punitive and exemplary damages, and such other and further relief as the Court deems just; and
- E. Reasonable costs and attorneys' fees.

Respectfully submitted,

s/ Paul S. Livingston

Paul S. Livingston
Attorney for Richard Rubin
P.O. Box 250
Placitas, NM 87043
505-771-4000

JURY TRIAL REQUEST

Plaintiff hereby requests trial by jury of all matters that may properly be tried to a jury.

Submitted by:

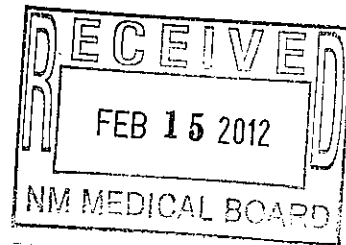
s/ Paul S. Livingston

Paul S. Livingston
Attorney for Richard Rubin
P.O. Box 250
Placitas, NM 87043
505-771-4000

NEW MEXICO MEDICAL BOARD

2055 So. Pacheco St. Bldg. 400
 Santa Fe NM 87505
 Phone: 505-476-7220 Fax: 505-476-7237

2012-~~4~~021
COMPLAINT FORM



Please Note

The jurisdiction of the Medical Board is limited to the licensing and discipline of medical doctors and physician assistants. It cannot obtain refunds of money paid to licensees, nor necessarily obtain the services you may request. It can only impose disciplinary measures against a licensee found to have violated the licensing act or the rules of professional conduct.

Date of Incident: 2/9/2012

<p><u>Steven Jentkusky MD</u> Name of Complainant <u>8300 Constitution NE</u> Address (Street and Number) <u>Albuquerque NM 87110</u> City, State, Zip <u>505 291-2536</u> Phone</p>	<p><u>Richard Rubin PA</u> Complaint Against <u>5401 Comar Blvd NE</u> Address (Street and Number) <u>Albuquerque, NM 87110</u> City, State, Zip <u>505 353-0989</u> Phone</p>
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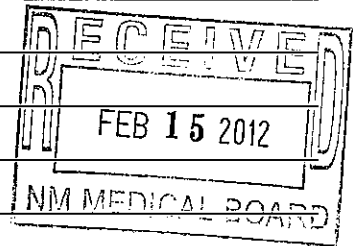
Witnesses (if any)		
Name	Address	Phone
<u>Pete Carramano, PA</u>	<u>1325 Wyoming Blvd NE</u>	<u>291-5300</u>
	<u>Albuquerque NM 87112</u>	

Please complete the narrative section on the reverse side.

ALLEGATIONS AND NATURE OF COMPLAINT

Please be as detailed as possible and place events in chronological order
Type or print legibly in black ink
Attach an additional sheet if necessary

see attached sheet



Signature of Complainant

Date

[Handwritten signature]

2/9/12

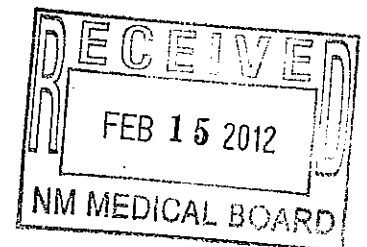
On February 9, 2012 I spoke with Richard Rubin, PA as he called my PA, Pete Carmany, asking for a psychiatrist to confirm that one of our patients had PTSD so Mr. Rubin could fill out a medical marijuana application for Mr. Carmany's patients.

Mr. Carmany referred this to me as his supervising physician. I contacted Mr. Rubin, and asked if he was caring for the patient in question, and did he have a therapeutic relationship. He said, well no, not really, "I just help people fill out the application for the medical marijuana" state license. He also stated he did not have a physician supervisor in the medical marijuana clinic that he works in, identified by him as Cannabis Program Health Center, 5401 Lomas Blvd NE, Albuquerque, NM 87110, telephone # 353-0989.

Beside the issue of Mr. Rubin intruding in the care of one of our clinic patients and promoting non-evidenced based care that could harm this patient, the state Medical Cannabis Program requires a caregiver to fill out the form. If Mr. Rubin is filling out these forms, while stating he is not a caregiver, but is accepting payment (in cash) for these services, he may be engaging in an unethical practice.

As his licensing body, I would like to make a formal complaint to the board about his practice around facilitating patients of other providers obtaining medical marijuana licenses, especially when they are not his patients. He may be falsifying documents, claiming he is their provider and may be practicing without physician supervision.

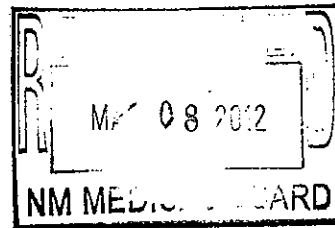
Complaint submitted by Steven Jenkusky, MD



Re: NMMB Investigation Case No. 2012-E-021

Response to Complaint/Allegations

March 7, 2012



Richard Rubin PA-C
Zia Health and Wellness
5401 Lomas Blvd. NW
Albuquerque, NM 87110
(505) 353-0989
RIRubinPAC@gmail.com

EXHIBIT 2

NMMB 00041

Here is my response and statement of the facts regarding the allegations of Steven Jenkusky, M.D. I will show that Dr. Jenkusky's claims are either unfounded or based on a misunderstanding of this patient and/or the rules and functions of the New Mexico Medical Cannabis Program and medical providers (such as me) within that program. In discussing this particular situation with several experienced medical mental health professionals, who are open and supportive of cannabis as a treatment option for PTSD, there is agreement that some aspects of Dr. Jenkusky's actions are an indication of the internal struggle within the behavioral health profession regarding the use of cannabis as a treatment for PTSD patients. Given the events and subject, I agree that this may be true. For this reason, I feel that this particular case may have some specific precedential significance as it may involve and affect the function of other providers, and active and potential medical cannabis patients, in addition to me, personally.

Summary of Events:

Along with on-call services as a Physician Assistant for Doctor-on-Call, LLC, and scheduled services for Health Care Partners, LLC, both Family Medicine and Urgent Care clinics in Albuquerque, New Mexico, I provide contracted services at Zia Health and Wellness. In this position, I evaluate patients for the New Mexico Medical Cannabis Program (the "Program"). Many of the patients who come to Zia Health and Wellness do so because their primary treating physician/NP/PA-C is unable to write a certification for medical cannabis for them, as offered per state law. This is variously because "they don't believe in it" (often due to grossly misinformed reasons) or "they really think it's a good idea, but can't because VA/Lovelace/Presbyterian/XYZ policy" prohibits them from doing so. In either case, Zia Health and Wellness offers patients an alternate route to what is now their medical right in the state of New Mexico.

The nature of the patient contact and interaction: The patient relationship in these situations is directed by the regulations and requirements of the Program, as established by the Lynn and Erin Compassionate Use Act and the evolving and changing rules and guidelines of the Program. Indeed, at my request, I recently met with Dr. Linda Gorgos, M.D., Program Medical Director, to discuss several aspects of the program, as well as communicate my experiences and concerns as a provider. During our meeting Dr. Gorgos confirmed that my methods and actions are appropriate and true to the rules and guidelines of the Program.

On January 3, 2012, Christopher Landis (dob 3/18/1974) came to the office of Zia Health and Wellness, seeking renewal of his New Mexico Medical Cannabis Patient ID Card, which had been issued one year previously for the qualifying condition of Post-Traumatic Stress Disorder (PTSD). The patient's medical cannabis card was due to expire in three weeks, and the current processing time of the Program was about five weeks. The original certification had been completed the previous year by another provider. Mr. Landis did not have complete documentation of his condition on the day of his appointment, but did complete a focal medical history and signed a Release of Information form designating Zia Health and Wellness to obtain records from Presbyterian Health Services Behavioral Health, where he has been receiving care. The patient stated that "Dr. Carmany" had been providing his ongoing care through regular visits and prescription therapy.

I spoke with Mr. Landis about his condition, the benefits and/or problems that the use of medical cannabis had provided to him in the past year, and other concerns he had about his condition and treatment. In summary, Mr. Landis satisfied the requirements of "a qualifying condition" that "is debilitating despite standard therapies", and that "potential benefits of medical cannabis likely out way health risks", the standards I always apply. In this case the actual benefit without any adverse events or effects was now a fact of his recent medical history. I also asked him, as I do all patients, if his treating physician had been involved in or informed of his participation in the medical cannabis program. Mr. Landis confided, as many patients do, that he had not discussed cannabis use with his physician. Again, as I do with all patients who share similar stories, I encouraged the patient to share the fact of his participation in this Program with this

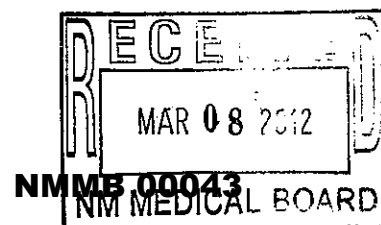
medical provider. Nevertheless, many patients, for various reasons, do not share this important medical knowledge with their medical provider because they fear receiving animosity as a response. Further, the patients I see are well informed through self-education about the risks and potential benefits of cannabis use—many are more informed than many medical providers. This pattern is relevant to this case, as well as the general function of the program. I believe that denial of a safe, legal, effective treatment is patient maltreatment or abuse and when a physician/NP/PA provides misinformation it should be considered a mild form of malpractice.

Since the patient's medical cannabis card was set to expire in three weeks, and processing by the state cannabis office was taking five weeks or longer, I decided to complete the application, and obtain medical records supporting the patient's medical condition for our files. The application was completed at that time *only* because this was a *renewal* application, indicating that the needed proof of diagnosis had been accepted into the Programs records the previous year. The completed application was given to Mr. Landis to mail to the state office, and he paid our standard fee of \$95 for the processing of a renewal application; of this sum I received \$35 for my services.

Mr. Landis mailed the completed renewal application to the state medical cannabis office, and received a letter dated 1/19/2012 requesting a "Proof of Diagnosis" and "consent for release of information for psychiatrist." This indicated that the state had not received or had misplaced the documents from the patient's initial certifying year, a surprise, but not entirely unlikely due to observed changes in the program function over the past year. As of this date, Zia Health and Wellness had not received copies of Mr. Landis' records, so we requested them from Presbyterian Behavioral Health for a second time.

In early February Mr. Landis' medical records were received by Zia Health and Wellness. During my initial review I noted that Peter Carmany was a Physician Assistant not a psychiatrist and he had conducted *all* visits with Mr. Landis. I immediately contacted Mr. Carmany's office and left a message for him. Several days later he returned my call and I explained that Mr. Landis, his patient, was applying for renewal of his Medical Cannabis Patient Card. I explained the need for a psychiatrist's attestation to the diagnosis, and asked if he could provide such. Mr. Carmany agreed to provide one via fax although it was never received. However, several days later I received a call from Dr. Jenkusky in regards to this patient.

I repeated the nature of the situation to Dr. Jenkusky, explaining the limited nature of my relationship with Mr. Landis. Further, we discussed several topics, including his expectation of the practice of "evidence-based medicine," and his allegation that there is no evidence supporting the use of cannabis for the treatment of PTSD. I talked about my discussions with PTSD patients (and their partners) about their experiences with cannabis for their condition. Additionally, I offered to provide Dr. Jenkusky with evidence of the benefits of cannabis for PTSD patients. I also inquired of Dr. Jenkusky, how PTSD as a condition could have made it through a scrutinizing Medical Cannabis Advisory Board, to be affirmed by a Secretary of Health who had shown conservatism about approving new conditions, if it is not an acceptable treatment option under the Program guidelines. Dr. Jenkusky pointed out that New Mexico is the only state recognizing PTSD as a medical cannabis indication. The fact remains New Mexico does recognize PTSD as a potential treatment option for PTSD and medical research studies support PTSD as a condition whose symptoms may be treated effectively with cannabis in some patients. Dr. Jenkusky also asked about the nature of our "business" and who was acting as my supervising physician, in truth, he seemed to be bothered by the existence and function of Zia Health and Wellness, and that I had had any participation in the medical experience of Christopher Landis.



Let me reaffirm that as a provider for Zia Health and Wellness I have always followed and satisfied the rules and requirements of the Lynn and Erin Compassionate Use Act and Program requirements. I have evaluated hundreds of patients, and it is important to note that many patients seeking a recommendation for this Program have been denied certification by me because they did not qualify. However, as a renewal patient with a qualifying diagnosis on record with the state Program, Mr. Landis meets the state requirements for recertification, even if the supervising physician of record disagrees in his use of this medication. Mr. Landis has found relief from the suffering caused by PTSD symptoms in the use of medical cannabis. This Program is designed to assist patients like Mr. Landis.

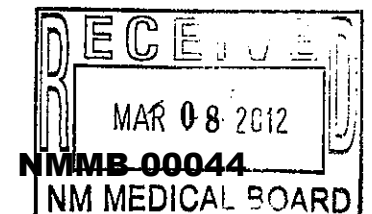
So, to specifically address Dr. Jenkusky's allegations:

- 1) "Facilitating patients of other providers obtaining medical marijuana licenses, especially when they are not his patients":

I do facilitate the obtainment of medical marijuana licenses, for individuals, per their request, ***after assuring via interview and medical record review that they satisfy the requirements of the Program.*** That I am not the patient's primary or specialist provider for the qualifying condition is not a requirement of the Program for fulfilling this role. I do not diagnose, I do not "treat," my role is to provide the required licensed certification of the patient's qualification for a Patient Card. It is clear that because many medical providers are either forbidden by employer policy or are unwilling to provide such a recommendation on "moral", not medical or clinical grounds (e.g. Dr. Jenkusky refused to provide a certification or even a signature against his patient's reasonable wishes and experience) such patients are required to seek assistance at Zia Health and Wellness, so they may obtain the recommendation for treatment based solely upon their medical condition and ability to qualify for the Program. Without such services qualified patients would be shut-out from access to what research studies show to be a safe and highly beneficial medication for some patients. The nature and extent of my interaction with Mr. Landis fully satisfies the requirements of the Program. Further, Mr. Landis states he is considering a complaint against Dr. Jenkusky for interfering in established and effective care. (It is important to note Mr. Landis also states that Dr. Jenkusky NEVER saw him as a patient—and would thereby only be aware of Mr. Landis' condition by review of his medical records and interview with Mr. Carmany, not by patient contact which I indeed had.) Mr. Carmany has been his only medical provider of record through the behavior health program at Presbyterian and the appointments he has had with Mr. Carmany consist primarily of short check-off interview visits. The fact that the patient didn't discuss Medical Cannabis with either Mr. Carmany or Dr. Jenkusy, despite his interest and eventual effective use of it, is directly related to their espoused resistance and this complaint.

- 2) "May be falsifying documents":

Simply stated this is a libelous comment with absolutely no evidence; never have I falsified documents. I do not claim to be Mr. Landis' primary care or specialty provider. Further, verification and signature were sought from Mr. Landis' regular medical providers, "Dr." Carmany, and then Dr. Jenkusky. When not obtained the application was cancelled, and a refund offered to Mr. Landis. This case is complicated by confusion over recertification when the patient's qualifying condition had already been certified by a specialist during the initial application process and the fact the patient scheduled so close to his renewal date. You can be assured that these minor oversights will not be repeated. However, no false statements were made and no records were falsified.



3) "Claiming he is their provider"

See #1

4) "Practicing without physician supervision"

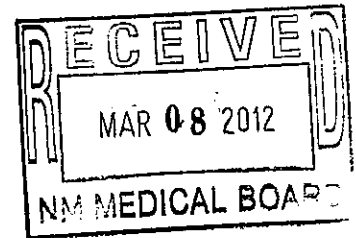
I have state supervisory relationships with three (3) physicians, at the sites mentioned earlier. Two of them have agreed to allow me to do Medical Cannabis evaluations and certifications. Certainly no on-site supervision is required for the functions of history taking and medical record review.

Please do consider the occurrence of these events in the context of the NM State Medical Cannabis Program and those patients in New Mexico who are entitled to access to this treatment, in an environment unreasonably, though "professionally" hostile to it.

I hope that this information clarifies my actions, as well as the incorrectness of Dr. Jenkusky's allegations.



Richard Rubin PA-C March 7, 2012



Dieterich, Debbie, BME

From: Richard Rubin [rirubinpac@gmail.com]
Sent: Saturday, May 12, 2012 11:10 AM
To: Dieterich, Debbie, BME
Subject: Re: NMMB Investigation Case No. 2012-D-021 CONFIDENTIAL COMMUNICATIONS
May 12, 2012

Debbie Dieterich
New Mexico Medical Board
2055 South Pacheco Street
Building 400
Santa Fe, NM 87505

Re: NMMB Case # 2012-D-021

Ms. Dietreich: In response to your e-mail of April 25, 2012

Zia Health and Wellness is a licensed business owned by Ed Gifford. Its sole activities are to provide information on the New Mexico Medical Cannabis law, to provide potential patients with free consultations via discussion of their history and medical record review, and determining if they indeed qualify for the program per the three essential criteria:

- 1) Have a qualifying condition which
- 2) is debilitating despite standard therapies and where
- 3) benefits of medical cannabis outweigh the risks.

If these criteria are met then we also assist in obtaining the necessary medical records in support and documentation of their application, complete the necessary forms, provide information on completion of the application process, including a Personal Production License or Caregiver Application if desired. When the patients obtain their card we offer them guidance in finding the best delivery system, specific medicine, and growing instruction if appropriate. This is done by me, the owner and a few additional staff members. We do not engage in any patient evaluation via physical examination, on-site diagnostic testing, ordering of new labs or diagnostics, or any prescribing or dispensing of pharmaceuticals.

I work in a self-employed role, and am paid by Mr. Gifford on a per-patient basis, a portion of the total standard or discounted fee collected from the patient for the services we provide. Please note that if a completed application is finally denied by the Program, which has happened only several times, the patient is refunded all but a small part of their fee.

The references to "PTSD Psychiatrist Available", "Pain Specialists Available" are to our small referral network of specialists sometimes required by the Medical Cannabis Program (again, the "Program"). Since certification for Severe Chronic Pain and Post-Traumatic-Stress Disorder have specific additional requirements i.e.,: secondary certification by a Pain Specialist, and the

NMMB 00027

5/14/2012

diagnosis only recognized from a Psychiatrist or Psychiatric Nurse Practitioner, we refer patients as needed to several independent, unaffiliated professionals for those evaluations as needed. There is no other established relationship between them and me or Zia Health and Wellness.

The reference to "Primary Physicians Available" is essentially to me at this time, although there was an MD on-site in the past, prior to my presence. I do not misrepresent myself to any patients, and always introduce myself as a "Physician Assistant", not a "Doctor" or "Physician". I don't think that this text constitutes a significant problem.

Regarding the question of my Supervising Physician, there have been a series of abrupt changes over the past 10 months that may not have been submitted properly or tracked by some clinic credentialing personnel, or other errors. The matter with Dr. John Vigil is a complicated one, and since both he and I experienced and continue to experience repercussions from the events surrounding Dr. Barry Maron, I do not want to cause him any more complications. Our relationship through my several periods of employment by Dr.-On-Call was in communication somewhat tenuous, and in this last interval from July of 2011 to whenever he didn't need me any more, it was clearly understood through another clinical employee that Dr. Vigil knew of and accepted that I was writing, fully under the law and state guidelines and under his supervisory signature, Medical Cannabis certifications. It may be that with new difficulties he is experiencing Dr. Vigil wants to distance himself from this policy, and I don't see any way to finally resolve this matter, as there never was any written statement.

I have also, since November of 2011, been employed by HealthCare Partners at their Urgent Care facility at 8307 Constitution Ave NE Albuquerque, NM 87110, (505) 268-0700. I worked scheduled and as-needed shifts, with what was thought to be plans for expansion of hours and the development of an Integrative Medicine care program. I had, as I understood, two Supervising Physicians through Health Care Partners: Harry Messec, MD NM# MD2010-0058, who supported Medical Cannabis certifications, and Kevin McClintock, MD NM# MD2009-0728, who I have never met. Dr. Messec suddenly left the practice about 2 weeks ago, and I have been unable to contact him. Then, 4 days ago, I was told that the clinic is closing entirely for an unknown period. I have attempted to contact Dr. McClintock to discuss our relationship, but have also been unable to do this.

Note please also that I have made several focused attempts to find independent physicians willing to partner to offer Integrative Model health guidance, beyond Medical Cannabis, as is desired by many contemporary patients. But, I have had no response, perhaps because the pool of physicians unaffiliated with the large health providers, and thus able to partner and hire at their own discretion, is very small. Also perhaps due to the general disinterest or animosity of physicians regarding exploration of Complementary, "Alternative" side of the Integrative equation.

I am now myself trying to ascertain my relationship with Dr. McClintock, and communicate with Dr. Messec, to clarify and hopefully stabilize these expected Supervisory relationships.

Sincerely,

5/14/2012

NMMB 00028

Dieterich, Debbie, BME

From: Richard Rubin [rirubinpac@gmail.com]
Sent: Thursday, May 17, 2012 11:08 AM
To: Dieterich, Debbie, BME
Subject: One additional statement
Attachments: Statement.doc

Given that this investigation arises from and concerns, along with me personally, the function of the New Mexico Medical Cannabis program, I believe that some comments on that fact are appropriate.

It would not be becoming to claim conspiracy in this matter, but I do suggest that with the political and clinical emblem that the program has become to some parties, it is reasonable to look at at some aspects of this claim from that perspective. The animosity of our current governor to the Medical Cannabis program, and likely then that of her appointed Secretary of Health, is well established. Recent events serve to demonstrate what may be an ongoing, collective effort to diminish the mission and ability of the program to provide an unquestionably beneficial medicine to qualified people. The complainant, Dr. Jenkusky, was bothered by several matters, some regulatory and procedural, but others regarding clinical control and perhaps a question of patient rights and empowerment.

Recent decisions and statements from the Department of Health, including the denial of all new indications, a warning/threat to censor expert opinion, and the cancellation of all new grower applications, despite shortages, show clearly the intentions in play, against science and medicine. It may not be written so, but I believe it should be the Medical Board's mandate to view its investigations in the context of the actual structures and functions of the healthcare system, both regarding medical cannabis and generally. This requires considering possible dogmatic and fallacious influences on the attitudes of some of the involved parties. Directly here, Dr. Jenkusky, but also perhaps, in a propagandist way, and I do not use the word lightly, from other forces opposing the rational use of this plant.

A familiarity with its history is presented in the extremely serious but appropriately lightly named "The Pot Book" edited by Julie Holland, M.D. Dr. Holland was a presenter and panelist at the 7th National Conference on Cannabis Therapeutics in Tucson that I recently attended. Let me say that Dr. Holland and other esteemed clinicians and researchers there spoke pointedly and actively for a "calling out" of the irrationalities and clinical inconsistencies of those opposing protected and expanded use of cannabis.

It is well known, and recently affirmed, that the political lobbies opposing expansion of both the medical use and the general decriminalization of cannabis include: Law Enforcement (the governor's background), The "Correctional" Industry, The Tobacco and Alcohol Industries, and, no surprise, the hugely powerful and influential Pharmaceutical Industry. That the "medicines" offered by that industry and regularly prescribed and dispensed by psychiatric professionals are engineered on gross neurophysiological understanding, often work poorly to relieve the targeted symptoms, have paradoxical and frequent significant adverse effects, (including true physiological addiction with dangerous withdrawal syndromes), and are thrown at patients liberally "off-label" "just to see", when the effects, benefits and risks of cannabis are in truth well-established: This final, long sentence should be taken into consideration in this case.

Richard Rubin PA-C

NMMB 00030

5/17/2012

**NEW MEXICO MEDICAL BOARD
Second Quarter Meeting
May 17 - 18, 2012**

MINUTES

Members Present: Steve Weiner, M.D., Chair
Rebecca Cochran, CPMSM, CPCS, Vice Chair, Public Member
Paul Kovnat, M.D., Secretary Treasurer (absent on May 18, 2012)
Roger Miller, M.D.
Steve Jenkusky, M.D.
Sam Kankanala, M.D.
Steven Komadina, M.D. (attended at 8:45 am)
Albert Bourbon, PA-C (attended at 8:40 am)

Others Present: Lynn Hart, Executive Director
Grant La Farge, M.D., Medical Director
Andrea Buzzard, Assistant Attorney General
Dan Rubin, Administrative Prosecutor
Jerry Marshak, Administrative Prosecutor
J.J. Walker, Compliance Manager / PIO
Gayle Mascarenas, CFO / HR
Lynn Tipton, Administrative Assistant
Debbie Dieterich, Senior Investigator
Leann Adams, Investigator
Amanda Chavez, Investigator
Samantha Breen, Licensing Clerk

(See list of all attendees attached to these minutes.)

1. **CALL TO ORDER / ROLL CALL / INTRODUCTIONS:**
Dr. Weiner called the regular meeting of the New Mexico Medical Board to order at 8:35 a.m., and a quorum was present.
2. **APPROVAL OF AGENDA:**
MOTION was made by Dr. Weiner to approve the agenda. **SECONDED** by Ms. Cochran. **YES:** Ms. Cochran, Dr. Kankanala, Dr. Kovnat, Dr. Jenkusky, Dr. Miller and Dr. Weiner. **ABSENT:** Dr. Komadina and Mr. Bourbon **MOTION CARRIED.**
3. **APPROVAL OF MINUTES:**
MOTION was made by Dr. Weiner to approve the Minutes from the April 5, 2012 Interim Meeting. **SECONDED** by Dr. Miller. **YES:** Ms. Cochran, Dr. Kankanala, Dr. Kovnat, Dr. Jenkusky, Dr. Miller and Dr. Weiner. **ABSENT:** Dr. Komadina and Mr. Bourbon **MOTION CARRIED.**

EXECUTIVE SESSION:

MOTION was made by Dr. Weiner to go into closed session pursuant to Section 10-15-1(H)(1) of the Open Meetings Act to discuss matters pertaining to the issuance, suspension, renewal or revocation of a license. **SECONDED** by Ms. Cochran. **YES:** Ms. Cochran, Dr. Kankanala, Dr. Kovnat, Dr. Jenkusky, Dr. Miller and Dr. Weiner. **ABSENT:** Dr. Komadina and Mr. Bourbon **MOTION CARRIED.**

The Board returned to open session. Dr. Weiner stated for the record that the matters discussed in executive session were limited only to those specified in the motion for closure.

4. COMPLAINT COMMITTEE REPORTS:

A. Licensees and Applicants

Complaint Committee A:

RECOMMENDATION was made by Dr. Kovnat to close complaint cases 2010-A-221; 2010-A-253; 2010-A-277; 2011-A-014; 2011-A-068; 2011-A-091; 2011-A-096; 2011-A-099; 2011-A-133; 2011-A-169, as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Weiner, Ms. Cochran, Mr. Bourbon, Dr. Kankanala, Dr. Miller and Dr. Jenkusky. **ABSTAINED:** Dr. Kovnat and Dr. Komadina. **RECOMMENDATION PASSED.**

Case No. 2011-A-005 RECOMMENDATION was made by Dr. Kovnat to close this case and to issue physician an advisory letter regarding patient interaction. **YES:** Dr. Weiner, Ms. Cochran, Mr. Bourbon, Dr. Kankanala, Dr. Miller and Dr. Jenkusky. **ABSTAINED:** Dr. Kovnat and Dr. Komadina. **RECOMMENDATION PASSED.**

Case No. 2011-A-027 RECOMMENDATION was made by Dr. Kovnat to close this case and to issue physician an advisory letter regarding office management with regard to flow of patients and double booking appointments and respecting patients' needs and rights. **YES:** Dr. Weiner, Ms. Cochran, Mr. Bourbon, Dr. Kankanala, Dr. Miller and Dr. Jenkusky. **ABSTAINED:** Dr. Kovnat and Dr. Komadina. **RECOMMENDATION PASSED.**

Case No. 2012-A-035 (Chandler Morgan, PST) RECOMMENDATION was made by Dr. Kovnat to offer the Polysomnographic Technician a stipulated license requiring mandatory participation in NM Monitored Treatment Program and other standard substance abuse stipulations. If he does not accept, recommend issuance of a Notice of Contemplated Action based on, but not limited to, habitual and excessive use of alcohol.

Complaint Committee B:

RECOMMENDATION was made by Ms. Cochran to close complaint cases 2010-B-269; 2010-B-274; 2010-B-278; 2011-B-028; 2011-B-064; 2011-B-090; 2011-B-093; 2011-B-101 and 2011-B-152 as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Mr. Bourbon, Dr. Kovnat, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Dr. Weiner. **ABSTAINED:** Ms. Cochran and Dr. Miller. **RECOMMENDATION PASSED.**

Case No. 2011-B-001 RECOMMENDATION was made by Ms. Cochran to close this case and to issue physician an advisory letter regarding appropriate medical record charting. **YES:** Mr. Bourbon, Dr. Kovnat, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Dr. Weiner. **ABSTAINED:** Ms. Cochran and Dr. Miller. **RECOMMENDATION PASSED.**

Case No. 2011-B-181 RECOMMENDATION was made by Ms. Cochran to close this case and to issue physician a letter regarding upcoming implementation of the Board's regulation on treating chronic pain with controlled substances. **YES:** Mr. Bourbon, Dr. Kovnat, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Dr. Weiner. **ABSTAINED:** Ms. Cochran and Dr. Miller. **RECOMMENDATION PASSED.**

Complaint Committee C:

RECOMMENDATION was made by Dr. Kankanala to close complaint case 2010-C-206; 2010-C-251; 2011-C-033; 2011-C-037; 2011-C-061; 2011-C-070; 2011-C-079; 2011-C-083; 2011-C-098; 2011-C-100; 2011-C-107 and 2011-C-237 as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Kovnat, Dr. Miller, Dr. Jenkusky, Dr. Komadina, Dr. Weiner, Ms. Cochran and Mr. Bourbon. **ABSTAINED:** Dr. Kankanala. **RECOMMENDATION PASSED.**

Case No. 2011-C-060 RECOMMENDATION was made by Dr. Kankanala to close this case and to issue physician an advisory letter regarding failure to report and interaction with patients. **YES:** Dr. Kovnat, Dr. Miller, Dr. Jenkusky, Dr. Komadina, Dr. Weiner, Ms. Cochran and Mr. Bourbon. **ABSTAINED:** Dr. Kankanala. **RECOMMENDATION PASSED.**

Complaint Committee D:

RECOMMENDATION was made by Mr. Bourbon to close complaint cases 2011-D-013; 2011-D-015; 2011-D-034; 2011-D-054; 2011-D-172 as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Kovnat, Dr. Kankanala, Dr. Miller, Dr. Komadina, Dr. Weiner and Ms. Cochran. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

Case No. 2011-D-040 RECOMMENDATION was made by Mr. Bourbon to close this case and to issue the physician an advisory letter regarding failure to report an arrest and change of supervisor to the Board as required. **YES:** Dr. Kovnat, Dr. Kankanala, Dr. Miller, Dr. Komadina, Dr. Weiner and Ms. Cochran. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

Case No. 2011-D-062 RECOMMENDATION was made by Mr. Bourbon to close this case and to issue an advisory letter to Physician Assistant and Physician regarding appropriate communication and ethical behavior towards patients, expected ethical supervision of physician assistant by the physician, and the recommendation provided to the patient regarding the Hemoglobin level. **YES:** Dr. Kovnat, Dr. Kankanala, Dr. Miller, Dr. Komadina, Dr. Weiner and Ms. Cochran. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

Case No. 2012-D-038 RECOMMENDATION was made by Mr. Bourbon to close this case and to issue the physician an advisory letter regarding the fact that physician assistant can only be supervised by an Osteopathic Physician if physician assistant is also licensed by the Osteopathic Board. Otherwise supervision must be by a medical doctor per Board Regulation. **YES:** Dr. Kovnat, Dr. Kankanala, Dr. Miller, Dr. Komadina, Dr. Weiner and Ms. Cochran. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

Case No. 2011-D-215 (Daniel Brandt, M.D.) RECOMMENDATION was made by Mr. Bourbon to accept the Impaired Physician Committee recommendations and to offer stipulated license requiring mandatory participation in NM Monitored Treatment Program and other standard substance abuse stipulations. **YES:** Dr. Kovnat, Dr. Kankanala, Dr. Miller, Dr. Komadina, Dr. Weiner and Ms. Cochran. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

Case No. 2012-D-021 (Richard Rubin, PA) RECOMMENDATION was made by Mr. Bourbon to **Summarily Suspend** physician assistant's license to practice medicine based on him being an immediate danger to the public and to simultaneously issue a Notice of Contemplated Action based on, but not limited to, conduct unbecoming; conduct likely to deceive the public; use of a deceptive statement in a document connected with the practice of medicine; manifest incapacity to practice; obtaining a fee by misrepresentation; interaction with other healthcare providers that could interfere with patient care; and practicing without physician supervision. **YES:** Dr. Kovnat, Dr. Kankanala, Dr. Miller, Dr. Komadina, Dr. Weiner and Ms. Cochran. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

Case No. 2012-D-021 RECOMMENDATION was made by Mr. Bourbon to close this case against supervising physician as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Kovnat, Dr. Kankanala, Dr. Miller, Dr. Komadina, Dr. Weiner and Ms. Cochran. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

- E. **Proposed Pharmacy Regulations** - Dr. LaFarge briefly discussed the proposed amendments to the following Pharmacy Board rules.
- **16.19.4 NMAC – Pharmacy**
 - **16.19.20 NMAC – Controlled Substances**
 - **16.19.29 NMAC – Controlled Substance Prescription Monitoring Program**
- F. **Support Exempting Nurses from Medical Image Licensing** – Linda Siegle, a representative of different nursing groups throughout the state discussed with the Board the legislation that was passed in 2009 to license sonographers and radiology techs. A part of the legislation would require nurses, unlike other medical practitioners, to be licensed to use sonography or ionizing and non-ionizing radiation procedures. The bill had been drafted poorly and the Rules and Regulations are still being worked on and have not yet gone into effect. Were the rules to go into effect as the Act is written, it would require nurses to prove their education and training to the NM Environment Department Medical Imaging and Radiation Therapy Advisory Council (MIRTAC) and obtain approval prior to using ultrasound or any form of radiation. The nurses have asked the Medical Board for their support to be exempt from this Act. The Board of Nursing will go before the legislature in 2013 with the request to exempt nurses from this existing Act. Dr. Weiner **MOVED** that the New Mexico Medical Board support the exemption of nurses from the current requirements of the NM Environment Department Medical Imaging and Radiation Therapy Health and Safety Act. Dr. Jenkusky **SECONDED YES**: Dr. Weiner, Ms. Cochran, Mr. Bourbon, Dr. Kankanala, Dr. Kovnat, Dr. Miller, Dr. Komadina and Dr. Jenkusky. **MOTION PASSED.**

EXECUTIVE SESSION:


MOTION was made by Dr. Weiner to go into closed session pursuant to Section 10-15-1(H)(7) of the Open Meetings Act to discuss matters subject to the attorney – client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant. **SECONDED** by Ms. Cochran. **YES**: Mr. Bourbon, Dr. Kovnat, Dr. Kankanala, Dr. Miller, Dr. Jenkusky, Dr. Komadina, Dr. Weiner and Ms. Cochran. **MOTION CARRIED.**

The Board returned to open session. Dr. Weiner stated for the record that the matters discussed in executive session were limited only to those specified in the motion for closure.


13. OLD BUSINESS

- A. **Update on Chiropractic Appeal regarding rules** – Discussed in executive session.

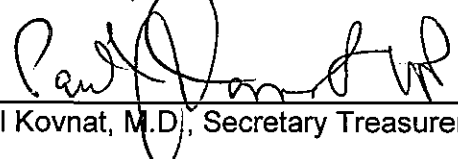
14. ADJOURN - There being no further business, the meeting adjourned at 11:45 a.m.

SUBMITTED BY: 
Lynn S. Hart, Executive Director

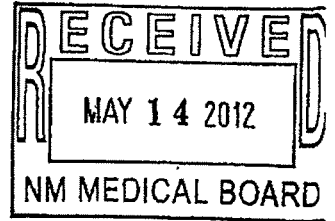
DATE: July 2, 2012

APPROVED BY: 
Steve Weiner, M.D., Vice Chair

DATE: June 28, 2012

APPROVED BY: 
Paul Kovnat, M.D., Secretary Treasurer

DATE: 6 28 2012



BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF)
)
RICHARD RUBIN, P.A.)
License No. PA2006-014)
)
Respondent.)

No. 2012-018

SUMMARY SUSPENSION ORDER

WHEREAS the New Mexico Medical Board ("Board") having received a complaint against Respondent and investigations having been initiated; and

WHEREAS the Board having reviewed and considered the results of such investigations; and

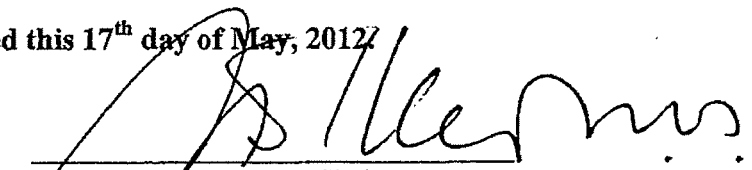
WHEREAS pursuant to §61-6-15.1 NMSA 1978, the Board may summarily suspend a license issued by the Board; and

WHEREAS the Board pursuant to §61-6-15.1(A)(1) has reason to believe that Respondent poses a clear and immediate danger to the public health and safety if the Respondent continues to practice; AND GOOD CAUSE APPEARING; and

WHEREAS the Respondent is entitled to a hearing on this Order by the Board within fifteen days from the date the Respondent requests a hearing,

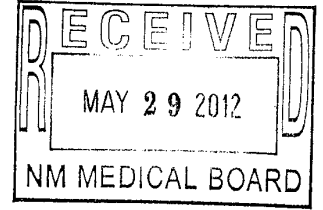
IT IS HEREBY ORDERED that Respondent's New Mexico license to practice as a physician assistant is hereby **SUSPENDED** until further Order of the Board.

Dated this 17th day of May, 2012



Steven Weiner, M.D., Chair
New Mexico Medical Board

BEFORE THE NEW MEXICO MEDICAL BOARD



IN THE MATTER OF)
)
RICHARD RUBIN, P.A.)
License No. PA2006-014)
)
Respondent.)

No. 2012-018

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that pursuant to provisions of §61-1-4 NMSA 1978 of the Uniform Licensing Act (“ULA”), the New Mexico Medical Board (“Board”) has before it sufficient evidence that, if not rebutted or explained, will justify the Medical Board imposing sanctions that could include restricting, revoking or suspending your license to practice medicine in the State of New Mexico.

1. Respondent is subject to action by the Board pursuant to Sections 61-1-1 et seq. NMSA 1978 of the Uniform Licensing Act and Sections 61-6-1 et seq., NMSA 1978 of the Medical Practice Act.

2. This contemplated action is based on the following allegations:

A. Beginning sometime in 2011, Respondent prescribed marijuana for numerous persons by certifying to the New Mexico Department of Health (“DoH”) on an “Enrollment/Re-Enrolment Certification Form” (“DoH Certification”) that he was each person’s medical “provider” pursuant to the Lynn and Erin Compassionate Use Act, NMSA 26-2B-1 et seq. (“CUA”), which generally provides for the medical use of cannabis. Respondent made this certification without first establishing that he was the “primary caregiver” for any of these persons as that term is defined pursuant to the CUA, or otherwise first establishing a physician-patient relationship as required pursuant to the CUA. Respondent further certified that each person was a “qualified patient” as that term is defined pursuant to the CUA, without proper supporting documentation as required under Rules promulgated by the DoH pertaining to either

“severe chronic pain” or post-traumatic stress disorder” set forth at NMAC 7.34.3.8(B)(1) and (7).

Respondent provided such services under the auspices of a facility located at 5401 Lomas Boulevard, Albuquerque, New Mexico, advertised to the public as “Zia Health and Wellness.” This facility advertised that it was staffed with “primary physicians” as well as doctors specializing in pain management. Both the facility and Respondent received payments from those persons in return for the processing of the DoH Certification.

In addition to violating the CUA, the above allegations, if proven, would constitute a violation of Section 30-31-20(B) of the New Mexico Criminal Code which proscribes intentional trafficking of a substance designated as a Schedule I Controlled Substance, including marijuana, which is designated as a Schedule I controlled substance pursuant to Section 30-31-6(C)(10).

The above allegations, if proven, would constitute a violation of the following provisions of the Medical Practice Act and constitute grounds for action against Respondent’s license:

1. Section 61-6-15(D)(15), “use of a false, fraudulent, or deceptive statement in a document connected with the practice of a license”;
2. Section 61-6-15(D)(18), “conduct likely to deceive, defraud or harm the public,”
3. Section 61-6-15(D) (26) NMSA 1978, which proscribes injudicious prescribing;
4. Section 61-6-15(D)(29), “conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public;” and
5. Section 61-6-15(D), “unprofessional or dishonorable conduct” as further defined through Board Rule NMAC 16.10.8.8(L), which prohibits “prescribing, dispensing or administering drugs or

medical supplies to a patient when there is no established physician-patient relationship....” and Board Rule 16.10.8.8(C), “violating a narcotic or drug law.”

B. Respondent’s prescribing of marijuana under the circumstances described in A, above, occurred without any supervision or direction by a licensed physician. This allegation, if proven, would constitute a violation of Section 61-6-7(D) of the Physician Assistant Act, which states as follows:

Physician assistants may prescribe, administer and distribute dangerous drugs other than controlled substances in Schedule I of the Controlled Substances Act pursuant to rules adopted by the board after consultation with the board of pharmacy if the prescribing, administering and distributing are done under the direction of a supervising licensed physician and within the parameters of a board-approved formulary and guidelines established under Subsection C of Section 61-6-9 NMSA 1978...Physician assistants shall not otherwise dispense dangerous drugs or controlled substances.

This allegation, if proven, would further constitute “unprofessional or dishonorable conduct” as proscribed by Section 61-6-15(D) of the Medical Practice Act.

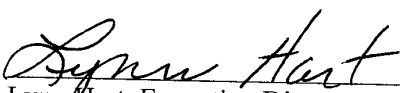
3. Please take notice that pursuant to §61-1-4, you may secure a hearing before the Board by depositing in the mail within twenty (20) days after service of this notice a certified return receipt requested letter addressed to the Board and containing a request for a hearing. If you do not request a hearing within twenty (20) days after service of this notice as described above, the Board will take the contemplated action, i.e., imposing sanctions that could include the revocation or suspension of your license to practice medicine in the State of New Mexico, and there will be no judicial review of their decision.

4. Pursuant to §61-1-8 NMSA 1978, you have the right to be represented by counsel or by a licensed member of your profession or both, and to present all relevant evidence by means of witnesses, books, papers, documents and other evidence; to examine all opposing witnesses who may appear on any matter relevant to the issues and have subpoenas duces tecum

issued as of right prior to the commencement of the hearing, to compel the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making a written request therefore to the Board. The issuance of such subpoenas after commencement of the hearing rests with the discretion of the Board or Hearing Officer.

Dated this 29 day of May, 2012.

NEW MEXICO MEDICAL BOARD


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