

Via E-mail

February 18, 2020

Craig T. Erickson, Esq.  
700 Tijeras Ave. NW  
Albuquerque, NM 87102  
E-mail: [craig@uttonkery.com](mailto:craig@uttonkery.com)

Re: Pending Medical Cannabis Program rulemaking

Dear Mr. Erickson:

This letter is submitted on behalf of the New Mexico Department of Health, Medical Cannabis Program (hereinafter, "Department"), to address certain public comments that were submitted for the second rule hearing regarding the proposed repeal and replacement of Medical Cannabis Program rule part 7.34.4 NMAC. The Department would like to respond to certain comments that may not have already been addressed in the rulemaking record.

Some commenters stated that they believe that the Department should implement additional testing via a phased-in schedule or via a pilot program. The Department responds that it does not believe that such an approach would be useful, and that it may in fact be detrimental. The Department anticipates that there may be some delay in implementing additional testing, due to the need for laboratories to obtain additional testing equipment, etc. The Department may temporarily waive testing requirements in accordance with 7.34.4.9(A) NMAC. However, once additional testing is implemented, the Department would implement the requirements fully. The Department does not foresee that phased-in testing or pilot programs would be economically beneficial for licensees or for patients, given that the added costs of testing would be associated with the purchase or lease by licensed laboratories of additional testing equipment. Those costs would remain the same regardless of whether testing was phased in; and because the costs would be spread over fewer tests, the tests would become significantly more expensive. Also, the Department does not foresee that a phased-in schedule or pilot program for testing would be of benefit to public health, because it would necessarily mean less testing. The Department is also concerned that implementing a phased-in schedule or pilot program would create confusion for the public regarding whether an individual product has been tested, and may give the false impression that a product was tested for a contaminant when it was not.

The Department received public comments that testing for total yeast and mold is not beneficial, and that such testing should therefore not be required. The commenters suggested that there are a variety of yeasts and mold, and that only some of them (such as Aspergillus) are dangerous. For the same reason, some commenters stated that the Department should require testing for specific types of mold, such as Aspergillus. The Department recognizes that not all molds are alike, and that certain types are more hazardous than others. However, as previously stated, the Department has based this requirement on standards that apply to nonsterile botanical supplements in the U.S.

**OFFICE OF GENERAL COUNSEL**

1190 St. Francis Dr., Room N4095 • P.O. Box 26110 • Santa Fe, New Mexico • 87502-6110  
(505) 827-2997 • Fax: (505) 827-2930 • [www.nmhealth.org](http://www.nmhealth.org)



Pharmacopeia, and it believes that this requirement is appropriate. Furthermore, the Department believes that licensed laboratories may not be able to accurately speciate between different mold types at the present time. Although testing for total yeast and mold could be of relatively limited value, the Department believes that such testing is nevertheless beneficial, insofar as a higher quantity of total yeast and mold may present a greater likelihood of the presence of dangerous substances, and may also indicate problems with a producer's growing or curing methods that could in turn increase the chances of cannabis harboring dangerous microbiological contaminants

Several commenters requested that the Department authorize persons and entities other than licensed nonprofit producers (LNPPs) to operate cannabis consumption areas. Some commenters stated that they wanted to take cannabis that they had grown themselves (under a personal production license) to cannabis consumption areas, and that they expected that nonprofit producers would not allow them to do so. While the Department understands the concerns that were raised on this topic, at this time, the Department believes that having LNPPs operate cannabis consumption areas makes the most sense. Most qualified patients who visit a cannabis consumption area will wish to obtain medical cannabis for consumption on the premises, and LNPPs are authorized to sell cannabis. Creating a new designation of licensee for this purpose is unnecessary, and may encourage operators to effectively operate as LNPPs, thereby engaging in unlawful sales.

Thank you for the opportunity to respond to these comments.

Sincerely,  
/s/ Chris D. Woodward 2-18-20  
Chris D. Woodward  
Assistant General Counsel