

**STATE OF NEW MEXICO
THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF SANDOVAL**

NEW MEXICO TOP ORGANICS-ULTRA HEALTH, INC.,

Petitioner,

v.

No. D-1329-CV-2018-01854

**LYNN GALLAGHER, in her official capacity as Secretary
of the New Mexico Department of Health; and
KENNY VIGIL, in his official capacity as Medical
Cannabis Program Manager of the New Mexico
Department of Health,**

Respondents.

ORDER

THIS MATTER is before the Court on Petitioner's Petition for Alternative Mandamus. The Court, being fully advised and having heard oral argument of counsel on October 9, 2017 and received certain stipulated facts, orders as follows:

1. The Petitioner's petition for Alternative Writ of Mandamus is granted.
2. The purpose of the Lynn and Erin Compassionate Use Act, NMSA 1978 § 26-2B-1 *et seq.* (the "Act"), is "to allow the beneficial use of cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments."
3. NMSA 1978 § 26-2b-7(A)(6) specifies what criteria Respondents may consider when designating new or additional dispensary locations operated by a Licensed Non-Profit Producer (LNPP) of medical cannabis.
4. Respondents require LNPPs that wish to amend their license to designate new or additional dispensary locations to do several things before the Respondents will inspect a

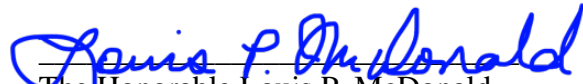
new or additional location and issue an amended license. Included in the required tasks are 1) acquire (by lease, purchase, or construction) the property and/or facility where the dispensary is to be operated, 2) build-out the facility to the specifications and conditions that will be present if the dispensary designation is approved, and 3) complete a checklist of requirements created by the Respondents.

5. Respondents require that the proposed new or additional location be ready to begin operations as a dispensary in all respects prior to the inspecting the location precedent to the issuance of an amended license.
6. Respondents have stipulated to the fact that there is no administrative appeal from their decision to deny an application for an amendment to a LNPP's license to designate a new dispensary location.
7. Respondents conduct neither a hearing for an application for an amendment to a LNPP's license, nor is there an administrative appeals process, thus there is no quasi-judicial proceeding.
8. Actions by administrative agencies are either quasi-judicial in nature, or ministerial.
9. The issuance of amendments to a LNPP's license designating new dispensary locations is therefore a ministerial function in which Respondents do not have discretion.
10. The reasons Respondents have given to Petitioner as the basis for the denials of the Petitioner's applications for new dispensary locations in Española and Los Lunas, New Mexico are found in neither the Act nor the regulations promulgated by the Respondents.
11. The Respondents shall 1) issue an amended license to Petitioner listing Petitioner's Los Lunas and Espanola stores as designated distribution locations for medical cannabis; 2) designate Petitioner's Los Lunas and Espanola stores as designated distribution locations

for medical cannabis; 3) issue license amendments to Petitioner in response to any and all past/future applications for additional distribution locations that meet the statutory criteria found in NMSA 1978 § 26-2b-7(A)(6).

12. The Respondents shall process future amended license requests submitted by Petitioner in a timely and legally compliant manner.

IT IS SO ORDERED.


The Honorable Louis P. McDonald

Respectfully Submitted,

Egolf + Ferlic + Harwood, LLC

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