

**STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE**

**HAROLD MEYERS, LAURA SIAS, and
DUKE RODRIGUEZ**
Petitioners,

v.

No. D-101-CV-2019-61967

**KENNY VIGIL, in his official capacity as Medical
Cannabis Program Manager of the New Mexico
Department of Health.**

Respondent.

ALTERNATIVE WRIT OF MANDAMUS

TO: Kenny Vigil, Program Manager of Department of Health Medical Cannabis Program

GREETINGS. WHEREAS it appears to the Court as follows:

1. Petitioners are non-New Mexico residents who wish to participate in New Mexico's Medical Cannabis and become "qualified patients;" Petitioners meet the statutory qualifications for qualified patients pursuant to the Lynn and Erin Compassionate Use Act.
2. Petitioners have petitioned this Court for an alternative writ of mandamus. The Petition is attached hereto as Exhibit A. All allegations found in the Petition that are not repeated herein are incorporated by reference.
3. The Lynn and Erin Compassionate Use Act (hereinafter "the Act") legalized the use and production of medical cannabis in New Mexico in 2007. See N.M.S.A. 1978 § 26-2B-1 et seq.
4. "The purpose of the Lynn and Erin Compassionate Use Act 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." NMSA 1978, § 26-2B-2 (2007).

5. The Act provides for the licensure of patients, health care providers, caregivers, cannabis manufacturers, and manufacturers of cannabis products by the MCP. NMSA 1978, § 26-2B-3 (2019).

6. The Lynn and Erin Compassionate Use Act was amended in 2019.

7. The changes to the Act took effect on June 14, 2019.

8. The Act charges the Department of Health (hereinafter “DOH”) with administering the medical cannabis system in New Mexico. See N.M.S.A. 1978 § 26-2B-7 (2019) and § 26-2B-3 (2019).

9. DOH has created within itself the Medical Cannabis Program.

10. Kenny Vigil is the Program Manager of the Medical Cannabis Program.

11. The Act is premised upon certain categories of people and business being exempted from penalties for activities involving cannabis.

12. Particularly, N.M.S.A. 1978 § 26-2B-4(A) (2019) states, “A qualified patient or a qualified patient’s primary caregiver shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of cannabis if the quantity of cannabis does not exceed an adequate supply.”

13. Additionally, N.M.S.A. 1978 § 26-2B-4(F) (2019) states that a medical “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.”

14. Additionally, N.M.S.A. 1978 § 26-2B-4(G) (2019) states that a licensed producer, manufacturer, or testing facility “shall not be subject to arrest, prosecution or penalty, in any

manner, for the production, possession, manufacture, distribution, dispensing or testing of cannabis pursuant to the Lynn and Erin Compassionate Use Act.”

15. In order for an individual to be allowed to purchase, possess, and consume medical cannabis, a “qualified patient” must first obtain a “registry identification card,” which is issued by the DOH Medical Cannabis Program. See N.M.S.A. 1978 §26-2B-3(V) and (X) and §26-2B-7(B).

16. An individual may “qualify” as a qualified patient if he or she “has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card.” N.M.S.A. 1978 §26-2B-3(V).

17. The “written certification” comes from a medical practitioner. The definition of “written certification” within the Act is “a statement made on a department-approved form and signed by a patient’s practitioner that indicates, in the practitioner’s professional opinion, that 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.” N.M.S.A. 1978 §26-2B-3(BB) (2019).

18. The Act also contains a definition of “practitioner,” which is “a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act.” N.M.S.A. 1978 §26-2B-3(S) (2019).

19. The Compassionate Use Act includes a list of medical conditions that are considered to be a “debilitating medical condition,” and having one of those conditions will make an individual eligible to be qualified to legally purchase and use medical cannabis in New Mexico. Rather, the Act lists several specific medical conditions that may make an individual

eligible to be qualified to legally purchase and use medical cannabis in New Mexico. Those specific medical conditions are listed at N.M.S.A. 1978, § 26-2B-3(J).

20. A registry identification card issued allows a qualified patient to legally purchase cannabis from a licensed producer and allows the qualified patient to use and transport cannabis intra-state without penalty. N.M.S.A. 1978 §26-2B-3(X).

21. The registry identification is issued by the Department of Health. N.M.S.A. 1978 §26-2B-3(X).

22. The Act specifically states when and under what conditions DOH must issue a registry identification card to an individual. N.M.S.A. 1978 §26-2B-7(B) states, “The department **shall issue registry identification cards** to a patient and to the primary caregiver for that patient, if any, **who submit the following, in accordance with the department's rules:** (1) a written certification; (2) the name, address and date of birth of the patient; (3) the name, address and telephone number of the patient's practitioner; and (4) the name, address and date of birth of the patient's primary caregiver, if any” (emphasis added).

23. The 2019 amendments to the Act changed the definition of “qualified patient.”

24. Prior to the 2019 amendments to the Act, the definition of qualified patient was “**a resident of New Mexico** who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card” (emphasis added). See Senate Bill 406, Page 12.

25. The 2019 amendments changed the definition of qualified patient to “**a person** who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card...” (emphasis added). N.M.S.A. 1978 §26-2B-3(V). *Id.*

26. By making this change to the law, the Legislature removed the requirement that an applicant for a registry identification card be a “resident of New Mexico.”

Issuance of Registry Identification Cards Is Ministerial and Non-Discretionary

27. The Department of Health’s issuance of registry identification cards for use, possession, and purchase of medical cannabis is a non-discretionary function.

28. The Department of Health’s issuance of registry identification cards for use, possession, and purchase of medical cannabis is a purely ministerial function.

29. This is apparent from both the words of the statute and from prior caselaw.

30. “Mandamus lies to compel the performance of a ministerial act or duty that is clear and indisputable.” *New Energy Econ., Inc. v. Martinez*, 2011–NMSC–006, ¶ 10, 149 N.M. 207, 247 P.3d 286.

31. “A ministerial act is an act which an officer performs under a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, without regard to the exercise of his own judgment upon the propriety of the act being done.” *Id.* ¶ 10

32. N.M.S.A. 1978 §26-2B-7(B) states, “The department **shall issue registry identification cards** to a patient and to the primary caregiver for that patient, if any, who submit the following, in accordance with the department’s rules: (1) a written certification; (2) the name, address and date of birth of the patient; (3) the name, address and telephone number of the patient’s practitioner; and (4) the name, address and date of birth of the patient’s primary caregiver, if any.” (emphasis added).

33. The word “shall” indicates a ministerial action without the availability of discretion.

34. N.M.S.A. 1978 §26-2B-7(C) (2019) further states, “The department shall verify the information contained in an application submitted pursuant to Subsection B of this section and shall approve or deny an application within thirty days of receipt. **The department may deny an application only if the applicant did not provide the information required pursuant to Subsection B of this section or if the department determines that the information provided is false**” (emphasis added).

35. The Uniform Statute and Rule Construction Act governs how certain words and expressions in statute are to be interpreted. N.M.S.A. 1978 § 12-2A-4(A).

36. N.M.S.A. 1978 § 12-2A-4(A) states that the words “shall” and “must” “express a duty, obligation, requirement or condition precedent.”

37. “One of the canons of statutory construction states that the words ‘shall’ and ‘will’ are mandatory and ‘may’ is permissive or directory.” *Montano v. Los Alamos County*, 1996-NMCA-108, ¶ 5.

38. Because N.M.S.A. 1978 §26-2B-7(B) states DOH “shall issue registry identification cards,” the Department’s issuance of the cards is a mandatory duty that is clear, indisputable, and obligatory.

39. Furthermore, NMSA 1978, §26-2B-7(B) describes the “given state of facts” under which DOH must issue the registry identification card.

40. NMSA 1978, § 26-2B-7(B) lists four, and only four, pieces of information that are required for submission by a prospective patient.

41. Additionally, NMSA 1978, § 26-2B-7(C) states, “The department may deny an application **only if the applicant did not provide the information required pursuant to Subsection B of this section or if the department determines that the information provided**

is false,” which precludes the Department of Health from requiring any other pieces of information other than the four pieces listed in §26-2B-7(B) (emphasis added).

42. While NMSA 1978, §26-2B-7(B) contains the phrase “who submit the following, in accordance with Department rules,” this phrase refers merely to the manner of submission of the four listed pieces of information, rather than the substance of the information required.

43. “In accordance with Department rules” does not work to enlarge the Department’s discretionary power over the issuance of registry identification facts; rather, it only works to recognize the Department’s ability to specify the manner in which patients should submit applications for registry identification cards.

44. NMSA 1978, §26-2B-7(C) emphasizes that the Department does not have discretion regarding what pieces of information are necessary to receive a registry identification card: “The department may deny an application only if the applicant did not provide the information required pursuant to Subsection B of this section or if the department determines that the information provided is false.”

45. In addition to the statutory language being obviously mandatory and ministerial, there is legal precedent regarding DOH’s lack of discretion over registry identification cards.

46. Case D-101-CV-2014-00140, *Carola Kieve v. New Mexico Department of Health*, involved issuance of registry identification cards as well.

47. The Court’s final order in that case states “As part of an initial application for a patient card, the Department may require from patients and their practitioners no more information than what is included in NMSA 1978 § 26-2B-3(H)” and “The Department may require a practitioner to submit a ‘written certification’ in support of a patient’s application, but

the Department may not require that the ‘written certification’ contain any information or attestation that is not expressly required by the Act” (Order, page 3).

48. The *Kieve* case reinforces that DOH may not add requirements beyond what is in statute for registry identification card issuance.

49. As explained further below, DOH currently requires prospective qualified patients to submit a copy of a New Mexico driver’s license, in order to prove New Mexico residency.

50. The current application form used by DOH requires patients applicants to submit a “clear copy of your current New Mexico Driver’s License or New Mexico photo ID.”

51. DOH’s requirement of a copy of a New Mexico driver’s license is, in and of itself, a violation of law *even as to New Mexico residents*.

52. The statute does not require submission of a driver’s license from anyone, resident or not.

53. The requirement of a driver’s license is directly contrary to statute and to the *Kieve* ruling.

54. Respondent must cease requiring driver’s licenses and must issue registry identification cards without submission of driver’s licenses.

Persons Not New Mexico Residents Are Eligible To Be Qualified Patients and Must Receive Registry Identification Cards

55. The plain language of the 2019 Lynn and Erin Compassionate Use Act indicates that non-New Mexico-residents may obtain registry identification cards and participate in the state’s medical cannabis program.

56. The plain language of the 2019 Lynn and Erin Compassionate Use Act indicates that DOH must issue a registry identification card to an out-of-state resident who otherwise meets the requirements for obtaining a card.

57. “When interpreting a statute, a court’s primary goal is to facilitate and promote the Legislature’s purpose.” *Gandydancer, LLC v. Rock Hosue CGM, LLC*, 2018-NMCA-064, ¶ 7.”

58. “In discerning that purpose, ‘we look first to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended.’” *Id.*, quoting *Flores v. Herrera*, 2016-NMSC-033, ¶ 8, 384 P.3d 1070.

59. In another mandamus case, the Supreme Court stated, “A statute must be read and given effect as it is written by the Legislature, not as the court may think it should be or would have been written if the Legislature had envisaged all the problems and complications which might arise...Courts must take the act as they find it and construe it according to the plain meaning of the language employed.” *Perea v. Baca*, 1980-NMSC-079, ¶ 22, 94 N.M. 624.

60. The plain language of the current definition of qualified patient indicates that the qualified patient need not be a New Mexico resident.

61. The language is “**a person** who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card...” (emphasis added). N.M.S.A. 1978 §26-2B-3(V).

62. A “person” is simply that: a human being, regardless of whether they are a New Mexico resident or not.

63. Additionally, the word “person” replaces “New Mexico resident,” Which was found in the law prior to the 2019 changes to the law. The replacement is a clear sign of legislative intent to widen the reach of eligibility for the New Mexico medical cannabis program.

64. Although the Compassionate Use Act contains a definition of “reciprocal participant,” a reciprocal participant is different than a “qualified patient,” and “reciprocal participant” is not a subset of the term “qualified patient.”

65. The 2019 amendments added a new definition of “reciprocal participant” to the Act, which is “an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.”

66. The Act does not require DOH to promulgate rules regarding reciprocal participants until 2020: “By March 1, 2020, the secretary of health shall adopt and promulgate rules relating to medical cannabis program reciprocity. The department may identify requirements for the granting of reciprocity, including provisions limiting the period of time in which a reciprocal participant may participate in the medical cannabis program.” N.M.S.A. 1978 § 26-2B-7(I).

67. There is ample evidence from the statute indicating that “reciprocal participants” are an entirely different category of card-holders separate and apart from “qualified patients.”

68. First, the definition of “registry identification card” at NMSA 1978, § 26-2B-3(X) says it is a card issued to a “qualified patient” or “primary caregiver,” but not to a reciprocal participant.

69. Second, NMSA 1978, § 26-2B-4, the section of the Act exempting MCP participants from criminal penalties for their participation in cannabis-related activities contains one exemption from prosecution for “qualified patients” and another separate exemption for “reciprocal participants.” Thus, reciprocal participants and “qualified patients” are listed separately as separate categories of eligible users by the Act itself. If reciprocal participants

were merely a subset of qualified patients, there would be no need to grant them separate explicit exemptions.

70. Third, “qualified patients” are authorized to possess an “adequate supply” of medical cannabis, while reciprocal participants are allowed to possess “not more than the limit identified by department rule” under § 26-2B-4(C) (stating that “a qualified patient or primary caregiver [may purchase] not more than an adequate supply from a lawful source,” while a “reciprocal participant [may] purchas[e] or obtain[] not more than the limit identified by department rule”).

71. If reciprocal participants were merely a subset of qualified patients, there would be no need to set different purchase limitations for the two different classes.

72. Fourth, the Medical Advisory Board of the Medical Cannabis Program is charged with recommending “quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and primary caregivers,” and also with recommending “quantities of cannabis that a reciprocal participant may obtain and possess.” N.M.S.A. 1978 § 26-2B-6.

73. This again demonstrates that “qualified patients” is not simply an umbrella term that incorporates “reciprocal participants,” because qualified patients are subject to different possession limitations than reciprocal participants.

74. Fifth, reciprocal participants “shall not be required to comply with the registry identification card application and renewal requirements.” N.M.S.A. 1978 §26-2B-7(J).

75. The definition of “qualified patient” is “a person who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card...” N.M.S.A. 1978 §26-2B-3(V) (2019).

76. A qualified patient has received a registry identification card, but reciprocal participants do not receive registry identification cards. Therefore, a reciprocal participant is not a qualified patient.

77. Therefore, the two classes are entirely different, and the definition of “qualified patient” does not subsume the definition of reciprocal participant.

78. Additionally, the difference between a reciprocal participant and a non-New Mexico resident qualified patient is that a reciprocal participant must be a resident of a state that allows medical cannabis for that person’s individual health condition.

79. If a person lives in a state that does not allow medical cannabis, or does not allow it for that person’s particular condition, that person cannot be a “reciprocal participant.”

80. The plain language of the definition of “qualified patient,” together with the larger structure of the statute, includes New Mexico residents and non-New Mexico residents.

81. Further revealing the intent to allow non-residents to participate in the Medical Cannabis Program is the requirement that patients must receive written certifications from “practitioners,” and the definition of “practitioner” is a medical professional “a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act.” N.M.S.A. 1978 §26-2B-3(S) (2019).

82. The 2019 amendments to the Act do not obviate the requirement that a qualified patient be certified by a New Mexico-licensed practitioner.

83. Therefore, a non-New Mexico resident must still receive a certification from a medical practitioner licensed in New Mexico in order to receive a registry identification card.

84. Additionally, the 2019 amendments to the Compassionate Use Act included a provision for the creation of “cannabis consumption areas.” These “cannabis consumption

areas” are defined as “an area within a licensed premises approved by the department where cannabis may be consumed that complies with rule as established by the department.” N.M.S.A. 1978 §26-2B-3(C) 2019.

85. There are many conceivable classes of non-New Mexico residents who may wish to participate in New Mexico’s medical cannabis program as a qualified patient.

86. Those classes include, but are not limited to, out-of-state residents receiving medical treatment in New Mexico and staying here for an extended period, but not long enough to qualify as a resident; out-of-state residents who have second homes in New Mexico and do not spend enough time in New Mexico to qualify as a resident; out-of-state residents who regularly visit relatives, friends, or business interests in New Mexico and wish to maintain continuity of cannabis ingestion during their visits; out-of-state residents contemplating or completing a move to New Mexico who have not yet established residency; out-of-state residents who wish to spend time in New Mexico to find out whether cannabis may help their medical conditions; a college student attending an institute of higher learning in New Mexico who will not qualify as a New Mexico resident during their college attendance; a visiting or interning scientist at one of New Mexico’s scientific laboratories who will not stay long enough to establish official residence in New Mexico.

87. Allowing non-residents to participate in a state medical cannabis program has occurred and still occurs in other states and U.S. territories.

88. The Lynn and Erin Compassionate Use Act clearly allows non-New Mexico residents to become qualified patients and purchase medical cannabis lawfully within New Mexico.

89. The Act does not allow non-New Mexico residents to transport cannabis across state lines.

90. Any non-New Mexico resident who becomes a qualified patient does so with the understanding that their use of cannabis is still subject to other laws, including laws prohibiting the transport of cannabis across state lines.

91. The Petitioners in this case do not advocate for interstate transportation of cannabis, and they do not argue that the Act makes such interstate transportation legal.

92. Out-of-state residents who apply for registry identification cards in New Mexico may and should be educated regarding the legal consequences of transporting cannabis into or out of New Mexico.

93. The requirements for issuance of a medical cannabis registry identification card from the New Mexico Department of Health Medical Cannabis Program are clear.

94. First, the applicant must be a “person.” N.M.S.A. 1978 §26-2B-3(V) (2019).

95. The applicant person must have one of the debilitating medical conditions listed at N.M.S.A. 1978 § 26-2B-3(J) (2019).

96. The applicant person must obtain a “a statement made on a department-approved form and signed by” a medical practitioner “licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act” “that indicates, in the practitioner’s professional opinion, that 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.” N.M.S.A. 1978 §26-2B-3(BB) and §26-2B-3(S) (2019).

97. The applicant person must submit the written certification to the Department of Health along with the name, address and date of birth of the patient and the name, address and telephone number of the patient's practitioner.

Petitioners Are Out of State Residents Denied Registry Identification Cards

98. Petitioner Duke Rodriguez is a resident of Scottsdale, Arizona.

99. Mr. Rodriguez suffers from post-traumatic stress disorder.

100. Mr. Rodriguez owns a home in New Mexico, but he does not spend the requisite number of days in New Mexico to be considered a "resident" under IRS definitions.

101. Mr. Rodriguez is a principle of several businesses in New Mexico and comes to New Mexico frequently to conduct business here.

102. Mr. Rodriguez also has immediate family members in New Mexico, and he travels here frequently to see these family members.

103. Mr. Rodriguez does not wish to transport cannabis across the border between Arizona and New Mexico, as that transport is illegal.

104. However, Mr. Rodriguez wishes to maintain his regimen of cannabis medication while in New Mexico.

105. Mr. Rodriguez intends to consume cannabis at his home in New Mexico when he comes to New Mexico to visit family or conduct business.

106. Mr. Rodriguez obtained a written certification from a New Mexico-licensed practitioner.

107. Mr. Rodriguez submitted the written certification to DOH on the form prescribed by DOH, along with the names and addresses of him/herself and the practitioner who issued the certification.

108. DOH issued a denial letter.
109. The reasons DOH gave for the denial were “ID you sent was from outside New Mexico,” and “it does not contain a New Mexico address or New Mexico County of Residence.”
110. DOH did not deny Mr. Rodriguez’s application on any basis having to do with the veracity of the written certification or with the qualifying condition.
111. Therefore, DOH has conceded that Mr. Rodriguez obtained the necessary written certification, and the only basis DOH has for denial is residency.
112. Petitioner Harold Meyers is a resident of Dalhart, Texas.
113. Mr. Meyers suffers from obstructive sleep apnea.
114. Dalhart, Texas is just over the state line from Clayton, New Mexico.
115. Mr. Meyers owns and operates several small business located in New Mexico, including a retail liquor store and a check-cashing store. Meyers also leases and operates several cattle ranches in New Mexico.
116. Mr. Meyers spends approximately three days per week in New Mexico, and does not qualify as a “resident” of New Mexico, nor does he have a New Mexico driver’s license.
117. Mr. Meyers intends to travel to New Mexico from Dalhart, purchase medical cannabis at a dispensary, and consume it within New Mexico.
118. Mr. Meyers obtained a written certification from a New Mexico-licensed practitioner.
119. Mr. Meyers submitted the written certification to DOH on the form prescribed by DOH, along with the names and addresses of him/herself and the practitioner who issued the certification.
120. DOH issued a denial letter.

121. DOH did not deny Mr. Meyers' application on any basis having to do with the veracity of the written certification or with the qualifying condition.

122. Therefore, DOH has conceded that Mr. Meyers obtained the necessary written certification, and the only basis DOH has for denial is residency.

123. The basis for DOH's denial was lack of a New Mexico driver's license or ID card.

124. Petitioner Laura Sias is a resident of El Paso, Texas.

125. Ms. Sias suffers from post-traumatic stress disorder.

126. Ms. Sias's brother and best friend both live in Las Cruces New Mexico, and she visits them frequently.

127. Ms. Sias would like to obtain medical cannabis to alleviate the symptoms of her post-traumatic stress disorder.

128. Ms. Sias intends to travel to Las Cruces from El Paso, purchase medical cannabis at a dispensary, and consume it at her brother's residence or best friend's residence.

129. Ms. Sias has considered moving to New Mexico in order to obtain medical cannabis lawfully, but her partner works in El Paso, and they cannot make the move to New Mexico.

130. Ms. Sias obtained a written certification from a New Mexico-licensed practitioner.

131. Ms. Sias submitted the written certification to DOH on the form prescribed by DOH, along with the names and addresses of herself and the practitioner who issued the certification.

132. DOH issued a denial letter.

133. The reasons DOH gave for the denial were “ID you sent was from outside New Mexico,” and “it does not contain a New Mexico address or New Mexico County of Residence.”

134. DOH did not deny Ms. Sias’ application on any basis having to do with the veracity of the written certification or with the qualifying condition.

135. Therefore, DOH has conceded that Ms. Sias obtained the necessary written certification, and the only basis DOH has for denial is residency.

136. All of these Petitioners met the qualifications described above but were nevertheless denied their registry identification cards by DOH.

Cause of Action One: Mandamus

137. “Mandamus lies to compel the performance of a ministerial act or duty that is clear and indisputable.” *New Energy Econ., Inc. v. Martinez*, 2011–NMSC–006, ¶ 10, 149 N.M. 207, 247 P.3d 286.

138. “A ministerial act is an act which an officer performs under a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, without regard to the exercise of his own judgment upon the propriety of the act being done.” *Id.* ¶ 10

139. Kenny Vigil owes a ministerial duty to issue medical cannabis registry identification cards to any person—whether a resident of New Mexico or not—who submits the written certification and other items listed in N.M.S.A. 1978 § 26-2B-7(B).

140. Petitioners all submitted registry identification card applications to the Department of Health that met the statutory criteria for issuance of a card.

141. As such, Kenny Vigil has a ministerial duty to Petitioners to issue the registry identification cards.

142. This duty is clear and indisputable.

143. The issuance of registry identification cards are acts which Defendants perform under a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, and without regard to the exercise of their own judgment upon the propriety of the particular individual obtaining such a card.

144. The “given state of facts” here is 1) being a person; 2) the person having one of the debilitating medical conditions listed in statute; 3) the person obtaining “a statement made on a department-approved form and signed by” a medical practitioner “licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act” “that indicates, in the practitioner’s professional opinion, that 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; and 4) the person submitting the written certification to the Department of Health along with the name, address and date of birth of the patient and the name, address and telephone number of the patient’s practitioner.

145. The prescribed manner here is the person’s submission of this information on the DOH-prescribed form.

146. The mandate of legal authority is found in NMSA § 26-2B-7(B).

147. The lack of DOH’s power to exercise its judgment in determining whether to issue a registry identification card is shown by the lack of any such delegation of power in the Lynn and Erin Compassionate Use Act.

148. Mandamus will issue if there is no “plain, speedy and adequate remedy in the ordinary course of law.” NMSA 1978, § 44-2-5 (1884).

149. Petitioners have no other mechanism to challenge DOH’s denial of their applications for registry identification cards.

150. Petitioners do not have a plain, speedy, and adequate remedy in the ordinary course of law.

THEREFORE, RESPONDENT IS COMMANDED TO:

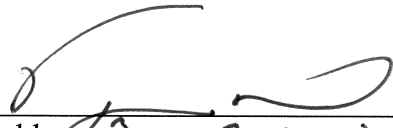
151. Issue medical cannabis program registry identification cards to each of the Petitioners.

152. Issue a medical cannabis program registry identification card to any person, whether a New Mexico resident or not, who 1) has one of the debilitating medical conditions listed in statute; 2) has obtained “a statement made on a department-approved form and signed by” a medical practitioner “licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act” “that indicates, in the practitioner’s professional opinion, that 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;” and 3) has submitted that statement to the Department of Health along with the name, address and date of birth of the patient and the name, address and telephone number of the patient’s practitioner.

153. Appropriately process registry identification cards in a timely and legally compliant manner.

154. Serve and file a responsive pleading by August 19, 2019 pursuant to Rule 1-065 NMRA (E) and (F).

155. Show cause before this court at 12:15 a.m./p.m. on the 21st day of August, 2019 why you should not do so.


Honorable Bryan Biedscheid 8-5-19

**STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE**

FILED
1st JUDICIAL DISTRICT COURT
Santa Fe County
7/25/2019 2:43 PM
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Jennifer Romero

**HAROLD MEYERS, LAURA SIAS, and
DUKE RODRIGUEZ**

Petitioners,

v.

No. 0-101-CV-2019-01967

**KENNY VIGIL, in his official capacity as Medical
Cannabis Program Manager of the New Mexico
Department of Health,**

Respondent.

VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDAMUS

COME NOW Petitioners Harold Meyers, Laura Sias, and Duke Rodriguez, by counsel Egolf + Ferlic + Harwood, LLC (Brian Egolf and Kristina Caffrey, appearing) and petition this Court for an alternative writ of mandamus, pursuant to NMSA 1978 § 44-2-4, to compel the Secretary of the New Mexico Department of Health and the Department of Health Medical Cannabis Program Manager to immediately issue registry identification cards to Harold Meyers, Laura Sias, and Duke Rodriguez, because they are qualified patients pursuant to statutory definitions. As of the date of this filing, the Department of Health's Medical Cannabis Program has refused to issue registry identification cards to eligible qualified patients, and in so doing it has failed to perform a ministerial non-discretionary duty.

A proposed form of Writ of Mandamus accompanies this petition as Exhibit 1, is incorporated herein fully by reference, and will also be submitted directly to the Court.

Jurisdiction and Venue

1. Harold Meyers is a resident of Dalhart, Texas who suffers from obstructive sleep apnea, a debilitating medical condition.

EXHIBIT A

2. Laura Sias is a resident of El Paso, Texas, who suffers from post-traumatic stress disorder, a debilitating medical condition.

3. Duke Rodriguez is a resident of Scottsdale, Arizona, who suffers from post-traumatic stress disorder, a debilitating medical condition.

4. Kenny Vigil is a state officers of the New Mexico Department of Health, which has its offices located in Santa Fe, New Mexico.

5. Jurisdiction in Santa Fe County is proper pursuant to N.M.S.A. 1978 § 38-3-1(G).

Background of Medical Cannabis in New Mexico

6. The Lynn and Erin Compassionate Use Act (hereinafter “the Act”) legalized the use and production of medical cannabis in New Mexico in 2007. See N.M.S.A. 1978 § 26-2B-1 et seq.

7. “The purpose of the Lynn and Erin Compassionate Use Act 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.” NMSA 1978, § 26-2B-2 (2007).

8. The Act provides for the licensure of patients, health care providers, caregivers, cannabis manufacturers, and manufacturers of cannabis products by the MCP. NMSA 1978, § 26-2B-3 (2019).

9. The Lynn and Erin Compassionate Use Act was amended in 2019. The law amending the Act, Laws 2019, Chapter 247, is attached here as Exhibit 2. The current text available from the New Mexico Compilation Commission enacting and evidencing the amendments is attached as Exhibit 2A.

10. The changes to the Act took effect on June 14, 2019.

11. The Act charges the Department of Health (hereinafter “DOH”) with administering the medical cannabis system in New Mexico. See N.M.S.A. 1978 § 26-2B-7 (2019) and § 26-2B-3 (2019).

12. DOH has created within itself the Medical Cannabis Program.

13. Kenny Vigil is the Program Manager of the Medical Cannabis Program.

14. The Act is premised upon certain categories of people and business being exempted from penalties for activities involving cannabis.

15. Particularly, N.M.S.A. 1978 § 26-2B-4(A) (2019) states, “A qualified patient or a qualified patient’s primary caregiver shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of cannabis if the quantity of cannabis does not exceed an adequate supply.”

16. Additionally, N.M.S.A. 1978 § 26-2B-4(F) (2019) states that a medical “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.”

17. Additionally, N.M.S.A. 1978 § 26-2B-4(G) (2019) states that a licensed producer, manufacturer, or testing facility “shall not be subject to arrest, prosecution or penalty, in any manner, for the production, possession, manufacture, distribution, dispensing or testing of cannabis pursuant to the Lynn and Erin Compassionate Use Act.”

18. In order for an individual to be allowed to purchase, possess, and consume medical cannabis, a “qualified patient” must first obtain a “registry identification card,” which is

issued by the DOH Medical Cannabis Program. See N.M.S.A. 1978 §26-2B-3(V) and (X) and §26-2B-7(B).

19. An individual may “qualify” as a qualified patient if he or she “has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card.” N.M.S.A. 1978 §26-2B-3(V).

20. The “written certification” comes from a medical practitioner. The definition of “written certification” within the Act is “a statement made on a department-approved form and signed by a patient’s practitioner that indicates, in the practitioner’s professional opinion, that 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.” N.M.S.A. 1978 §26-2B-3(BB) (2019).

21. The Act also contains a definition of “practitioner,” which is “a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act.” N.M.S.A. 1978 §26-2B-3(S) (2019).

22. The Compassionate Use Act includes a list of medical conditions that are considered to be a “debilitating medical condition,” and having one of those conditions will make an individual eligible to be qualified to legally purchase and use medical cannabis in New Mexico. Rather, the Act lists several specific medical conditions that may make an individual eligible to be qualified to legally purchase and use medical cannabis in New Mexico. Those specific medical conditions are listed at N.M.S.A. 1978, § 26-2B-3(J).

23. A registry identification card issued allows a qualified patient to legally purchase cannabis from a licensed producer and allows the qualified patient to use and transport cannabis intra-state without penalty. N.M.S.A. 1978 §26-2B-3(X).

24. The registry identification is issued by the Department of Health. N.M.S.A. 1978 §26-2B-3(X).

25. The Act specifically states when and under what conditions DOH must issue a registry identification card to an individual. N.M.S.A. 1978 §26-2B-7(B) states, “The department **shall issue registry identification cards** to a patient and to the primary caregiver for that patient, if any, **who submit the following, in accordance with the department's rules:** (1) a written certification; (2) the name, address and date of birth of the patient; (3) the name, address and telephone number of the patient's practitioner; and (4) the name, address and date of birth of the patient's primary caregiver, if any” (emphasis added).

26. The Lynn and Erin Compassionate Use Act was amended in 2019 with the stated purpose of “to expand eligibility...and to establish new qualifying medical conditions, civil protections, and interstate and tribal reciprocity.” Senate 406, as passed and signed and enrolled into effect, attached here as Exhibit 2 and Exhibit 2A.

27. The 2019 amendments to the Act changed the definition of “qualified patient.”

28. Prior to the 2019 amendments to the Act, the definition of qualified patient was “**a resident of New Mexico** who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card” (emphasis added). See Senate Bill 406, Page 12, attached hereto as Exhibit 2.

29. The 2019 amendments changed the definition of qualified patient to “**a person** who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card...” (emphasis added). N.M.S.A. 1978 §26-2B-3(V). *Id.*

30. By making this change to the law, the Legislature removed the requirement that an applicant for a registry identification card be a “resident of New Mexico.”

31. The issue presented by this petition for writ of mandamus is whether the Department must issue registry identification cards to persons not residents of New Mexico who meet all other conditions of the definition of “qualified patient.”

Issuance of Registry Identification Cards Is Ministerial and Non-Discretionary

32. The Department of Health’s issuance of registry identification cards for use, possession, and purchase of medical cannabis is a non-discretionary function.

33. The Department of Health’s issuance of registry identification cards for use, possession, and purchase of medical cannabis is a purely ministerial function.

34. This is apparent from both the words of the statute and from prior caselaw.

35. “Mandamus lies to compel the performance of a ministerial act or duty that is clear and indisputable.” *New Energy Econ., Inc. v. Martinez*, 2011–NMSC–006, ¶ 10, 149 N.M. 207, 247 P.3d 286.

36. “A ministerial act is an act which an officer performs under a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, without regard to the exercise of his own judgment upon the propriety of the act being done.” *Id.* ¶ 10

37. N.M.S.A. 1978 §26-2B-7(B) states, “The department **shall issue registry identification cards** to a patient and to the primary caregiver for that patient, if any, who submit the following, in accordance with the department’s rules: (1) a written certification; (2) the name, address and date of birth of the patient; (3) the name, address and telephone number of the patient’s practitioner; and (4) the name, address and date of birth of the patient’s primary caregiver, if any.” (emphasis added).

38. The word “shall” indicates a ministerial action without the availability of discretion.

39. N.M.S.A. 1978 §26-2B-7(C) (2019) further states, “The department shall verify the information contained in an application submitted pursuant to Subsection B of this section and shall approve or deny an application within thirty days of receipt. **The department may deny an application only if the applicant did not provide the information required pursuant to Subsection B of this section or if the department determines that the information provided is false**” (emphasis added).

40. The Uniform Statute and Rule Construction Act governs how certain words and expressions in statute are to be interpreted. N.M.S.A. 1978 § 12-2A-4(A).

41. N.M.S.A. 1978 § 12-2A-4(A) states that the words “shall” and “must” “express a duty, obligation, requirement or condition precedent.”

42. “One of the canons of statutory construction states that the words ‘shall’ and ‘will’ are mandatory and ‘may’ is permissive or directory.” *Montano v. Los Alamos County*, 1996-NMCA-108, ¶ 5.

43. Because N.M.S.A. 1978 §26-2B-7(B) states DOH “shall issue registry identification cards,” the Department’s issuance of the cards is a mandatory duty that is clear, indisputable, and obligatory.

44. Furthermore, NMSA 1978, §26-2B-7(B) describes the “given state of facts” under which DOH must issue the registry identification card.

45. NMSA 1978, § 26-2B-7(B) lists four, and only four, pieces of information that are required for submission by a prospective patient.

46. Additionally, NMSA 1978, § 26-2B-7(C) states, “The department may deny an application **only if the applicant did not provide the information required pursuant to Subsection B of this section or if the department determines that the information provided is false,**” which precludes the Department of Health from requiring any other pieces of information other than the four pieces listed in §26-2B-7(B) (emphasis added).

47. While NMSA 1978, §26-2B-7(B) contains the phrase “who submit the following, in accordance with Department rules,” this phrase refers merely to the manner of submission of the four listed pieces of information, rather than the substance of the information required.

48. Thus, the Department can issue rules requiring the use of a form or requiring that submissions be typed, or requiring the usage of blue ink rather than black ink, or specifying the person to whom the application should be addressed.

49. “In accordance with Department rules” does not work to enlarge the Department’s discretionary power over the issuance of registry identification facts; rather, it only works to recognize the Department’s ability to specify the manner in which patients should submit applications for registry identification cards.

50. NMSA 1978, §26-2B-7(C) emphasizes that the Department does not have discretion regarding what pieces of information are necessary to receive a registry identification card: “The department may deny an application only if the applicant did not provide the information required pursuant to Subsection B of this section or if the department determines that the information provided is false.”

51. In addition to the statutory language being obviously mandatory and ministerial, there is legal precedent regarding DOH’s lack of discretion over registry identification cards.

52. Case D-101-CV-2014-00140, *Carola Kieve v. New Mexico Department of Health*, involved issuance of registry identification cards as well.

53. The Court's final order in that case, which is attached here as Exhibit 3, states "As part of an initial application for a patient card, the Department may require from patients and their practitioners no more information than what is included in NMSA 1978 § 26-2B-3(H)" and "The Department may require a practitioner to submit a 'written certification' in support of a patient's application, but the Department may not require that the 'written certification' contain any information or attestation that is not expressly required by the Act" (Order, page 3).

54. The *Kieve* case reinforces that DOH may not add requirements beyond what is in statute for registry identification card issuance.

55. As explained further below, DOH currently requires prospective qualified patients to submit a copy of a New Mexico driver's license, in order to prove New Mexico residency.

56. The current application form used by DOH is attached here as Exhibit 4. It requires patients applicants to submit a "clear copy of your current New Mexico Driver's License or New Mexico photo ID."

57. DOH's requirement of a copy of a New Mexico driver's license is, in and of itself, a violation of law *even as to New Mexico residents*.

58. The statute does not require submission of a driver's license from anyone, resident or not.

59. The requirement of a driver's license is directly contrary to statute and to the *Kieve* ruling.

60. The Court must order Respondents to cease requiring driver's licenses and to issue registry identification cards without submission of driver's licenses.

Persons Not New Mexico Residents Are Eligible to Be Qualified Patients and Must Receive Registry Identification Cards

61. The plain language of the 2019 Lynn and Erin Compassionate Use Act indicates that non-New Mexico-residents may obtain registry identification cards and participate in the state's medical cannabis program.

62. The plain language of the 2019 Lynn and Erin Compassionate Use Act indicates that DOH must issue a registry identification card to an out-of-state resident who otherwise meets the requirements for obtaining a card.

63. "When interpreting a statute, a court's primary goal is to facilitate and promote the Legislature's purpose." *Gandydancer, LLC v. Rock Hosue CGM, LLC*, 2018-NMCA-064, ¶ 7."

64. "In discerning that purpose, 'we look first to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended.'" *Id.*, quoting *Flores v. Herrera*, 2016-NMSC-033, ¶ 8, 384 P.3d 1070.

65. In another mandamus case, the Supreme Court stated, "A statute must be read and given effect as it is written by the Legislature, not as the court may think it should be or would have been written if the Legislature had envisaged all the problems and complications which might arise...Courts must take the act as they find it and construe it according to the plain meaning of the language employed." *Perea v. Baca*, 1980-NMSC-079, ¶ 22, 94 N.M. 624.

66. The plain language of the current definition of qualified patient indicates that the qualified patient need not be a New Mexico resident.

67. The language is "**a person** who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card..." (emphasis added). N.M.S.A. 1978 §26-2B-3(V).

68. A “person” is simply that: a human being, regardless of whether they are a New Mexico resident or not.

69. Additionally, the word “person” replaces “New Mexico resident,” Which was found in the law prior to the 2019 changes to the law. The replacement is a clear sign of legislative intent to widen the reach of eligibility for the New Mexico medical cannabis program.

70. DOH has informally indicated, since the passage of the 2019 amendments, that the change from “resident of New Mexico” to “person” was only done to accommodate the addition of “reciprocal participants.”

71. This argument is unavailing.

72. The 2019 amendments added a new definition of “reciprocal participant” to the Act, which is “an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.”

73. The Act does not require DOH to promulgate rules regarding reciprocal participants until 2020: “By March 1, 2020, the secretary of health shall adopt and promulgate rules relating to medical cannabis program reciprocity. The department may identify requirements for the granting of reciprocity, including provisions limiting the period of time in which a reciprocal participant may participate in the medical cannabis program.” N.M.S.A. 1978 § 26-2B-7(I).

74. While DOH may wish to believe that reciprocal participants are a mere sub-set of qualified patients, there is ample evidence from the statute indicating that “reciprocal participants” are an entirely different category of card-holders separate and apart from “qualified patients.”

75. First, the definition of “registry identification card” at NMSA 1978, § 26-2B-3(X) says it is a card issued to a “qualified patient” or “primary caregiver,” but not to a reciprocal participant.

76. Second, NMSA 1978, § 26-2B-4, the section of the Act exempting MCP participants from criminal penalties for their participation in cannabis-related activities contains one exemption from prosecution for “qualified patients” and another separate exemption for “reciprocal participants.” Thus, reciprocal participants and “qualified patients” are listed separately as separate categories of eligible users by the Act itself. If reciprocal participants were merely a subset of qualified patients, there would be no need to grant them separate explicit exemptions.

77. Third, “qualified patients” are authorized to possess an “adequate supply” of medical cannabis, while reciprocal participants are allowed to possess “not more than the limit identified by department rule” under § 26-2B-4(C) (stating that “a qualified patient or primary caregiver [may purchase] not more than an adequate supply from a lawful source,” while a “reciprocal participant [may] purchas[e] or obtain[] not more than the limit identified by department rule”).

78. Again, if reciprocal participants were merely a subset of qualified patients, there would be no need to set different purchase limitations for the two different classes.

79. Fourth, the Medical Advisory Board of the Medical Cannabis Program is charged with recommending “quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and primary caregivers,” and also with recommending “quantities of cannabis that a reciprocal participant may obtain and possess.” N.M.S.A. 1978 § 26-2B-6.

80. This again demonstrates that “qualified patients” is not simply an umbrella term that incorporates “reciprocal participants,” because qualified patients are subject to different possession limitations than reciprocal participants.

81. Fifth, reciprocal participants “shall not be required to comply with the registry identification card application and renewal requirements.” N.M.S.A. 1978 §26-2B-7(J).

82. The definition of “qualified patient” is “a person who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card...” N.M.S.A. 1978 §26-2B-3(V) (2019).

83. A qualified patient has received a registry identification card, but reciprocal participants do not receive registry identification cards. Therefore, a reciprocal participant is not a qualified patient.

84. Therefore, the two classes are entirely different, and the definition of “qualified patient” does not subsume the definition of reciprocal participant.

85. Additionally, the difference between a reciprocal participant and a non-New Mexico resident qualified patient is that a reciprocal participant must be a resident of a state *that allows medical cannabis for that person’s individual health condition*.

86. If a person lives in a state that does not allow medical cannabis, or does not allow it for that person’s particular condition, that person cannot be a “reciprocal participant.”

87. Sixth, the stated purpose of the 2019 amendments was to “expand eligibility...and to establish new qualifying medical conditions, civil protections, and interstate and tribal reciprocity,” indicating that expanded access (expanding the definition of qualified patient) and establishing reciprocity are two different parts of the statute.

88. The plain language of the definition of “qualified patient,” together with the larger structure of the statute, includes New Mexico residents and non-New Mexico residents.

89. Further revealing the intent to allow non-residents to participate in the Medical Cannabis Program is the requirement that patients must receive written certifications from “practitioners,” and the definition of “practitioner” is a medical professional “a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act.” N.M.S.A. 1978 §26-2B-3(S) (2019).

90. The 2019 amendments to the Act do not obviate the requirement that a qualified patient be certified by a New Mexico-licensed practitioner.

91. Therefore, a non-New Mexico resident must still receive a certification from a medical practitioner licensed in New Mexico in order to receive a registry identification card.

92. Additionally, the 2019 amendments to the Compassionate Use Act included a provision for the creation of “cannabis consumption areas.” These “cannabis consumption areas” are defined as “an area within a licensed premises approved by the department where cannabis may be consumed that complies with rule as established by the department.” N.M.S.A. 1978 §26-2B-3(C) 2019; see Exhibit 2, statutory amendments, at pages 7 and 28.

93. There are many conceivable classes of non-New Mexico residents who may wish to participate in New Mexico’s medical cannabis program as a qualified patient.

94. Those classes include, but are not limited to, out-of-state residents receiving medical treatment in New Mexico and staying here for an extended period, but not long enough to qualify as a resident; out-of-state residents who have second homes in New Mexico and do not spend enough time in New Mexico to qualify as a resident; out-of-state residents who regularly visit relatives, friends, or business interests in New Mexico and wish to maintain continuity of

cannabis ingestion during their visits; out-of-state residents contemplating or completing a move to New Mexico who have not yet established residency; out-of-state residents who wish to come to New Mexico to determine if and how medical cannabis helps their debilitating medical conditions; a college student attending an institute of higher learning in New Mexico who will not qualify as a New Mexico resident during their college attendance; a visiting or interning scientist at one of New Mexico's scientific laboratories who will not stay long enough to establish official residence in New Mexico.

95. Allowing non-residents to participate in a state medical cannabis program has occurred and still occurs in other states and U.S. territories. Prior to 2016, Oregon statute stated that cannabis authorization cards were to be issued to "persons who meet the requirements" (see Opinion of Oregon Attorney General, June 14, 2010, attached here as Exhibit 5). The Oregon Attorney General stated in an opinion that the Oregon medical cannabis statute "contains no Oregon residency requirement for obtaining an Oregon registry identification card."

96. The Oregon Attorney General opinion also discussed the fact that Oregon still required an Oregon medical practitioner to make a certification for a patient. The Oregon Attorney General commented that physicians have reciprocity in licensing, that there need not be a long-term relationship between an Oregon physician and a prospective patient, and that the difficulty a nonresident might encounter in finding an Oregon physician was not an impediment sufficient to restrict non-residents from access (see opinion at page 3).

97. California law also currently does not have a residency requirement. Under CA Health & Safety Code Section 11362.712, a "qualified patient" must possess a "physician's recommendation" to access medical cannabis at reduced prices (California also has legalized recreational cannabis, but medical cannabis can be purchased without sales tax). The definition

of “qualified patient” is “ a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.” CA Health & Safety Code Section 11362.7.

98. California’s governmental website contains a Frequently Asked Questions Page. One of the questions is “Can I use cannabis,” with the answer stating, “You can legally use cannabis if you are 21 or older. You can also use cannabis if you are 18 or older and have a current qualifying physician’s recommendation or a valid county-issued medical marijuana identification card.”¹

99. The United States Virgin Islands explicitly has a definition for and a category for “Nonresident in-patient cardholder.” See V.I. St. Title 19, Section 776.

100. The Act clearly allows non-New Mexico residents to become qualified patients and purchase medical cannabis lawfully within New Mexico.

101. The Act does not allow non-New Mexico residents to transport cannabis across state lines.

102. Any non-New Mexico resident who becomes a qualified patient does so with the understanding that their use of cannabis is still subject to other laws, including laws prohibiting the transport of cannabis across state lines.

103. The Petitioners in this case do not advocate for interstate transportation of cannabis, and they do not argue that the Act makes such interstate transportation legal.

¹ California recently overhauled its cannabis laws. Now, registry identification cards are optional and governed by counties. Many counties do require proof of residency to issue the cards, but a person does not need a card to purchase medical cannabis; the person needs only the physician recommendation.

104. Out-of-state residents who apply for registry identification cards in New Mexico may and should be educated regarding the legal consequences of transporting cannabis into or out of New Mexico.

105. The requirements for issuance of a medical cannabis registry identification card from the New Mexico Department of Health Medical Cannabis Program are clear.

106. First, the applicant must be a “person.” N.M.S.A. 1978 §26-2B-3(V) (2019).

107. The applicant person must have one of the debilitating medical conditions listed at N.M.S.A. 1978 § 26-2B-3(J) (2019).

108. The applicant person must obtain a “a statement made on a department-approved form and signed by” a medical practitioner “licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act” “that indicates, in the practitioner’s professional opinion, that 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.” N.M.S.A. 1978 §26-2B-3(BB) and §26-2B-3(S) (2019).

109. The applicant person must submit the written certification to the Department of Health along with the name, address and date of birth of the patient and the name, address and telephone number of the patient’s practitioner.

Petitioners Are Out of State Residents Denied Registry Identification Cards

110. Petitioner Duke Rodriguez is a resident of Scottsdale, Arizona.

111. Mr. Rodriguez suffers from post-traumatic stress disorder.

112. Mr. Rodriguez owns a home in New Mexico, but he does not spend the requisite number of days in New Mexico to be considered a “resident” under IRS definitions.

113. Mr. Rodriguez is a principle of several businesses in New Mexico and comes to New Mexico frequently to conduct business here.

114. Mr. Rodriguez also has immediate family members in New Mexico, and he travels here frequently to see these family members.

115. Mr. Rodriguez does not wish to transport cannabis across the border between Arizona and New Mexico, as that transport is illegal.

116. However, Mr. Rodriguez wishes to maintain his regimen of cannabis medication while in New Mexico.

117. Mr. Rodriguez intends to consume cannabis at his home in New Mexico when he comes to New Mexico to visit family or conduct business.

118. Mr. Rodriguez obtained a written certification from a New Mexico-licensed practitioner.

119. Mr. Rodriguez submitted the written certification to DOH on the form prescribed by DOH, along with the names and addresses of him/herself and the practitioner who issued the certification.

120. DOH issued a denial letter. The denial letter is attached here as Exhibit 6.

121. The reasons DOH gave for the denial were "ID you sent was from outside New Mexico," and "it does not contain a New Mexico address or New Mexico County of Residence."

122. Petitioner Harold Meyers is a resident of Dalhart, Texas.

123. Mr. Meyers suffers from obstructive sleep apnea.

124. Dalhart, Texas is just over the state line from Clayton, New Mexico.

125. Mr. Meyers owns and operates several small business located in New Mexico, including a retail liquor store and a check-cashing store. Meyers also leases and operates several cattle ranches in New Mexico.

126. Mr. Meyers spends approximately three days per week in New Mexico, and does not qualify as a “resident” of New Mexico, nor does he have a New Mexico driver’s license.

127. Mr. Meyers intends to travel to New Mexico from Dalhart, purchase medical cannabis at a dispensary, and consume it within New Mexico.

128. Mr. Meyers obtained a written certification from a New Mexico-licensed practitioner.

129. Mr. Meyers submitted the written certification to DOH on the form prescribed by DOH, along with the names and addresses of him/herself and the practitioner who issued the certification.

130. DOH issued a denial letter. The denial letter is attached here as Exhibit 7.

131. The basis for DOH’s denial was lack of a New Mexico driver’s license or ID card.

132. Petitioner Laura Sias is a resident of El Paso, Texas.

133. Ms. Sias suffers from post-traumatic stress disorder.

134. Ms. Sias’s brother and best friend both live in Las Cruces New Mexico, and she visits them frequently.

135. Ms. Sias would like to obtain medical cannabis to alleviate the symptoms of her post-traumatic stress disorder.

136. Ms. Sias intends to travel to Las Cruces from El Paso, purchase medical cannabis at a dispensary, and consume it at her brother’s residence or best friend’s residence.

137. Ms. Sias has considered moving to New Mexico in order to obtain medical cannabis lawfully, but her partner works in El Paso, and they cannot make the move to New Mexico.

138. Ms. Sias obtained a written certification from a New Mexico-licensed practitioner.

139. Ms. Sias submitted the written certification to DOH on the form prescribed by DOH, along with the names and addresses of herself and the practitioner who issued the certification.

140. DOH issued a denial letter. The denial letter is attached here as Exhibit 9.

141. The reasons DOH gave for the denial were “ID you sent was from outside New Mexico,” and “it does not contain a New Mexico address or New Mexico County of Residence.”

142. All of these Petitioners met the qualifications described above at Paragraphs 106 but were nevertheless denied their registry identification cards by DOH.

Cause of Action One: Mandamus

143. “Mandamus lies to compel the performance of a ministerial act or duty that is clear and indisputable.” *New Energy Econ., Inc. v. Martinez*, 2011–NMSC–006, ¶ 10, 149 N.M. 207, 247 P.3d 286.

144. “A ministerial act is an act which an officer performs under a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, without regard to the exercise of his own judgment upon the propriety of the act being done.” *Id.* ¶ 10

145. Kenny Vigil owes a ministerial duty to issue medical cannabis registry identification cards to any person—whether a resident of New Mexico or not—who submits the written certification and other items listed in N.M.S.A. 1978 § 26-2B-7(B).

146. Petitioners all submitted registry identification card applications to the Department of Health that met the statutory criteria for issuance of a card.

147. As such, Kenny Vigil has a ministerial duty to Petitioners to issue the registry identification cards.

148. This duty is clear and indisputable.

149. The issuance of registry identification cards are acts which Defendants perform under a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, and without regard to the exercise of their own judgment upon the propriety of the particular individual obtaining such a card.

150. The “given state of facts” here is 1) being a person; 2) the person having one of the debilitating medical conditions listed in statute; 3) the person obtaining “a statement made on a department-approved form and signed by” a medical practitioner “licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act” “that indicates, in the practitioner’s professional opinion, that 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; and 4) the person submitting the written certification to the Department of Health along with the name, address and date of birth of the patient and the name, address and telephone number of the patient’s practitioner.

151. The prescribed manner here is the person’s submission of this information on the DOH-prescribed form.

152. The mandate of legal authority is found in NMSA § 26-2B-7(B).

153. The lack of DOH's power to exercise its judgment in determining whether to issue a registry identification card is shown by the lack of any such delegation of power in the Lynn and Erin Compassionate Use Act.

154. Mandamus will issue if there is no "plain, speedy and adequate remedy in the ordinary course of law." NMSA 1978, § 44-2-5 (1884).

155. Petitioners have no other mechanism to challenge DOH's denial of their applications for registry identification cards.

156. Petitioners do not have a plain, speedy, and adequate remedy in the ordinary course of law.

157. A proposed form of alternative writ of mandamus is included with this Application.

Request for Relief

Petitioners requests the Court:

158. Issue a writ of mandamus requiring that Mr. Vigil issue a registry identification card to the Petitioners and any other person, whether a New Mexico resident or not, who 1) has one of the debilitating medical conditions listed in statute; 2) has obtained "a statement made on a department-approved form and signed by" a medical practitioner "licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act" "that indicates, in the practitioner's professional opinion, that 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;" and 3) has submitted that statement to the Department of Health along with the name, address and date of birth of the patient and the name, address and telephone number of the patient's practitioner.

B. Award Petitioners their damages, costs, and fees pursuant to NMSA § 44-2-12 and 44-6-11.

C. Direct Defendants to appropriately process registry identification cards in a timely and legally compliant manner.

D. Award any such other relief as the Court deems just and proper.

Respectfully submitted,

EGOLF + FERLIC +
MARTINEZ + HARWOOD, LLC

By: /s/ Kristina Caffrey
Kristian Caffrey
Brian Egolf
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Santa Fe, NM 87501
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Kristina@EgolfLaw.com
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Attorneys for Petitioners

VERIFICATION

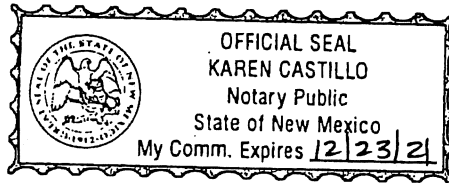
I have read the foregoing Petition for Writ of Mandamus and swear that the foregoing is true and correct to the best of my knowledge.

Harold Meyers
Harold Meyers

Subscribed and sworn before me this 25th day of July, 2019.

Karen Castillo
Notary Public

My Commission expires:



VERIFICATION

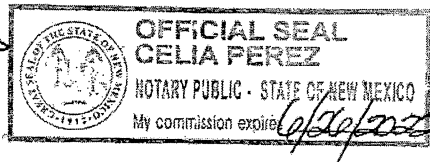
I have read the foregoing Petition for Writ of Mandamus and swear that the foregoing is true and correct to the best of my knowledge.


Laura Sias

Subscribed and sworn before me this 25 day of July, 2019.

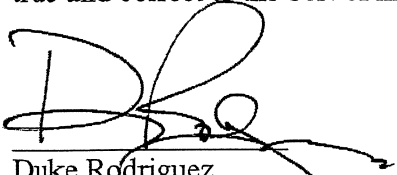

Notary Public

My Commission expires:

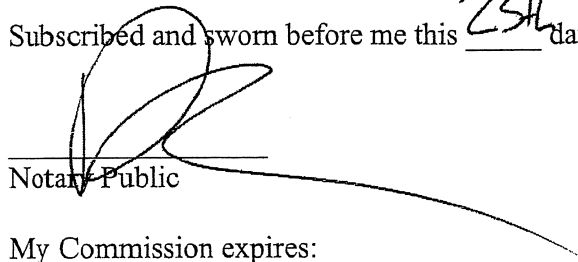


VERIFICATION

I have read the foregoing Petition for Writ of Mandamus and swear that the foregoing is true and correct to the best of my knowledge.


Duke Rodriguez

Subscribed and sworn before me this 25th day of July, 2019.


Notary Public

My Commission expires:

