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Joe Pollock, R.E.H.S.
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January 6, 2016

Dear Mr. Pollock,

As expressed in previous communications, the Nevada Dispensary Association is grateful that in the short time that you have been the Deputy Administrator for the medical marijuana program, you and your team have quickly responded to the needs of the medical marijuana industry and have implemented policies that will promote the growth of the industry while always maintaining patient safety as a priority.

The NDA members that have opened their dispensary doors in the past several months have become aware of a significant problem with patients being able to obtain Registry Identification Cards (“patient cards”) in a timely manner. As such, on behalf of patients, the NDA respectfully requests that the Division take steps to streamline the patient card process. Below, please find the NDA’s recommendations, which comport with Nevada Revised Statutes (“NRS”) and Nevada Administrative Code (“NAC”), and support for those recommendations.

The lengthy and complicated process to obtain a patient card in Nevada is causing sick patients to wait months to obtain the medicine the patient's physician has recommended to alleviate the patient's symptoms. The delays do not comport with the legislative intent behind implementation of the medical marijuana program; the delays promote the black market that is currently flourishing; and the delays are unnecessary as can be seen by our neighboring states that provide access easily and quickly once a doctor has recommended medical marijuana.

I. RECOMMENDATIONS TO STREAMLINE PROCESS

Nevada's laws relating to medical marijuana aim to ensure patient safety; reduce the black market; allow for tracking of medical marijuana purchases; and allow doctors to determine who qualifies as a medical marijuana patient. Unfortunately, the implementation of Nevada's laws has slowed the process for patients to obtain their doctor-recommended treatment for months. The current delays promote the black market, threaten patient safety, and jeopardize the State's ability to track medical marijuana purchases by promoting the black market.

When a patient submits an application to the Division, pursuant to NRS 453A.210(8), the application is sufficient to show to law enforcement for thirty (30) days to avoid prosecution. During that 30 day period, the patient is typically unable to purchase medical marijuana through a licensed dispensary because the patient must wait for the patient card, which may take months to obtain. Therefore, the current system is practically encouraging the use of black market medical marijuana because a patient can legally possess marijuana but cannot legally purchase it from a dispensary.

The following recommendations comport with current NRS, which requires DPBH to approve an application within 30 days and provide a patient card "as soon as

practicable.” (NRS 453A.210 and NRS 453A.220). The NRS does afford DPBH up to 30 days to approve or deny a patient’s application, but it also requires DPBH to provide a patient card “as soon as practicable,” once a patient has been approved. Based on the current two (2) to four (4) month process patients are enduring to obtain a patient card, the mandate to provide a card “as soon as practicable,” is not being honored.

1. POLICY CHANGES:

a. DMV INTERFACE/ARIZONA BASED SOFTWARE

In 2014, the Division made substantial progress toward utilizing an interface with the DMV to match the patient’s identification with DMV records and then issue the patient card from the DMV without requiring an in-person visit from the patient. The Division should immediately resume progress on this effort and promptly implement this system while implementing reasonable response times. Alternatively, the DMV should utilize the software it already possesses, which was obtained from the Arizona medical marijuana program, to quickly process and issue patient cards from the Division.

b. LETTER OF APPROVAL

The Division should expand its current policy to allow a patient to access medical marijuana by presenting the “letter of approval” the Division issues to the dispensary. (“Letter of Approval” is referred to throughout this document as the letter the Division issues upon approval of a patient card and is not the same as the one described in SB 447 for patients under 10 years old). The Division should interpret NRS 453A.140, which defines a patient card as “a document issued by the Division,” to include the “letter of approval” the Division sends to approved patients. The Division recently issued a policy that its letter of approval will be sufficient for 14 days for purchases of medical marijuana

so there is no legal reason this letter of approval cannot be sufficient to purchase medical marijuana for longer than 14 days.

NRS 453A.225 supports the interpretation that the letter of approval should be sufficient for dispensing purposes because the Division shall approve or deny the application within 30 days of submission and can later revoke if the Division determines the applicant has been convicted of selling a controlled substance. The Division does not need to verify the applicant's criminal history before approving an application because the Division can revoke it at any time. NRS 453A.220 also supports a policy that the letter of approval is sufficient for purchasing medical marijuana because it requires the Division, or its designee, to issue a serially numbered patient card as soon as practicable. The current system is clearly not designed to provide a serially-numbered card as soon as practicable.

c. ONLINE ACCESS AND ADMINISTRATION

DPBH should provide access to the patient card application online; allow online submission and electronic processing of the application; and provide written approval electronically. NRS 453A.740 does not require the Division to collect the \$25 fee for the application and \$75 fee for processing prior to providing the application. NRS 453A.740 allows for the Division to provide the application online and collect the \$100 prior to processing. Alternatively, the Division could accept payment for the application online, which as previously discussed, the Division expects will be feasible in February of 2016.

This adjustment will help DPBH comply with the NRS mandate to provide a patient card "as soon as practicable." Nevada's medical marijuana program was modeled after and adopted from Arizona's program, which involves an online application that is processed and approved within ten (10) days. Nevada enjoys access to the same application processing software that Arizona utilizes.

d. RESPONSE TIMES

DPBH should comply with the 30-day requirement for approval or denial of a patient card application set forth in NRS 453A.210 and the language in NRS 453A.220, which requires issuance of a serially numbered patient card as soon as practicable. DPBH can revoke a patient card if it receives documentation that a patient has been convicted of selling a controlled substance pursuant to NRS 453A.225.

Under NRS, denial of an application is different than revocation of an application. DPBH may deny an application if it finds that a person has been convicted of knowingly or intentionally selling a controlled substance or the Division can revoke the patient card if it learns of the conviction after the card has been issued. There is no requirement that DPBH wait for the results of its inquiry of the applicant's criminal history from the Central Repository for Nevada Criminal Records.

DPBH is not only required to approve or deny an application within 30 days, it is also required to provide a patient card "as soon as practicable," which mandates a process that does not span two (2) to four (4) months.

2. REGULATION CHANGES

NAC 453A.110 states that the Division will prepare a letter of approval that the patient will present to the DMV. The NAC must be changed in order to allow the Division to issue patient cards, rather than the DMV, or to remove the requirement for an in-person visit. Alternatively, the Division can extend its current policy to allow the letter of approval to be sufficient for purchases of marijuana to a period longer than 14 days.

II. SUMMARY OF RELEVANT NRS AND NAC

NRS 453A.210 sets for the registry identification card ("patient card") application requirements.

NRS 453A.140 defines a registry identification card as a *document* issued by the Division that identifies a person that is exempt from state prosecution.

NRS 453A.210 sets forth application requirements such as a doctor's recommendation and personal identifying information. Requires the Division to send copies of the application to the applicant, the primary caregiver, the Central Repository for Nevada Records of Criminal History and the Board of Medical Examiners.

NRS 453A.210 (5) requires the Division to verify the information contained in the application, approve or deny the application within 30 days, and provides the grounds for denial.

NRS 453A.740 requires the Division to cooperate with the DMV to issue a patient card and requires the Division to collect fees for the application (\$25) and processing (\$75).

NRS 453A.225, allows the Division to revoke a patient card at any time if the Division determines the person has been convicted of knowingly or intentionally selling a controlled substance.

NRS 453A.210 (8) the application itself is sufficient for law enforcement purposes if the Division has not yet approved or denied the application.

NRS 453A.220 states that if the Division approves an application then it, or its designees (i.e. the DMV), **shall as soon as practicable issue a serially numbered patient card.**

NAC 453A.100 sets forth additional requirements to the patient card application (doctor's recommendation, materials needed by DMV, waiver and liability release, proof of residency, etc.).

NAC 453A.110 Upon approval, the Division will provide written notice to the patient, which must be presented to the DMV, which shall prepare the patient card.

NAC 453A.140 sets forth the \$25 application fee and \$75 patient card fee.

III. PATIENT ACCOUNTS OF TIMELINE TO OBTAIN CARD

The process to obtain a patient card, set forth in NRS and NAC requires a patient diagnosed with a chronic or debilitating condition to do the following:

- Obtain a physician's recommendation
- Submit a request in writing to obtain an application
- Wait to receive the application
- Submit the application with required documentation
- Wait for a letter of approval
- Take the letter of approval to the DMV
- Wait for DMV to send card

This process is already time-consuming and cumbersome without additional delays. Unfortunately, patients are reporting delays in receiving the application once they have submitted the written request; delays in processing of the application and obtaining the letter of approval; and delays in receiving the card from the DMV. Again, even without the delays, the current process once a patient has been diagnosed with a debilitating or chronic condition is too lengthy and should be streamlined.

Please see the following accounts provided by patients who obtained patient cards, but had to wait several months after initiating the process.

Patient 1 (Antoinette Lazcano): Mrs. Lazcano was diagnosed with breast cancer this year and is currently undergoing chemotherapy treatment. She started the process to obtain a patient card in late August and received the card on or about December 10, 2015. Mrs. Lazcano reports that the pain and nausea medication the doctor prescribed did not help with the severe pain and nausea she has suffered as a result of the chemotherapy, but the medical marijuana she has just started using has helped her immensely. Mrs. Lazcano received her letter of approval 33 days after submitting her application, but had to wait to receive the application once she requested it and had to go to the DMV, while battling breast cancer, and then wait for the patient card after her trip to the DMV.

Mrs. Lazcano's experience demonstrates the need to streamline the current process. Mrs. Lazcano received her letter of approval from the Division approximately 33 days from the time she submitted her application, which almost meets with the NRS requirement for the Division to approve or deny an application within 30 days. However, the entire process, including requesting the application and visiting the DMV with the letter of approval, expands the process beyond the 30-day approval window. The additional steps, including requesting the application and applying for the card at the DMV once approved by the Division was not contemplated by the NRS and causes patients like Mrs. Lazcano, who is suffering through breast cancer, to wait months for medicine.

Patient 2 (Keith Capurro): Mr. Capurro first requested an application in February of 2015 and received his patient card on July 19th, 2015. Mr. Capurro requested the application on or about February 9, 2015, or shortly thereafter, and submitted his application on or about March 11th, 2015. Mr. Capurro's paperwork was not found in DPBH's system and therefore he reapplied on or about April 22, 2015. Mr. Capurro received a letter of approval from DPBH on or about June 25, 2015, which was dated June 22, 2015. Mr. Capurro went to the DMV on or about July 13, 2015 and received his patient card on or about July 19, 2015. Approximately 60 days lapsed between the time Mr. Capurro submitted his application and the date he received his letter of approval from DPBH.

Patient 3 (Ben Sillitoe): After Mr. Sillitoe submitted his application through the mail in January 2015, he received a letter from the Division on February 20, 2015 stating that his application was received on January 15, 2015 and that he would receive a letter a letter of approval. Mr. Sillitoe ultimately obtained his patient card on June 24, 2015 and it expires on January 15, 2016. Mr. Sillitoe paid the State's fee for the ability to obtain

medical marijuana for a year when he will only be able to purchase it for six (6) months due to the several-month delay he experienced.

Patient 4 (Shane Terry): Mr. Terry first requested an application for a patient card on August 12, 2015 and received the patient card on November 5, 2015. Mr. Terry submitted his application on or about August 12, 2015 and received a letter of approval from DPBH on or about October 24, 2015. Mr. Terry received the patient card on or about November 5, 2015. Mr. Terry's patient application process spanned almost four (4) months, with two (2) of the months consisting of waiting for a letter of approval once he submitted his application.

IV. LEGISLATIVE HISTORY AND INTENT

In the 2013 Nevada legislative session, Senator Tick Segerblom and Senator Mark Hutchison sponsored Senate Bill 374 to allow medical marijuana patients to obtain medical marijuana in a safe manner from regulated businesses. Senator Mark Hutchison expressed that he was personally against medical marijuana, but that the State of Nevada received a mandate from Nevada voters that the State must allow patient use of medical marijuana and must authorize the appropriate methods of supply. **"Exhibit 1"** (Nevada Assembly Committee on Judiciary, 77th session, June 1, 2013, Minutes, Pages 11-12).

Medical marijuana was legalized by voter initiative by passing in 1998 and 2000 among a majority of voters. **"Exhibit 2"** (Nevada Assembly Committee on Judiciary, 77th session, June 1, 2013, Minutes, Page 3). Voters passed the initiative to amend the Nevada Constitution to provide that the Legislature shall allow a patient to use medical marijuana. Specifically, it also provided that the Legislature shall authorize the appropriate methods for supply.

In the Judiciary Committee hearing held on June 1, 2013, the sponsors of SB 374 submitted materials describing the proposed medical marijuana program. The materials included a description of Senate Bill 374 that specifically stated Nevada's Medical Marijuana program would be based on the Arizona Model. "**Exhibit 3**" (Assembly Committee on Judiciary, 77th session, June 1, 2013, binder materials, page 207). Senator Mark Hutchison also stated that Nevada's medical marijuana program would be based on Arizona's system. "**Exhibit 4**" (Nevada Assembly Committee on Judiciary, 77th session, June 1, 2013, Minutes, page 6).

The materials submitted in support of SB 374 also included information on Arizona's medical marijuana program, which the sponsors intended to emulate. The Arizona Department of Health Services publication included in those materials stated, doctors are the "gatekeepers" of medical marijuana. "**Exhibit 5**" (Assembly Committee on Judiciary, 77th session, June 1, 2013, Binder Materials, page 114) The sponsors of SB 374, and the legislature by passing SB 374, intended for Nevada to emulate the Arizona medical marijuana program, which has been successful in providing cards to patients quickly, reducing administrative costs by providing and processing the application electronically, and avoiding red tape delays that do not promote patient safety. In addition, under the Arizona program, it is the doctors who determine who should access medical marijuana and once that decision has been made, the patient can obtain it quickly, as discussed below.

V. BLACK MARKET AND OTHER ISSUES

In Las Vegas, Nevada, there are well over 150 illegal marijuana delivery establishments operating publicly. Upon searching the popular search engine Google for "Nevada dispensaries," one will find "Weedmaps.com" as the first result, which will

provide information for over 150 illegal marijuana delivery businesses. **“Exhibit 6.”** These are the businesses that are bold enough to operate publicly and do not include less visible illegal marijuana sales.

When a patient submits an application to the Division pursuant to NRS 453A.201(8), the application is sufficient to show to law enforcement for thirty (30) days to avoid prosecution. During that 30 day period, the patient is typically unable to purchase medical marijuana through a licensed dispensary because the patient must wait for the registry identification card, which may take months to obtain. Therefore, a patient can show that they are allowed to possess marijuana to law enforcement, but they are not able to legally obtain the medical marijuana. This current system, which involves unnecessary delays, is practically encouraging the use of black market medical marijuana because possession of marijuana is legal while purchasing from a licensed dispensary is not.

The medical marijuana program was devised and implemented by state legislators and regulators in order to reduce the black market, increase patient safety, and raise revenue for the State while doing so. Preventing patients from obtaining patient cards in a timely manner forces them to continue to obtain marijuana from unreliable and untested sources. Nevada’s licensed dispensary owners are forced to turn patients away on a daily basis because they only have the State’s letter of approval, but that letter of approval signifies that the person has been approved by a doctor and the State.

Please see the following accounts from dispensary owners/management:

“Since the State issued its policy to allow the letter of approval to be sufficient for dispensing purposes, we have turned away 4 patients that only have letter and it was past 14 days and expired.”

-Kathy Gillespie, Nevada Pure owner.

“We turn away multiple people a week due to state letters being over 14 days old or due to individuals being found in the state site but have not yet received their approval paper.”

-Darlene Purdy, Euphoria Wellness Managing Director

“Today we had a gentleman come in with the letter of approval from the state, confident he would be able to purchase. I checked the date on the letter and told him we could not accept it because it wasn't within the 14 day allowance (it was dated September something 2015) and that he needed his card. He said he didn't understand why a letter from the state giving him approval wouldn't suffice.

We have also repeatedly had patients who, via phone or in person, ask if their doctor recommendation would work. Many are people with serious conditions that believe if their doctor has prescribed the medicine approval should be automatic. To have to tell those patients that they are still four to six weeks away from legally purchasing medicinal marijuana creates some uncomfortable situations. I'm positive it has driven some patients to seek their medicine through illegal means such as delivery services or street dealers.”

-David Goodheart, The Source, Assistant Manager

Potential medical marijuana patients are purchasing marijuana from the black market that may contain prohibited pesticides and heavy metals. Marijuana obtained from

untested and unregulated sources can even contain E. Coli, salmonella, and other dangerous substances. “**Exhibit 7**” (“Modern Marijuana is Often laced With Heavy Metals and Fungus, by Brian Handwerk, Smithsonian.com, March 23, 2015).

While patients are obtaining medical marijuana from untested sources, the State is losing the revenue it could be generating from the taxes levied upon the tested and regulated medical marijuana. Not only are patients ingesting unknown materials such as heavy metals and pesticides, but they have also reported to dispensary owners that they were unable to purchase the correct strain on a consistent basis. When patients resort to purchasing marijuana on the black market, they may ingest harmful substances and yet they may not receive the medical benefits their doctor recommended.

Another problem imposed by the current patient card process is that business owners that have heavily invested time and resources to be able to serve the medical marijuana patient population are unable to serve potential patients while they wait months for a card, even though the doctor has approved and recommended medical use of marijuana. The business aspect is of course secondary to patient safety, but patient safety is safeguarded by requiring a doctor’s recommendation and extensive laboratory testing. Patient safety is not bolstered by forcing patients, especially those with a debilitating illness such as cancer, to wait months to obtain the medicine their doctor recommended.

VI. ARIZONA AND OTHER STATES

The Nevada card process is most similar to Arizona’s process as Nevada’s legislature modeled Nevada’s medical marijuana program after Arizona’s. A brief overview of the card application requirements of several states is attached hereto as “**Exhibit 8.**” Similar to Arizona, Nevada requires patients to present physical

documentation to a licensed dispensary. Unlike Arizona where a patient obtains a card within ten (10) days of receiving a doctor's recommendation, the Nevada process takes anywhere from six (6) weeks to four (months) or longer.

In Arizona, to obtain a patient card, a patient must submit the following :

- Application and Physician's recommendation
- Applicant's name, date of birth, and contact information address
- Name and contact information of recommending physician
- Physician's license number
- The patient's qualifying condition
- Caregiver information and other personal information
- A photograph of the patient
- A copy of the patient's identification
- A signed Patient Attestation
- A credit card number for payment

The applications are processed electronically, the patient does not request the application through the mail, the patient does not mail the application, and the patient does not present a letter of approval to a separate government agency (such as the Department of Motor Vehicles). **“Exhibit 9.”** The Arizona process is streamlined, reduces costs for administration and staffing, and allows patients to treat chronic or debilitating conditions in a timely manner. Arizona's medical marijuana program enjoyed a net increase in funds of over \$1.5 million for fiscal year 2014. **“Exhibit 10.”**

Nevada requires a patient to obtain the application through the mail and submit it through the mail along with the following:

- Physician's recommendation
- Applicant's name, phone number, social security number, and date of birth
- Waiver and Acknowledgment
- Proof of residency
- Name, address and phone number of person's attending physician
- Caregiver if person chooses to delegate at time of application

Nevada's laws relating to medical marijuana, similar to Arizona, aim to ensure patient safety; reduce the black market; allow for tracking of medical marijuana purchases;

and allow doctors to determine who qualifies as a medical marijuana patient. Unfortunately, the implementation of Nevada's laws has slowed the process for patients to obtain their doctor-recommended treatment for months. The current delays promote the black market, threaten patient safety, and jeopardize the State's ability to track medical marijuana purchases.

The recommendations outlined at the beginning of this paper include changes the Division can make in policy or code to streamline and improve Nevada's patient card process. The Division can propose a regulation change to remove the extra step requiring a patient to visit the DMV in-person and discuss their personal healthcare choice with a DMV employee. In addition, the Division can make the patient card application available online and allow for online submission. Finally, given the Division's current policy to allow the Division's "Letter of Approval" to suffice for dispensing purposes for 14 days, the Division could expand this window, which is an arbitrary timeline.

VII. CONCLUSION

The NDA thanks you for your time and dedication to the medical marijuana program. The following is a list of industry leaders and elected officials who support this request for policy and regulation change to increase patient access to medical marijuana.

Respectfully,
/s/ Riana Durrett, Esq.
Executive Director
Nevada Dispensary Association