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October 5, 2009

Dominick Zurlo
Harm Reduction Program Manager
New Mexico Department of Health
1190 St. Francis Dr. Suite S-1310
Santa Fe, NM 87502

Cc: Secretary Alfredo Vigil

Re: Confidentiality of marijuana producer applications

Dear Mr. Zurlo,

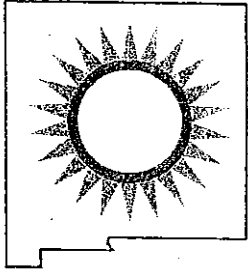
I am writing to express the New Mexico Foundation for Open Government's concern about the denial of recent public-information requests for marijuana-producer applications submitted under the Medical Cannabis Program. We believe these documents are public, and the Department's denial of the requests raises serious concerns about the existence of a confidentiality provision for licensed marijuana producers, contained in NMAC 7.34.4.16. The Foundation does not believe that this code supersedes the state's strong policy toward maximum possible disclosure of public records. In fact, we believe it directly contradicts that policy and should be repealed.

According to the Attorney General's compliance guide for the Inspection of Public Records, public bodies cannot typically rely upon a regulation or ordinance to make certain records confidential. However, such regulations may be proper if they are authorized by statute and necessary to carry out that statute's purpose.

That is not the case here. The Lynn and Erin Compassionate Use Act bestows confidentiality only upon petitions to add medical conditions to the approved list, and upon the names and addresses of persons who have applied for or received a registry identification card. These statutory provisions reflect a strong legal and public-policy mandate, at every level of government, to keep individual medical records private.

That mandate does not apply to the names and addresses of licensed pharmacies or health providers, nor should it apply to producers of medical marijuana. Furthermore, because the Compassionate Use Act's purpose is to allow beneficial use of medical cannabis in a *regulated* system (emphasis added), it would seem that hiding the names of producer applicants and licensees might actually impede proper implementation of the statute. Transparency is a key component of rigorous and effective regulation.

If you would be willing to meet with me to discuss this matter further, please



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contact me at (505) 764-3750 at your earliest convenience. I look forward to working with the Department to resolve this issue.

Sincerely,

Sarah Welsh
Executive Director