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STATE BOARD OF HEALTH
EMERGENCY RULING HEARING

IN RE:

MEDICAL MARIJUANA

NOVEMBER 3, 2009

1 STATE BOARD OF HEALTH, EMERGENCY RULING HEARING
2 RE: MEDICAL MARIJUANA NOVEMBER 3, 2009
3 START TIME: UNKNOWN LOCATION: UNKNONW
4 RECORDING FILE NAME: Medical marijuana meeting [11-3-2009] [10h
5 25m 28s (am)] ~Track 2 (Cut).MP3

6 (The following transcript contains multiple indiscernible
7 portions due to poor quality recording.)

8 (Recording Begins)

9 UNID MALE: There's about 200 people in this building. Oh,
10 yeah. It's a madhouse.

11 UNID MALE 2: (indiscernible) last night.

12 UNID MALE: (indiscernible) of medical marijuana. You guys
13 will never be able to (indiscernible) ever. You
14 are way too big.

15 UNID MALE 2: (indiscernible) laxative.

16 UNID MALE: Forty million marijuana smokers in America.
17 Gimme a break.

18 (Simultaneous conversation)

19 UNID MALE 2: Hey, man. (indiscernible) you need to put your
20 phone on mute. I know everyone in that room can
21 hear what you're saying, so put your phone on
22 mute.

23 UNID MALE 3: We're trying to take a roll call of the board.

24 UNID MALE: He's going to get the roll call (indiscernible)
25 roll call (indiscernible).

26 UNID MALE 2: I got instructions (indiscernible).

27 UNID FEMALE: We can't hear you. It sounds like three other
28 people have joined (indiscernible).

1 UNID MALE: I can hear.

2 UNID FEMALE 2: We're going to have two separate call lines
3 going. So some of the beeping that you're
4 hearing is the line that you're not on.

5 UNID FEMALE 3: I got in.
6 (Laughing)

7 UNID MALE: (Indiscernible) it's on.

8 UNID MALE 2: What?

9 UNID MALE: We're fine here. (indiscernible) everybody
10 else. We know we've (indiscernible) we're going
11 to (indiscernible) everybody else.

12 UNID FEMALE: On the conference call, please mute your phones
13 and take them off speakerphone now.
14 (Simultaneous conversation)

15 UNID MALE: (indiscernible) relationship (indiscernible)
16 barbecues every couple of months. I mean --

17 UNID MALE 2: Shut up.

18 UNID MALE: -- we do it the way they want it, but --

19 UNID MALE 3: Whoever is having the conversation about
20 barbecues, your phone is not on mute. Respect
21 (indiscernible).

22 UNID FEMALE: (Indiscernible)

23 UNID MALE 2: (Indiscernible) mute.

24 UNID MALE: Hello?

25 UNID MALE 4: We're getting this separate -- this board member
26 number out. We have to kind of do it
27 individually.

28 UNID MALE 5: Yes, I understand.

1 J. SWENSKY: Hello. Joan Swensky (phonetic).
2 G. SCHLABS: Hi, Joan.
3 J. TALINKSI: Hi, Glenn (phonetic).
4 J. RIDDLE: Hello.
5 UNID MALE: Who just joined us? Is that --
6 UNID FEMALE: Joelle (phonetic).
7 UNID MALE: -- Commissioner Riddle (phonetic)?
8 J. RIDDLE: It is Joelle. Yes. Thank you.
9 LOGAN: Hello. Logan.
10 UNID MALE: Hi, Logan.
11 UNID MALE 2: I was just wondering if I could (indiscernible).
12 (Simultaneous conversation)
13 UNID FEMALE: All right. Glenn.
14 (Simultaneous conversation)
15 UNID FEMALE: Do you have -- in a moment, we're doing the roll
16 call.
17 G. SCHLABS: (indiscernible) and Dr. Kyte (phonetic).
18 K. MULCH: Glenn, this is Kendra, and I'm in the room.
19 G. SCHLABS: Okay. Thank you.
20 K. MULCH: And (indiscernible).
21 G. SCHLABS: I thank you for (indiscernible) and find out
22 when and where.
23 K. MULCH: They're getting him the information.
24 UNID MALE: (indiscernible) Dr. Kyte is on the line?
25 K. MULCH: Not yet.
26 UNID FEMALE: He's trying to get in.
27 K. MULCH: Oh.
28 G. SCHLABS: (Indiscernible) get in. I know that.

1 K. MULCH: Okay.

2 UNID MALE: We have seven members. Why don't we go ahead
3 and take a roll call.

4 K. MULCH: Okay. All right.

5 UNID MALE: I'm getting word from at least a dozen patients
6 (indiscernible) call (indiscernible) about
7 (indiscernible) participate.

8 G. SCHLABS: Well, they have to make it (indiscernible).

9 UNID MALE: They can't call in either.

10 (Simultaneous conversation)

11 G. SCHLABS: (Indiscernible) get in because the line
12 (indiscernible).

13 UNID FEMALE: All right. I'm going to go ahead and start with
14 the roll call. Davis.

15 DAVIS: Here.

16 UNID FEMALE: Dr. Kyte. Jean McGinnis (phonetic).

17 J. MCGINNIS: Here.

18 UNID FEMALE: Dr. Naylor (phonetic).

19 DR. NAYLOR: Yes.

20 UNID FEMALE: Kendra Mulch (phonetic).

21 K. MULCH: Yes.

22 UNID FEMALE: Chris Devenwoods (phonetic).

23 C. NEVENWOODS: Here.

24 UNID FEMALE: Joelle Riddle.

25 J. RIDDLE: Here.

26 UNID FEMALE: Glenn Schlabs (phonetic).

27 G. SCHLABS: Here.

28 UNID FEMALE: Joan Swensky.

1 J. SWENSKY: Here.

2 UNID FEMALE: Thank you.

3 DR. KYTE: Gerry Snipes (phonetic) here.

4 UNID FEMALE: Oh. Dr. Kyte.

5 UNID MALE: Yeah. Dr. Kyte joined us.

6 UNID FEMALE: Okay. Great. Thank you.

7 UNID MALE: Thank you, Dr. Kyte.

8 UNID FEMALE: All right. Glenn we can start the emergency
9 rule making hearing.

10 G. SCHLABS: First of all, I would like to thank everyone who
11 showed interest. We are starting now, but 35
12 minutes late due to our desire to accommodate
13 the public (indiscernible) and some difficulties
14 with the technology on the phones, for which I
15 apologize.

16 What I'd like to do now is start the
17 emergency rule making hearing and -- for the
18 adoption of a temporary rule as put forward in
19 the notice. And I would like to state now that
20 this rule is temporary. There is a -- if it is,
21 in fact, passed, that a full hearing on this
22 matter is -- it would be noticed for December
23 16th. And the requirement for this rule making
24 hearing has been indicated by the department,
25 primarily due to the Clendenin decision, as
26 stated in the notice.

27 At this time, I'd ask a member of the
28 staff, I believe Ms. Haas (phonetic), to speak

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about the temporary rule.

A. HAAS:

My name is Anne Haas (phonetic). I'm the director of legal and regulatory affairs for the Colorado Department of Public Health and Environment. I'm here today to present an emergency rule to the Board of Health.

On Thursday, October 29th, 2009, the Colorado Court of Appeals issued a decision in People v. Clendenin, which reflects with the current Board of Health rules the Medical Marijuana Program administered by the Department. The Medical Marijuana Program was passed by voter initiative and is found at Article XVIII (indiscernible) of the Colorado Constitution.

The constitutional amendment created the Medical Marijuana Program to allow the patient who has been diagnosed with a defined debilitating medical condition by his or her physician, and for whom this physician has recommended the use of medical marijuana, to utilize marijuana for medicinal purposes.

Additionally, the amendment allows (indiscernible) to designate a primary caregiver, which is defined in the Constitution as a person other than the patient and the patient's physician who is 18 years of age or older and has significant responsibility for

1 managing the well-being of a patient who has a
2 debilitating medical condition.

3 In July 2009, this (indiscernible) adopted
4 some modifications to the existing Medical
5 Marijuana Program rules. Specifically, the
6 board adopted a definition (indiscernible)
7 responsibility for managing the well-being of a
8 patient as follows: Significant responsibility
9 for managing the well-being of a patient means
10 assisting a patient with daily activities,
11 including but not limited to transportation or
12 housekeeping or meal preparation or shopping or
13 making any necessary arrangement for access to
14 medical care for services or provision of
15 medical marijuana.

16 This definition allows for a primary
17 caregiver to solely provide marijuana to a
18 patient on the registry and to qualify as the
19 primary caregiver. In People v. Clendenin, the
20 Colorado Court of Appeals considered the
21 criminal conviction of an individual for --

22 UNID MALE: I guess.

23 MS. HAAS: -- various marijuana charges might have --

24 UNID MALE 2: You need to mute your phone.

25 MS. HAAS: -- (indiscernible) the decision that she was a
26 primary caregiver for a patient with a
27 debilitating medical condition. The Court of
28 Appeals concluded that to qualify the primary

1 caregiver under Colorado Constitution Article
2 XVII Section 14, a person must do more to manage
3 the well-being of a patient who has a
4 debilitating medical condition than merely
5 supplying marijuana. In this case, the
6 Defendant argued that the provision of marijuana
7 constituted the significant responsibility
8 required to be a caregiver, but both the trial
9 court and to the Court of Appeals rejected this
10 argument.

11 The Colorado Court of Appeals considered
12 all of the following in reaching its
13 conclusions. The Court looked at two other
14 states, including Washington and California, and
15 indicated that these states have statutes
16 sufficiently similar to Colorado that address
17 the requisite degree of responsibility for a
18 patient's care that is necessary to qualify as a
19 primary caregiver.

20 The Court also considered the definition of
21 significant, which is defined as deserving to be
22 considered important, notable. The Court held
23 that significant responsibility means more than
24 being accountable for just one aspect of a
25 patient's well-being. It means managing a
26 patient's (indiscernible).

27 The Court then went on to define manage.
28 They defined managed as to direct, control,

1 govern, administer, oversee. The Court also
2 (indiscernible) --
3 (Music Playing)
4 UNID MALE: Hello. What's going on?
5 UNID FEMALE: The music, please.
6 UNID FEMALE 2: Turn that off.
7 UNID MALE: Somebody has on music. Please turn the music
8 off.
9 UNID MALE 2: Mute the phone.
10 UNID MALE: They're going to have to put us all on hold.
11 (Indiscernible) the line.
12 (Music Playing)
13 (Beeping Tone)
14 (Music Playing)
15 UNID MALE: Hey, idiot with the music, turn it off.
16 UNID FEMALE: Get rid of the music now.
17 UNID MALE 2: Can we please get that person off of this call.
18 (Music Playing)
19 UNID MALE: Dude, mute the phone!
20 UNID FEMALE: This is the most important part of this.
21 (Music Playing)
22 UNID FEMALE: Is it possible for the moderator to respond.
23 UNID MALE: There is no moderator. That's why they call is
24 chaos.
25 UNID FEMALE: I don't think (indiscernible) this music on.
26 UNID MALE 2: This person is in violation of the law, and in
27 (indiscernible) --
28 (Simultaneous conversation)

1 (Beeping Tone)

2 UNID MALE 2: -- the notice. Turn off the music.

3 (Music Playing)

4 UNID MALE 2: This is a violation of the law. You are

5 violating public (indiscernible) rules

6 (indiscernible). Turn off your phone and music

7 now.

8 MS. HAAS: This opposed rule would simply eliminate the

9 definition of (indiscernible) --

10 (Music Playing)

11 UNID FEMALE: I suspect they put it on hold.

12 UNID FEMALE 2: Can you all hang up and call back

13 (indiscernible) minute.

14 UNID FEMALE: (Indiscernible)

15 UNID MALE 2: Your music playing is a violation of the law in

16 a public hearing (indiscernible).

17 (Simultaneous conversation)

18 (Music Playing)

19 UNID MALE: We need to get the moderator to get on this.

20 (Beeping Tone)

21 UNID MALE: This is (indiscernible).

22 (Music Playing)

23 MS. HAAS: -- the definition of (indiscernible) --

24 UNID FEMALE 2: Can we just start over?

25 MS. HAAS: -- responsibility (indiscernible) --

26 (Music Playing)

27 UNID MALE 2: No, we can't. We've been on hold for an hour.

28 UNID MALE: You can't drop the call and have us all call

1 back.

2 UNID FEMALE: I think this is a conspiracy.

3 UNID MALE: If anybody knows (indiscernible) hold.

4 (Music Playing)

5 UNID MALE: (Indiscernible) should know (indiscernible)

6 we're having issues.

7 UNID MALE 2: (Indiscernible) doing this.

8 (Simultaneous conversation)

9 UNID MALE: Get the conference call moderator to respond

10 (indiscernible).

11 (Beeping Tone)

12 (Music Playing)

13 UNID FEMALE: (Indiscernible)

14 (Beeping Tone)

15 (Music Playing)

16 UNID MALE: Why don't you guys just leave the call?

17 UNID MALE 2: Come on.

18 (Music Playing)

19 (Simultaneous conversation)

20 (Beeping Tone)

21 UNID MALE: -- awards, regulations --

22 (Beeping Tone)

23 (Music Playing)

24 UNID FEMALE: Whoever it is is not listening. They're just

25 playing music through it. It's on like hold.

26 (Music Playing)

27 UNID MALE: Actually, I think (indiscernible) --

28 (Simultaneous conversation)

1 UNID MALE: Somebody is doing that on purpose. Somebody is
2 trying to destroy this call.

3 UNID FEMALE: They are doing it on purpose, and we can't hear
4 the meeting.

5 (Music Playing)

6 UNID MALE: I'm going to call you right back in a minute and
7 then (indiscernible) number, call it
8 (indiscernible).

9 UNID FEMALE: I'm just double checking. This is for the
10 hearing.

11 (Simultaneous conversation)

12 UNID FEMALE 2: On medical marijuana.

13 UNID FEMALE: It is, but somebody is being a jackass playing
14 music is all.

15 (Music Playing)

16 M. LOPEZ: I know. I'm talking to a Channel 7 news
17 reporter right now, letting him --

18 UNID FEMALE: Good.

19 M. LOPEZ: -- know what's going on.

20 (Beeping Tone)

21 (Simultaneous conversation)

22 UNID FEMALE 2: A reporter is in that meeting. So let me see.

23 M. LOPEZ: I know. I'm the one who called (indiscernible)
24 and alerted (indiscernible) and this is Miguel
25 Lopez.

26 (Simultaneous conversation)

27 (Music Playing)

28 T MCCALLISTER: Miguel, this is Tom McCallister. I don't think

1 they're playing the music. I think they don't
2 even know we're sitting here on hold or
3 something, because they're continuing the
4 meeting. I've texted (indiscernible) --

5 M. LOPEZ: I know, but I'm just trying to alert the media
6 of what's going on.

7 (Beeping Tone)

8 UNID FEMALE: (Indiscernible) too, because I was having to
9 play the meeting --

10 UNID FEMALE 2: Okay. Everybody, quiet.

11 UNID FEMALE: (Indiscernible) get in.

12 UNID FEMALE 2: Okay. (Indiscernible) on. Be quiet.

13 UNID MALE 2: Ten minutes of music. We've missed 10 minutes
14 (indiscernible) music.

15 UNID MALE: -- which a litigant can (indiscernible) the
16 review of --

17 UNID MALE 2: 3-5-2-9-7-2-5.

18 UNID MALE: -- (indiscernible) the report.

19 UNID MALE 3: Please mute your phone.

20 UNID MALE 4: Star-6-Star will mute your phone.

21 UNID FEMALE: Do not put the call back on hold.

22 UNID MALE 3: Let me go to where I can hear this.

23 UNID MALE: And if they do hear it, it's possible that they
24 would oppose it in summary manner --

25 (Beeping Tone)

26 UNID MALE: -- (indiscernible) consider it more fully.
27 So --

28 UNID MALE 3: You hear me?

1 UNID MALE 2: Yes, I can.

2 UNID MALE 3: Can you hear me? Hello.

3 UNID MALE 4: Please be quiet.

4 UNID MALE 2: Mute your phone.

5 UNID FEMALE: Be quiet.

6 (Simultaneous conversation)

7 A. FENERRI: This is Alan Fenerrri (phonetic). I'm calling in
8 regards to the conference call for the medical
9 marijuana meeting today.

10 UNID MALE 2: Mute your phone.

11 UNID MALE 3: Mute your phone now.

12 UNID FEMALE: Quiet.

13 DR. KYTE: -- significant responsibility (indiscernible)?

14 A. HAAS: That's correct.

15 G. SCHLABS: Anne, would you address that?

16 A. HAAS: That's correct.

17 C. GABONET: Someone repeat the question. I couldn't hear it
18 well. This is Chris Gabonet (phonetic).

19 G. SCHLABS: And by the -- this is Glenn. What I would ask
20 is once we have a board member ask the question,
21 if the staff member will repeat the question, so
22 that everyone present on the telephone can
23 understand it. So I --

24 Anne, go ahead. Would you repeat Dr.
25 Kyte's question and then respond to it?

26 A. HAAS: Sure. The question was whether the proposal was
27 to strike the entire definition of significant
28 responsibility for managing the well-being of a

1 patient. And that is correct. The proposal is
2 to strike that definition in its entirety.

3 G. SCHLABS: Okay. Anne, this is Glenn. There is still a
4 constitutional definition, is there not?

5 (Beeping Tone)

6 A. HAAS: No. There is a constitutional definition of
7 primary caregiver.

8 G. SCHLABS: Okay.

9 A. HAAS: That is set forth in the Constitution. Within
10 the definition of primary caregiver, it
11 describes that individual as a person who has
12 significant responsibility for managing the
13 well-being of a patient with a debilitating
14 medical condition.

15 So the board's rule attempted to define
16 what it meant to have significant responsibility
17 for managing the well-being of a patient with a
18 debilitating medical condition. We are simply
19 proposing to --

20 UNID MALE: Sure. I've got most of the program, but
21 (indiscernible) we're --

22 A. HAAS: -- eliminate that definition in its entirety, so
23 that --

24 UNID MALE: -- to do now is (indiscernible) --

25 UNID MALE 2: Shh.

26 A. HAAS: -- the constitutional definition of primary
27 caregiver which is replicated in the board's
28 rules continues, remains in existence. This

1 simply gets rid of -- proposes to get rid of the
2 definition of significant responsibility.

3 K. MULCH: Glenn, this is Kendra. And I have in front of
4 me the current definitions that we did adopt.
5 And the part about the primary caregiver, in
6 that particular definition, I'm going to just
7 read this, so that everybody can hear this.

8 (Beeping Tone)

9 K. MULCH: A primary caregiver means a person other than
10 the patient and the patient's physician who is
11 18 years of age or older and has significant
12 responsibility for management --

13 (Coughing)

14 K. MULCH: -- of a patient who has a debilitating medical
15 condition. That remains in our rule.

16 (Beeping Tone)

17 K. MULCH: So the primary caregiver includes verbiage that
18 says significant responsibility. As I recall
19 our lengthy discussion in July, that's where --
20 that's what we spent a lot of time on was trying
21 to define significant responsibility in order to
22 clarify that verbiage by their primary
23 caregiver. What we came up with is the
24 definition that is not now legal. You know, I'm
25 no attorney. So whatever the verbiage is for it
26 (indiscernible) --

27 (Ringing)

28 K. MULCH: -- as I see it, fellow board members, is so

1 imperative, because we didn't have the statu- --
2 we don't have the statutory standing to define
3 significant responsibility in a manner in which
4 we can find it.

5 UNID FEMALE: So this just (indiscernible) the condition that
6 it (indiscernible) before the July hearing.

7 K. MULCH: Correct. That's the way it came. We tried to
8 clarify it, and it seems like maybe we muddied
9 the water. So whenever we've (indiscernible)
10 the (indiscernible) discussing this, I'm
11 prepared for a motion, Glenn, whenever we call
12 for it.

13 G. SCHLABS: I want to make sure that the board brings out
14 any questions they have for Anne. I think I
15 would just like to chime in that in my day job
16 I'm a lawyer. I am concerned that there would
17 be contradictory guidance for people who were
18 relying on it for a criminal affirmative
19 defense. That --

20 (Beeping Tone)

21 G. SCHLABS: -- bothers me a lot. And whether the -- we were
22 right or wrong or the Court of Appeals is right
23 or wrong is no so much the question. I think
24 the question is really that we should not --

25 (Clapping)

26 G. SCHLABS: -- or I think the answer is that we should not
27 (indiscernible) --

28 UNID MALE: How are you?

1 (Beeping Tone)

2 G. SCHLABS: -- contradictory. In fact, I (indiscernible) --

3 UNID MALE 2: Hello? Hello?

4 G. SCHLABS: -- guidance on this important matter.

5 UNID FEMALE: Be quiet.

6 G. SCHLABS: So that's (indiscernible) I have to say.

7 UNID MALE 2: People, mute your phone.

8 C. DEVENWOODS: Jim, this is Chris Devenwoods. I have a
9 question.

10 J. LOGAN: Go ahead, doctor.

11 C. DEVENWOODS: Okay. In your statement, you said that you have
12 never seen this before. And I didn't quite
13 catch what it was you were referring to. Could
14 you explain that? We had (indiscernible).

15 (Shuffling)

16 UNID MALE: Could you please repeat the doctor's question?

17 J. LOGAN: I will. Dr. Devenwoods asked what I meant by --
18 what I meant when I said that I believe this
19 situation is unprecedented. Did everybody hear
20 that?

21 UNID MALE: Yes.

22 UNID MALE 2: Yes.

23 J. LOGAN: All right. I've served on a number of boards in
24 commissions. I continue to serve on a number of
25 boards in commissions. And never in all of
26 those years of service have I encountered the
27 situation where within literally months of
28 having adopted a provision to implement a

1 constitutional amendment have I seen a Court of
2 Appeals issue a decision that is directly,
3 clearly, and unavoidably in conflict with the
4 decision of the board's (indiscernible). It is,
5 in part, because this is a constitutional
6 matter, in part, because the Court of Appeals
7 decision was so clear and so telling that I
8 think -- I have not seen that ever happen
9 before, and I do not believe that it leaves this
10 board with any alternative but to reconcile its
11 decision -- its regulations with the Court of
12 Appeals decision, at least on the basis of an
13 emergency rule making while we take this matter
14 under more thorough consideration in December
15 and decide how to move forward. It is not a
16 matter of evaluating the merits of the decision
17 (indiscernible) the board (indiscernible) in
18 July. It is merely relatively -- actually, it's
19 relatively (indiscernible) unprecedented clarity
20 of the Court of Appeals decision, and it's very
21 clear on -- with the Board of Health's
22 regulations.

23 C. DEVENWOODS: Okay. Thank you.

24 G. SCHLABS: Are there other board questions or comments? I
25 just wanted to indicate for the record, and I
26 want to make sure that email is included with
27 the record of this hearing, that the board
28 members received a email from Robert Chase

1 (phonetic). And Mr. Chase, I think, very
2 succinctly characterized his opposition to --
3 his organization's opposition to this emergent
4 temporary rule making. I certainly can't agree
5 with all the characterization that Mr. Chase
6 made of the Department, but he did present a
7 cogent succinct basis for not proceeding, which
8 all the board members have received.

9 Are there any further questions or comments
10 from the board?

11 Well, then because we are going to have a
12 full hearing, I am -- and because the
13 requirements of subsection 4 are suspended, we
14 will not take public comment (indiscernible) --

15 (Public utterances)

16 G. SCHLABS: -- motion concerning these rules.

17 R. COREY: Mr. Chairman, this is Robert Corey. Do you want
18 to hear from the lawyer who actually Clendenin
19 case? Because I've got a three-minute --

20 G. SCHLABS: Rob, actually, I do some time, but not now.

21 R. COREY: If I can have three minutes, I can lay this out
22 for you.

23 (Simultaneous conversation)

24 R. COREY: It really won't take that long. It's just three
25 minutes I need.

26 K. MULCH: Glenn, if we allow this -- I want to know --
27 just a moment. This is Kendra. What I want to
28 know is the part about public comment, if we

1 start, do we have to continue? So I think we
2 need -- before --

3 G. SCHLABS: Kendra, thank you. I appreciate the help, but
4 that's the point. I have --

5 (Beeping Tone)

6 G. SCHLABS: I have wrestled with this and, obviously, have
7 agonized over it, because I know -- first of
8 all, I respect quite deeply many of the lawyers
9 that are involved in this issue. And I think
10 you have served your clients well. I think I
11 and the board members are acutely aware of the
12 (indiscernible) -

13 (Beeping Tone)

14 G. SCHLABS: -- law (indiscernible) Colorado --

15 UNID FEMALE: Ask me.

16 G. SCHLABS: -- on this issue. This is no fair way to do
17 this. Subsection 4 is suspended for --

18 UNID MALE: Shh. Mute your phones, please.

19 G. SCHLABS: -- purposes of this temporary rule making.

20 UNID FEMALE: (Indiscernible)

21 G. SCHLABS: And so --

22 UNID MALE 2: Stop talking, so we can hear him.

23 (Coughing)

24 G. SCHLABS: -- (indiscernible) taking public comment now.
25 But we certainly will take (indiscernible) --

26 (Coughing)

27 G. SCHLABS: -- public comment in December. So, Rob, I
28 appreciate the offer, but it's respectfully

1 decline --

2 R. COREY: The amount of time you just said I could have
3 speak -- I could have spoken. You took public
4 comment from Robert Chase. You just read his
5 email into the record. I just need three
6 minutes of your time. I litigated the Clendenin
7 case. I was in the courtroom (indiscernible) --

8 G. SCHLABS: You are now out of order. Please be quiet.
9 Make no further comment.

10 R. COREY: Also, for the record, there are dozens of people
11 who are trying to get into this room --

12 UNID FEMALE: Mr. Corey, you're going to be asked to be
13 removed from the room.

14 R. COREY: Listen. I just need to make this record. There
15 are people who are trying to get into this room
16 or into the phone who can't get in. This is a
17 secret meeting. The public is not being allowed
18 to participate. This is illegal, Mr. Chairman.

19 G. SCHLABS: Thank you very much.
20 (Clapping)

21 R. COREY: I'll see you in court.

22 G. SCHLABS: I appreciate your comment. And the hearing will
23 be (indiscernible) in an appropriate forum.

24 R. COREY: Did you hear me? I'll see you in court.

25 UNID FEMALE: Glenn.

26 R. COREY: Did you hear me, Mr. Chairman?

27 UNID FEMALE: Glenn, could we --

28 R. COREY: We all will.

1 G. SCHLABS: I'm going to ask is there any final board
2 questions or comments?
3 UNID MALE: And we've got (indiscernible) Colorado on the
4 phone.
5 G. SCHLABS: If there are none, I will ask if anyone wants to
6 make a motion.
7 UNID FEMALE: Thank you.
8 K. MULCH: Glenn, this is Kendra.
9 UNID MALE: Sue them in a public capacity also.
10 K. MULCH: I move to adopt the proposed emergency finding
11 and --
12 (Simultaneous conversation)
13 K. MULCH: -- justification for proposed amendments to the
14 (indiscernible) --
15 UNID MALE: And a personal capacity. Sue them as private
16 individuals also.
17 UNID FEMALE: Listen.
18 K. MULCH: -- the medical use of marijuana, 5 C.C.R.
19 1006-2 (Regulations 2, definitions), along with
20 -- one moment --
21 UNID MALE 2: I hate it.
22 K. MULCH: -- the board finding that a need to adopt
23 another rule is imperatively necessary to comply
24 with the state or federal law (indiscernible)
25 federal regulation (indiscernible) prevention,
26 public health, safety, or welfare, in compliance
27 with the notice of provisions section 20 --
28 G. SCHLABS: Kendra.

1 K. MULCH: Yes?

2 G. SCHLABS: I need to tell you, you were beeped out.

3 K. MULCH: Section 24-4-103 of the (indiscernible) Act --

4 (Simultaneous conversation)

5 K. MULCH: -- would be contrary to the public interest.

6 UNID MALE: Yes.

7 G. SCHLABS: I (indiscernible) amendment --

8 (Coughing)

9 (Beeping Tone)

10 G. SCHLABS: -- (indiscernible) the board is preservation of

11 public health and safety or welfare?

12 K. MULCH: Oh, yes. I know that. And I said prevention.

13 You know, that's the (indiscernible) --

14 (Laughing)

15 G. SCHLABS: I did (indiscernible) the (indiscernible) motion

16 is so amended. Is there a second?

17 UNID MALE: (Indiscernible)

18 (Simultaneous conversation)

19 G. SCHLABS: I will now ask that --

20 (Simultaneous conversation)

21 G. SCHLABS: -- (indiscernible). Be we do that, I should

22 (indiscernible) the motion is moved and second,

23 is there any discussion?

24 (Simultaneous conversation)

25 G. SCHLABS: (Indiscernible) because of the speakerphone

26 situation, I'd like you to call a roll call

27 (indiscernible).

28 UNID FEMALE: Okay. Davis.

1 MS. DAVIS: Yes.

2 UNID FEMALE: Kyte.

3 DR. KYTE: Yes.

4 UNID FEMALE: McGinnis.

5 J. MCGINNIS: Yes.

6 (Simultaneous conversation)

7 UNID FEMALE: (Indiscernible) Devenwoods.

8 C. DEVENWOODS: Yes.

9 (Simultaneous conversation)

10 UNID MALE: Dude, mute your phone.

11 UNID MALE 2: Come on, you idiot?

12 UNID FEMALE: Schlabs.

13 G. SCHLABS: (indiscernible)

14 UNID FEMALE 2: What the hell?

15 UNID FEMALE: Swensky.

16 (Simultaneous conversation)

17 UNID MALE: (Indiscernible)

18 UNID FEMALE 3: Yes.

19 G. SCHLABS: The motion is passed unanimously. I don't
20 believe there are any other motions before the
21 board (indiscernible) --

22 UNID MALE: Yes. Mr. Chairman, I believe that Jan has
23 something to add to it.

24 JAN: Glenn, I just received the -- a handwritten
25 petition from Mr. Corey, and -- that states
26 Health Board petition pursuant to C.R.S. 24-
27 (indiscernible)-1037 --

28 (Simultaneous conversation)

1 JAN: -- regarding 5 C.C.R. 1006-2, regulation 2,
2 definitions, submitted by Robert J. Corey,
3 Attorney at Law, November 3rd (indiscernible) --
4 (Simultaneous conversation)
5 JAN: -- the proposed --
6 UNID MALE: Mute your got damn phone.
7 JAN: -- (indiscernible) is --
8 UNID FEMALE: Hello.
9 (Simultaneous conversation)
10 JAN: -- three. And it reads significant
11 responsibility for managing the well-being of
12 the patient means (indiscernible) --
13 (Simultaneous conversation)
14 JAN: -- more than merely supplying a patient
15 (indiscernible) --
16 UNID MALE: Shut up about your fucking mango.
17 JAN: -- medical condition with marijuana, if needed,
18 requested, and purchased by the -- I'm sorry.
19 If such non-medical marijuana (indiscernible) --
20 (Simultaneous conversation)
21 JAN: -- services are needed, request
22 (indiscernible) --
23 (Beeping Tone)
24 (Simultaneous conversation)
25 JAN: -- by the patient. I believe Mr. Corey
26 submitted this pursuant to the petitioning
27 provision and the Colorado Administrative
28 (indiscernible) Act.

1 R. COREY: And if I could have a moment to address the
2 board about my proposal, which I believe is
3 required for me to (indiscernible) under --
4 JAN: You know, I think --
5 UNID MALE: Mr. Chairman (indiscernible) President --
6 R. COREY: -- 24-4-103 --
7 PRESIDENT: Hello. This is the president speaking.
8 UNID MALE: Mr. President.
9 PRESIDENT: Would you please just hold it for a second?
10 Which of my attorneys general are there?
11 (Simultaneous conversation)
12 J. LOGAN: This is Jim Logan. I was going to ask a
13 representative of the Attorney General's Office
14 to inform us whether this is within the notice
15 that was provided and, if not, whether this is
16 something that should be addressed in our
17 December hearing.
18 PRESIDENT: And that was --
19 (Beeping Tone)
20 PRESIDENT: -- the basis of my question, Jim. Thank you. I
21 just don't know who's there.
22 C. KAUFFMAN: This is Cynthia Kauffman (phonetic)
23 (indiscernible) --
24 UNID MALE: I wish you'd just (indiscernible) your fucking
25 mouth.
26 PRESIDENT: Cynthia, could you please address
27 (indiscernible) --
28 (Laughing)

1 PRESIDENT: -- the way Jim articulated the question?

2 C. KAUFFMAN: This is an expression of the board pursuant to
3 the Administrative (indiscernible) --
4 (Coughing)

5 C. KAUFFMAN: -- could entertained at the December meeting.

6 R. COREY: No. It says shall be considered and acted upon
7 in the same proceeding, subsection 7.

8 UNID FEMALE: It says acted on.

9 R. COREY: Subsection 7.

10 PRESIDENT: We are not going to have lawyers argue with each
11 other during the meeting.

12 R. COREY: There's no discretion. It shall be considered,
13 subsection 7.

14 UNID FEMALE: (indiscernible) incorrect.

15 UNID MALE: Bob.

16 R. COREY: I'm reading it. It's right in front of me.

17 PRESIDENT: You're a good lawyer, and I appreciate that.
18 Cynthia, is your --

19 UNID MALE: I beg to differ with that.

20 PRESIDENT: -- (indiscernible) discretionary with
21 (indiscernible) in considering Rob Corey's
22 petition?

23 UNID MALE: (indiscernible) direction.

24 A. FULTON: This is Anne Fulton (phonetic). It is
25 discretionary pursuant to (indiscernible) 7-103,
26 and it's simply considered at that December
27 meeting. If the board chooses to consider it,
28 it should be undertaken at the same rule making.

1 And it's my understanding that that would be the
2 rule is considered (indiscernible).

3 G. SCHLABS: I would --

4 A. FULTON: It wasn't noticed (indiscernible) --

5 G. SCHLABS: I can only speak for myself now, but I am not
6 willing to consider --

7 (Beeping Tone/Shuffling)

8 G. SCHLABS: -- a rule that I haven't received any
9 information on until the hearing. I would like
10 to consider the rule in December, but I
11 certainly (indiscernible) --

12 (Simultaneous conversation)

13 G. SCHLABS: -- have it read to me over the phone. I don't
14 feel comfortable at all in considering a rule
15 that I can't see or at least study before I
16 consider it. So if it discretionary with me as
17 the chairman in the proceeding --

18 (Simultaneous conversation)

19 G. SCHLABS: -- then we will consider Rob Corey's petition,
20 if at all, at the December meeting. I will
21 entertain no further discussion on that.

22 A. FULTON: Glenn, this is Anne Fulton. Could I just make
23 one further comment? It's important to note
24 that (indiscernible) notice (indiscernible) Jim
25 Martin advised you.

26 G. SCHLABS: Well, that's -- that was my concern. So if at
27 all, we will consider it in December. We will
28 have no further discussion on it now. Is there

1 any other business for Karen?

2 K. MULCH: Glenn, this is Kendra.

3 G. SCHLABS: Yes, Kendra.

4 K. MULCH: Just to recap (indiscernible) lawyer here --

5 UNID MALE: Hi.

6 K. MULCH: -- on the phone. So what I'm hearing is that
7 you have the discretion to say that we're not
8 going to discuss this any further. This is not
9 requiring board discussion. You have that -- as
10 chair, can you make that decision or do we need
11 to have the board --

12 (Simultaneous conversation)

13 K. MULCH: -- agree to this?

14 G. SCHLABS: I believe, as the chair, I have that discretion.
15 Am I correct, Anne?

16 A. FULTON: Glenn, because it is not within the notice, I do
17 not believe that the board --

18 (Beeping Tone)

19 A. FULTON: -- can consider this at today's hearing. It's
20 within the board's discretion to consider it at
21 the December hearing. And because it is not
22 within the notice, I believe that you have the
23 authority then to not take any further action on
24 it today.

25 (Simultaneous conversation)

26 G. SCHLABS: When you say you, you're talking about me the
27 Chair?

28 A. FULTON: Yeah, I am.

1 (Simultaneous conversation)

2 G. SCHLABS: And I agree, and I think I've already stated
3 that. Kendra, I appreciate your bringing that
4 up. And as long as we consider this --

5 (Simultaneous conversation)

6 G. SCHLABS: -- it will be in the December meeting.

7 K. MULCH: Okay. Thank you.

8 (Simultaneous conversation)

9 G. SCHLABS: Are there other questions or comments from the
10 board, Karen.

11 (Simultaneous conversation)

12 UNID MALE: Legalize it.

13 K. MULCH: No, there is not.

14 UNID MALE: Legalize it.

15 UNID MALE 2: Shut up.

16 G. SCHLABS: I'd like to thank you all for (indiscernible).

17 And (indiscernible) any objections

18 (indiscernible) we're adjourned.

19 (Simultaneous conversation)

20 UNID MALE: Legalize it.

21 (Simultaneous conversation)

22 (Recording Ends)

23

24

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28

CERTIFICATE

1
2 I certify that the foregoing is an accurate transcript,
3 produced to the best of my ability, from the electronic sound
4 recording provided by the ordering party.

5

6

7

Dated: November 6, 2009

Antoinette M. Franks

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