STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

RHODE ISLAND PATIENT ADVOCACY COALITION, INC., RHODE ISLAND ACADEMY OF PHYSICIANS ASSISTANTS, INC., and PETER NUNES, SR., Plaintiffs,	)	
v.	)	P.C. No. 12-5182
MICHAEL FINE, MD, Individually and in his Capacity as DIRECTOR OF THE RHODE ISLAND DEPARTMENT OF HEALTH, Defendant.	)	

MEMORANDUM OF LAW OF AMICUS CURIAE, RHODE ISLAND STATE NURSES' ASSOCIATION, IN SUPPORT OF PLAINTIFFS' REQUEST FOR DECLARATORY JUDGMENT

I. Facts

The Rhode Island State Nurses' Association ("RISNA") is a non-profit corporation existing under Rhode Island law and is a constituent member of the American Nursing Association. RISNA's membership consists of approximately 750 nurses practicing in Rhode Island including approximately 600 registered nurse practitioners ("RNPs"). RISNA's mission is the "promotion, advancement, and protection of nursing [in order to improve] the quality of and access to health care in Rhode Island." Among other services, RISNA provides leadership in defining standards of nursing practice, represents the nursing profession in state and local affairs, and provides information on nursing and health care for nurses and the Rhode Island community. RISNA has an substantial interest in the outcome of this litigation because the RNPs within its membership were deprived, by the Defendant, of the ability to issue written certifications for

patients concerning the relative benefits and health risks attendant to the medicinal use of marijuana.

The Rhode Island General Assembly passed the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act (R.I. Gen. Laws §§ 21-28.6-1, *et seq.*)(the "Hawkins-Slater Act") in 2005. In the most general terms, the Hawkins-Slater Act allows patients legal access to marijuana, and immunity from arrest and prosecution for possession and use of marijuana, subject to satisfaction of the certain conditions. R.I. Gen. Laws § 21-28.6-4. Primary among these conditions is the need for a registration card issued by the Rhode Island Department of Health ("DOH"). Id. As a prerequisite to such a registration, a patient is required to submit an application to the DOH which includes a "written certification" from a "practitioner" that "the benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient." R.I. Gen. Laws §§ 21-28.6-3 and 21-28.6-4.

In June 2006, the legislature passed the so-called "global signature act" which provides:

> Whenever any provision of the general or public law, or regulation requires a signature, certification, stamp, verification, affidavit or endorsement by a physician, it shall be deemed to include a signature, certification, stamp, verification, affidavit or endorsement by a certified registered nurse practitioner; provided, however, that nothing in this section shall be construed to expand the scope of practice of nurse practitioners.

R.I. Gen. Laws § 5-34-42.[1] Until Summer of 2012 DOH issued marijuana registry identification cards pursuant to the Hawkins-Slater Act based upon "written certifications" signed by RNPs. Thereafter, the DOH abruptly refused to do so. In particular, the written certification of plaintiff Peter Nunes was signed by a RNP who had previously signed certifications on behalf of other patients which were accepted by DOH. Notwithstanding, Nunes' application for a medicinal marijuana registration was denied.

[1] Hereinafter the "Global Signature Act."

On August 22, 2012 the Defendant sent a letter which is attached to the Second Amended Complaint[2], indicating that DOH would no longer accept written certifications from RNPs. A similar notice, attached to the Defendants' Submission of Administrative Procedures Act ("APA") Record[3] as Exhibit C, was sent by the Defendant to all of RNPs registered in Rhode Island.[4] RISNA was not notified in advance of the DOH's decision to reject written certifications signed by RNPs nor was it given an opportunity to comment on the impending change in practice. In fact, based upon the APA Record, it is apparent that none of the rulemaking procedures mandated by Rhode Island's Administrative Procedures Act (R.I. Gen. Laws § 42-35-1, *et seq.*)(the "APA") were followed by the Defendant in unilaterally deciding to reverse a six year old interpretation of the Hawkins-Slater Act under which RNPs could issue written certifications.

Had RISNA been given the notice and the opportunity to comment on the DOH's proposed new prohibition it would have done so. Failing that, its best alternative is to offer the following arguments in support of its position.

II. Argument

A. The DOH's policy of refusing to accept written certifications from RNPs is a "Rule" as defined by R.I. Gen. Laws § 42-35-1.

DOH's refusal to accept RNPs' written certifications is a generally applicable interpretation of law and a practice requirement of DOH. It therefore is a "Rule" as defined by the APA, which provides in relevant part

[2] For convenience, a copy of this letter is attached hereto as Exhibit 1.

[3] Hereinafter the "APA Record."

[4] A copy of this letter is attached hereto as Exhibit 2.

> "Rule" means each agency statement of general applicability that implements, interprets or prescribes law or policy or describes the organization, procedure or practice requirements of any agency.

R.I. Gen. Laws § 42-35-1(h).

The DOH apparently concedes as much given its repeated characterization of the refusal to accept RNPs' written certifications as a "practice." For example in the Defendants' Answer to Plaintiffs' Second Amended Complaint (pp. 6-7) the Defendant states separately in response to Counts IV through VII of the Second Amended Complaint "WHEREFORE, Defendants respectfully request that this Court grant them declaratory judgment that the Department's current *practice* is valid." (emphasis added). Likewise, the DOH's notice to RNPs that their written certifications would no longer be accepted indicated that DOH's "change" resulted from a careful review of its "*practices* in connection with the administration of the state's medical marijuana law." (Exhibit 2)(emphasis added).

In their memorandum seeking affirmance of DOH's actions, the Defendants define the central issue in this case as a matter of "statutory interpretation [which] turns on the construction of the term 'practitioner.'" (Defendants' Memorandum in Support of Affirming Agency Action, p. 2). Furthermore, the affidavit of Dr. Michael Fine[5] which accompanies the APA Record confirms the fact that the Defendants' refusal to accept RNPs' written certifications is a result of an interpretation of the Hawkins-Slater Act and the Global Signature Act. (Exhibit 3, ¶ 17). Though DOH's statutory interpretation, and the process from which it was derived, are flawed, it is indisputable that the DOH established a practice and interpretation of law which applied not only to pending application for marijuana registry identification cards, but prospectively to applications yet to be filed. See Newbay Corp. v. Annarummo, 587 A.2d 63, 66 (R.I. 1991). Accordingly, the DOH adopted a "Rule" as defined by the APA. See R.I. Gen. Laws § 42-35-

[5] Hereinafter the "Fine Affidavit." A copy of the Fine Affidavit is attached as Exhibit 3.

1(h); id.; Westerly Nursing Home, Inc. v. Rhode Island Dep't of Human Servs., C.A. No. WC 07-0060, 2007 R.I. Super. LEXIS 183, at *10-11 (R.I. Super. Dec. 18, 2007)(explaining the distinction between administrative rulemaking and adjudication of contested cases).

B. The DOH failed to adhere to any required rulemaking procedures in adopting a rule which denies marijuana registry identification cards to patients relying upon the written certification of an RNP.

DOH's practice of refusing to accept written certifications from RNPs is invalid because DOH utterly failed to comply with the statutory requirements applicable to administrative rulemaking in adopting the rule. Section 42-35-3 of the General Laws states in part:

> (a) Prior to the adoption, amendment, or repeal of any rule the agency shall:
> (1) Give at least thirty (30) days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and of the time when, the place where, and the manner in which interested persons may present their views thereon...
> (2) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing...
> (3) Demonstrate the need for the adoption, amendment, or repeal of any rule in the record of the rulemaking proceeding...
>
> (c) No rule hereafter adopted is valid unless adopted in substantial compliance with this section...

The rule prohibiting RNPs from issuing written certifications was adopted without notice, without an opportunity for RISNA or other interested parties to submit their views and arguments, and without any demonstrated need for adoption set forth within a rulemaking record and file. See R.I. Gen. Laws §§ 42-35-2.2 and 42-35-3. Rather, according to the Fine Affidavit, the rule was adopted by DOH based largely upon a variety of allegedly privileged internal memoranda and discussions. In particular, Dr. Fine states in his affidavit, "Because these memoranda are privileged, and because much of the other decision making was done through

oral discussions, I am providing this Affidavit to explain the Department of Health's decision making process..." (Fine Affidavit, ¶ 14.c).

The "Department of Health's decision making process," as described by the Defendant, did not include any of the processes required by R.I. Gen. Laws § 42-35-3 such as public notice of a proposed rule or an opportunity for public comment. Instead, a cadre of executive branch officials and attorneys furtively changed the DOH's six year old practice without informing patients or practitioners until after adoption of a new rule. (Fine Affidavit, ¶¶ 10-18). This process was so antithetical to the statutory requirements of notice and comment rulemaking that it is surprising the matter is being litigated. See e.g., Newbay Corp., 587 A.2d at 66. (describing the Department of Environmental Management's stipulation that none of the material requirements of notice and comment rulemaking had been satisfied by the agency when it summarily announced a rule in response to a request for a permit).

Given DOH's failure to abide by the APA's required rulemaking procedures, the DOH's rule prohibiting RNPs from issuing written certifications is invalid and a declaratory judgment to that effect should be entered. See R.I. Gen. Laws § 42-35-3(c); 42-35-7; Newbay Corp., 587 A.2d at 66-67.

C. The rule adopted by the DOH is inconsistent with R.I. Gen. Laws §§ 5-34-42, 21-28.6-3 and 21-28.6-4.

Even if the DOH had complied with the APA's rulemaking procedures, the rule prohibiting RNPs from issuing written certifications would be invalid due to its inconsistency with the Hawkins-Slater Act and the powers granted to RNPs under the Global Signature Act. Specifically, after enactment of the Hawkins-Slater Act, the legislature enacted the Global Signature Act authorizing an RNP's "signature, certification, stamp, verification, affidavit or endorsement" to substitute for that of a physician. R.I. Gen. Laws § 5-34-42. To the extent that

the Hawkins-Slater Act required a physician's certification to accompany an application for a marijuana registry identification card, the later enacted Global Signature Act provided that RNPs could similarly provide such certifications.

In response to these arguments, the Defendant argues that: 1) the "written certification" required by the § 3(15) of the Hawkins-Slater Act is somehow different from the "certification" referenced in the Global Signature Act, and 2) that allowing RNPs to issue written certifications would violate the prohibition against RNPs prescribing controlled substances listed on Schedule I in R.I. Gen. Laws § 21-28-2.08. Neither of these arguments is persuasive.

First, the argument that a "written certification" under the Hawkins-Slater Act is distinct from a "certification" under the Global Signature Act strains logic. There is no more distinction between a "written certification" and a "certification" than there is a distinction between a written signature and a signature. The Defendant attempts to imbue the term "written" with some quality that would have put the issuance of a "written certification" in a class of certifications not contemplated within the Global Signature Act. This is irrational as the stamps, signatures, affidavits, endorsements or verifications referenced in the Global Signatures Act would almost always (if not always by definition) be written. Whether the certification is written or not is of no import. Admittedly, the issuance of "written certification" as defined in R.I. Gen. Laws § 21-28.6-3, encompasses more than the simple ministerial act of signing a form. However, in light of the legislative enactment of the Global Signature Act after the enactment of the definition of "written certification" in the Hawkins-Slater Act the Court should presume that the legislature understood the certifications which RNPs were being authorized to issue. See Barrett v. Barrett, 894 A.2d 891, 898 (R.I. 2006)(stating, "As a general principle of statutory construction, we presume that the General Assembly knows the state of the law when enacting new legislation.").

Second, the Defendant's argument that allowing RNPs to issue written certifications would violate the prohibition against RNPs prescribing Schedule I controlled substances is equally without merit. See R.I. Gen. Laws § 5-34-39(a)(3). The Hawkins-Slater Act does not provide for the prescription of marijuana at all. Rather, it requires a written certification that the palliative effects of marijuana would, for a particular patient/applicant, likely outweigh the health risks presented by marijuana use. R.I. Gen. Laws § 21-28.6-3-15. In fact, the "written certification" form promulgated by the DOH, and the prior versions of this form attached to the Second Amended Complaint within Exhibit A, state in bold print "**NOTE: This does NOT constitute a prescription for marijuana**". (Exhibit 4).

The Global Signature Act is an unmistakable authorization for RNPs to issue certifications in the same manner, and to the same extent, as physicians provided that RNPs' existing scope of practice is not expanded by that authorization. See R.I. Gen. Laws § 5-34-42. When the Global Signature Act was enacted in 2006 the scope of practice of RNPs was defined, in part, by statute and included "utilizing independent knowledge of physical assessment and management of health care and illnesses. The practice includes prescriptive privileges." R.I. Gen. Laws § 5-34-3(3). Given this scope of practice, it is apparent that RNPs were qualified and authorized by statute to determine whether the palliative effects of a course of treatment would outweigh the risks attendant to it. Therefore, upon enactment of the Global Signature Act RNPs were authorized to issue written certifications concerning the medicinal use of marijuana under the Hawkins-Slater Act.

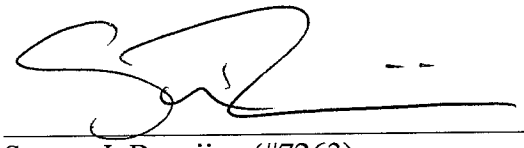
III. Conclusion

The DOH utterly failed to comply with the APA's rulemaking requirements in determining that RNPs should be prohibited from issuing written certifications to patients

seeking marijuana registry identification cards. Furthermore, even if the challenged rule had been adopted in accordance with required procedures, it would have been contrary to the provisions of the Hawkins-Slater and Global Signature Acts. Accordingly, the rule prohibiting RNPs from issuing written certifications must be declared invalid pursuant to R.I. Gen. Laws §§ 42-35-3(c) and 42-35-7.

RHODE ISLAND STATE NURSES ASSOCIATION

By its attorneys,

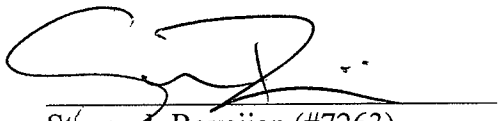


Steven J. Boyajian (#7263)
Robinson & Cole LLP
One Financial Plaza, Suite 1430
Providence, RI 02903
Tel. (401) 709-3359
Fax. (401) 709-3399
sboyajian@rc.com

Dated: May 28, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2013, a copy of the foregoing Memorandum in Support of Motion for Permission to File a Memorandum of Law as Amicus Curiae was mailed, postage prepaid and e-mailed to all pro se parties and counsel of record, as follows: Michael Field, Assistant Attorney General, 150 South Main Street, Providence, RI 02903, mfield@riag.ri.gov; Tom Folcarelli, Esq., 478 A Broadway, Providence, RI 02903, tfolcarelli@gmail.com; and Benjamin Copple, Esq., Department of Health, 3 Capitol Hill, Providence, RI 02908, copple47@gmail.com.



Steven J. Boyajian (#7263)

Exhibit

1

COPY

Michael Fine, MD, Director

Department of Health
Three Capitol Hill
Providence, RI 02908-5097

TTY: 711
www.health.ri.gov

August 22, 2012

Peggy Matteson
26 North Water Street
Portsmouth, RI 02871

Dear Chairwoman Matteson:

This letter is to inform you that effective August 22, 2012, the Rhode Island Department of Health can no longer allow licensed nurse practitioners and licensed physician assistants to authorize the use of medical marijuana for their patients. The Department has carefully reviewed its practices in connection with administration of the state's medical marijuana law in light of both amendments to the medical marijuana statute enacted in June and the increased scrutiny of medical marijuana programs nationwide.

As a result of this review, the Department has determined that the law does not permit either nurse practitioners or physician assistants to authorize the use of medical marijuana. Legal authorization privileges are limited to practitioners who received their licenses pursuant to R.I.G.L. §5-37.

Strict compliance with the state's medical marijuana law is necessary to protect the rights of medical marijuana patients as granted under the law. Medical Marijuana Program participants who received cards under the authorization of a licensed nurse practitioner or licensed physician assistant prior to this change will be able to retain those cards; however, when those cards are due to expire, renewals must be done under the authorization of a licensed physician (M.D. or D.O.).

We appreciate your assistance in this matter. I apologize for any inconvenience that this change has caused.

Sincerely,

Michael D. Fine, MD
Director of Health

Exhibit

2

HEALTH Announcement

Dear Nurse Practitioner:

This letter is to inform you that effective August 22, 2012, the Rhode Island Department of Health can no longer allow licensed nurse practitioners to authorize the use of medical marijuana for their patients. The Department has carefully reviewed its practices in connection with administration of the state's medical marijuana law in light of both amendments to the medical marijuana statute enacted in June and the increased scrutiny of medical marijuana programs nationwide.

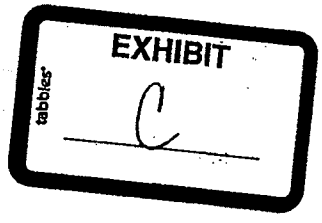
As a result of this review, the Department has determined that the law does not permit either nurse practitioners or physician assistants to authorize the use of medical marijuana. Strict compliance with the state's medical marijuana law is necessary to protect the rights of medical marijuana patients as granted under the law.

Medical Marijuana Program participants who received a registry card based on authorization from a licensed nurse practitioner or licensed physician assistant prior to this change will be able to retain those cards; however, when those cards are due to expire, renewals must be done under the authorization of a licensed physician (M.D. or D.O.). Any applications received by the Department of Health after August 7, 2012 with the written authorization of a licensed nurse practitioner or licensed physician assistant will be denied.

We appreciate your assistance in this matter. I apologize for any inconvenience that this change has caused you or your patients.

Sincerely,

Michael D. Fine, M.D.
Director
Rhode Island Department of Health
Three Capitol Hill
Providence, RI 02908



Connect with us:Rhode Island Department of Health

Exhibit

3

AFFIDAVIT OF DIRECTOR MICHAEL FINE, M.D.

I, Dr. Michael Fine, have knowledge and personally affirm the following representations:

1. I am the Director of the Rhode Island Department of Health and have served in this capacity since July 2011. From March 2011 to July 2011, I was Acting or Interim Director of the Department of Health.

2. The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act (hereafter "Medical Marijuana Act") is codified at Chapter 28.6 of Title 21 of the Rhode Island General Laws.

3. Among the Department of Health's statutory mandates is to issue medical marijuana "registry identification cards to qualifying patients." See R.I. Gen. Laws § 21-28.6-6(a). In order to receive a "registry identification card[]," qualifying patients must submit, among other information a "[w]ritten certification as defined in § 21-28.6-3(14) of [the Medical Marijuana Act]." See R.I. Gen. Laws § 21-28.6-6(a)(1).

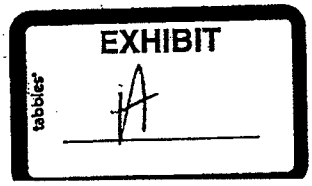
4. The Medical Marijuana Act, specifically R.I. Gen. Laws § 21-28.6-3(14), defines "[w]ritten certification" as:

> "the qualifying patient's medical records, and a statement signed by a practitioner, stating that in the practitioner's professional opinion the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. A written certification shall be made only in the course of a bona fide practitioner-patient relationship after the practitioner has completed a full assessment of the qualifying patient's medical history. The written certification shall specify the qualifying patient's debilitating medical condition or conditions." (Emphasis added).

5. The Medical Marijuana Act, specifically R.I. Gen. Laws § 21-28.6-3(8), also defines "[p]ractitioner" as "a person who is licensed with authority to prescribe drugs pursuant to chapter 37 of title 5 or a physician licensed with authority to prescribe drugs in Massachusetts or Connecticut." (Emphasis added).

6. Chapter 37 of Title 5 of the Rhode Island General Laws pertains to licensed physicians only. Chapter 37 of Title 5 does not provide licensing requirements for certified nurse practitioners or physician assistants. (Certified Nurse Practitioners are licensed pursuant to Chapter 34 of Title 5 of the Rhode Island General Laws. Physicians Assistants are licensed pursuant to Chapter 54 of Title 5 of the Rhode Island General Laws).

7. Prior to my tenure as Director, the Department of Health had accepted applications for medical marijuana containing "written certifications" signed by certified nurse practitioners or physician assistants. For the reasons discussed herein, and after consultations with personnel and attorneys from the Department of Health, the Executive



Office of Health and Human Services, and the Governor's Office – and upon the advise of my legal staff – the Department of Health made the decision that the Medical Marijuana Act required the Department of Health to accept "written certifications" from licensed physicians only and prohibited the Department of Health from accepting "written certifications" from certified nurse practitioners or physician assistants. The reasons for this conclusion are explained below.

8. In March 2011, the Department of Health received a decision (In the Matter of: Petition for Declaratory Ruling Pursuant to R.I. Gen. Laws § 42-35-8 filed with the Department of Health on September 27, 2010). In this decision the hearing officer interpreted the Medical Marijuana Act and opined that the Medical Marijuana Act does "not include[] nurse practitioners in the definition of 'practitioner.'"

9. I became aware of the hearing officer's decision discussed in Paragraph 8 shortly after it was issued and shortly after I became Acting or Interim Director of the Department of Health. Since the Medical Marijuana Act required medical marijuana applications to contain "written certifications" signed by a "practitioner," the hearing officer's observation that the Medical Marijuana Act did "not include[] nurse practitioners in the definition of 'practitioner'" raised the issue or question that past "written certifications" accepted by the Department of Health that contained "written certifications" signed by certified nurse practitioners or physician assistants may have been contrary to the Medical Marijuana Act.

10. In July 2012, my legal staff reviewed the Medical Marijuana Act while drafting revised regulations which would meet the legal requirements of the amendments passed by the General Assembly in June, 2012. The legal staff brought issues to my attention, as well as to the attention of Deputy Director Leonard Green, concerning the Department of Health's acceptance of "written certifications" signed by certified nurse practitioners or physician assistants.

11. While I would contend that the nature of my discussions with my legal staff are protected by the attorney/client, work product, and deliberative process privileges, I can state that as a result of conversations with my attorneys, the issue or question was again raised whether the Department of Health was acting in a manner consistent with the Medical Marijuana Act by accepting "written certifications" signed by certified nurse practitioners or physician assistants, rather than accepting "written certifications" signed only by licensed physicians. Because this was the second time since I became Acting or Interim Director in March 2011 that I had become aware that an attorney had questioned whether the Department of Health was conforming with the Medical Marijuana Act by accepting "written certifications" from certified nurse practitioners or physician assistants, rather than only licensed physicians, I (and others at my direction) began to take additional steps to resolve the issue or question concerning whether the Medical Marijuana Act allowed certified nurse practitioners or physician assistants to provide "written certifications," or whether the Medical Marijuana Act allowed only licensed physicians to provide "written certifications."

12. At or about the same time that my legal staff brought the issues described in Paragraphs 10 and 11 to my attention, as well as subsequently, I had numerous other discussions with personnel and attorneys from the Department of Health, the Executive Office of Health and Human Services, and the Governor's Office over an approximately two (2) week period. These discussions included conversations with the Governor's Executive Counsel Claire Richards, Esquire, and Executive Office of Health and Human Services Chief Legal Officer Jacqueline Kelley, Esquire.

13. While I would contend that the nature of my discussions referenced in Paragraph 12 are protected by the attorney/client, work product, and deliberative process privileges, I can state that as a result of the conversations referenced in Paragraph 12 I became further concerned that the Department of Health was acting in a manner prohibited by the Medical Marijuana Act by accepting "written certifications" signed by certified nurse practitioners or physician assistants, rather than by accepting "written certifications" signed only by licensed physicians.

14. My legal staff's written legal opinions were expressed to me in two (2) memoranda, which I am advised by my attorneys are protected by the attorney/client, work product, and deliberative process privileges. For purposes of identifying these memoranda they are:

    a. From Attorney Sternick to Deputy Director Green/Attorney J. Kelley, dated July 25, 2012 re: Medical Marijuana: Registry identification card issuance to qualifying patients (1 page), and

    b. From Attorney Sternick to Director Fine/Deputy Director Green/Christine Hunsinger/Dara Chadwick/Jacqueline Kelley, dated August 2, 2012 re: Medical Marijuana Program: Legal ability of individuals to write certifications for medical marijuana (2 pages).

    c. Because these memoranda are privileged, and because much of the other decision making was done through oral discussions, I am providing this Affidavit to explain the Department of Health's decision making process as it relates to this case.

15. Accordingly, as a result of all the foregoing – namely the hearing officer's decision and the numerous conversations with Attorneys Sternick (Department of Health), McIntyre (Department of Health), Richards (Office of the Governor), and Kelley (Executive Office of Health and Human Services), and upon the advice of the legal counselors – the Department of Health concluded that the acceptance of "written certifications" signed by certified nurse practitioners or physician assistants was contrary to the Medical Marijuana Act and that only licensed physicians may submit "written certifications" in accordance with the Medical Marijuana Act.

16. In arriving at the decision expressed in Paragraph 15, the Department of Health also considered the so-called "Global Signature Authority" statute set forth in R.I. Gen. Laws § 5-34-42, which provides:

> "Whenever any provision of the general or public law, or regulation requires a signature, certification, stamp, verification, affidavit or endorsement by a physician, it shall be deemed to include a signature, certification, stamp, verification, affidavit or endorsement by a certified registered nurse practitioner; provided, however, that nothing in this section shall be construed to expand the scope of practice of nurse practitioners."

17. After considering R.I. Gen. Laws Section 5-34-42, and upon the advice of legal counselors, the Department of Health determined that the "Global Signature Authority" statute did not permit certified registered nurse practitioners to submit "written certifications" under the Medical Marijuana Act in lieu of "written certifications" by a licensed physician for at least three (3) reasons:

a. First, the so-called "Global Signature Authority" statute generally allows a certified registered nurse practitioner's signature, certification, stamp, verification, affidavit, or endorsement to be used when a general or public law, or regulation, requires the signature, certification, stamp, verification, affidavit, or endorsement by a physician. The so-called "Global Signature Authority" statute also expressly provides that "nothing in this section shall be construed to expand the scope of practice of nurse practitioners."

b. Because the definition of "written certification" includes more than simply requiring a "signature, certification, stamp, verification, affidavit or endorsement by a physician," the provisions of R.I. Gen. Laws § 5-34-42 are not applicable to "written certifications." Specifically, the definition of "written certification" within the Medical Marijuana Act requires a medical assessment of a patient and the providing of a medical opinion. See R.I. Gen. Laws § 21-28.6-3(14)(requiring "a statement signed by a practitioner, stating that in the practitioner's professional opinion the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient"). The definition of "written certification" within the Medical Marijuana Act also requires that the "written certification" be made "only in the course of a bona fide practitioner-patient relationship after the practitioner has completed a full assessment of the qualifying patient's medical history." See R.I. Gen. Laws § 21-28.6-3(14). Because the definition of "written certification" requires a medical assessment of a patient and a "practitioner's professional opinion" regarding the benefits/risks of medical marijuana – and considering the reasons and statutes cited in Paragraph 17(c) – allowing "written certifications" by certified nurse practitioners falls outside the scope of the so-called "Global Signature Authority" statute and otherwise would expand the practice of certified nurse practitioners.

c. Second, while the so-called "Global Signature Authority" statute generally allows for certified registered nurse practitioners to have "prescriptive privileges," the Rhode Island General Laws expressly prohibit certified registered nurse practitioners from having prescriptive privileges for "controlled substances from Schedule I." R.I. Gen. Laws § 5-34-39(a)(3). Marijuana is a Scheduled I drug. See R.I. Gen. Laws § 21-28-2.08(d)(10). An interpretation or conclusion that would prohibit certified nurse practitioners from prescribing marijuana, but would allow certified nurse practitioners to provide "written certifications" for marijuana seems to be an interpretation not permitted by the Medical Marijuana Act.

d. Third, even if the so-called "Global Signature Authority" statute did allow certified nurse practitioners to submit "written certifications," such general authority would conflict with the more specific Medical Marijuana Act that limits "written certifications" to licensed physicians only. Upon the advice of legal counselors, the Department of Health determined that even if a conflict did exist between the Medical Marijuana Act and the "Global Signature Authority" statute, the more specific Medical Marijuana Act prohibition should control, and therefore, for all these reasons, the Department of Health concluded that the "Global Signature Authority" statute does not permit "written certifications" to be submitted by certified nurse practitioners.

e. Similarly, the Global Signature Authority extended to physicians assistants by Rhode Island General Law Section 5-54-8(c) limits the prescriptive authority of physician assistants, and does not authorize prescription of Schedule I drugs.

18. As a result of the conclusions expressed in Paragraphs 15 and 17, the Department of Health had to determine what should be done with pending and future applications for medical marijuana, which had been (or would be) submitted with "written certifications" from certified nurse practitioners or physician assistants. Generally speaking, the two options were to continue to allow the Department of Health to accept "written certifications" signed by certified nurse practitioners or physician assistants in contravention of the conclusions expressed in this Affidavit, or to require the Department of Health to accept "written certifications" signed only by licensed physicians consistent with the conclusions expressed in this Affidavit. Considering the conclusions reached, the determination was made that the Department of Health had to act in a manner consistent with the Rhode Island General Laws and specifically the Medical Marijuana Act.

19. Accordingly, with respect to all pending medical marijuana applications:

a. the Department of Health notified individuals whose applications contained "written certifications" signed by certified nurse practitioners or physician assistants, and whose applications were pending for fifteen (15) days or less, that their applications had been denied since they did not comply with the Medical Marijuana Act;

Exhibit

4

Department of Health
Medical Marijuana Program
Office of Health Professionals Regulation, Room 104
3 Capitol Hill, Providence, RI 02908-5097

PRACTITIONER FORM

Instructions: *Please complete patient information and have your practitioner complete all other sections of this form in order to comply with the registration requirements of the Rhode Island Medical Marijuana Act. Please attach this form to the Patient Application Form and mail the completed forms to the address listed above.*

NOTE: This does NOT constitute a prescription for marijuana

Patient Name, Date of Birth and Phone Number:

Full Name

Birth Month | Birth Day | Birth Year | Phone

Practitioner Name, License Number and Address Information

Full Name

License Number

1st Line Address (Apartment/Suite/Room Number, etc.)

Second Line Address (Number and Street)

City | State | Zip Code

Phone | Email Address (Format for email address is Username@domain e.g. applicant@isp.com)

These are the **ONLY** approved qualifying debilitating medical conditions - Check the appropriate box(es):

- ☐ 1. Cancer or the treatment of this condition
- ☐ 2. Glaucoma or the treatment of this condition
- ☐ 3. Positive status for Human Immunodeficiency Virus (HIV) or the treatment of this condition
- ☐ 4. Acquired immune deficiency syndrome (AIDS) or the treatment of this condition
- ☐ 5. Hepatitis C or the treatment of this condition

A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:
(Check all appropriate box(es))

- ☐ 6. Cachexia or wasting syndrome
- ☐ 7. Severe, debilitating, chronic pain-(specify)_____
- ☐ 8. Severe nausea
- ☐ 9. Seizures, including but not limited to those characteristic of epilepsy
- ☐ 10. Severe and persistent muscle spasms, including but not limited to, those characteristic of multiple sclerosis or Crohn's disease
- ☐ 11. Agitation related to Alzheimer's Disease

Comments:

Practitioner" means a person who is licensed with authority to prescribe drugs pursuant to chapter 37 of title 5 or a physician licensed with authority to prescribe drugs in Massachusetts or Connecticut.

I hereby certify that I am a practitioner as defined above. I have a practitioner-patient relationship with the qualifying patient and have completed a full assessment of the patient's medical history. The above-named patient has been diagnosed with a debilitating medical condition as listed above. Marijuana used medically may mitigate the symptoms or effects of this patient's condition. Further, it is my professional opinion that the potential benefits of the medical use of marijuana would likely outweigh the health risks for this patient.

Practitioner's Printed Name:_____

Practitioner's Signature: _____ Date of Signature:_____

This form is to be completed by the Attending Practitioner.