

Paul Twomey  
44 Ring Rd.  
Chichester, NH 03258

Clerk Eileen Fox  
New Hampshire Supreme Court

Re: Linda Horan v State of NH  
2015-0734

Dear Clerk Fox,

I am writing to you concerning the above case pursuant to Supreme Court Procedural Rule 29 (1). I was the attorney for the Appellee in Superior Court and have no further clients with any interest in this case. In writing to you, I am not waiving any objection to either personal or subject matter jurisdiction, both of which are lacking in this appeal.

Rule 29(1) allows any party to inform the Supreme Court of the death of a party and then states that a representative **may** be substituted for the deceased “and proceedings shall then be had as the Supreme Court may direct.”

The Appellee in the above case, Linda Horan, died on February 1, 2016. Her death was widely reported and her obituary may be found at <http://www.legacy.com/obituaries/unionleader/obituary.aspx?pid=177681828>

Linda Horan left no representative authorized to take any steps in this case and for the reasons that follow the Court must and should dismiss the appeal with prejudice.

Ms. Horan (hereinafter Appellee) filed a Petition for Preliminary Injunction and Declaratory Judgment seeking an order directing the State of New Hampshire (Appellant) to issue her a therapeutic cannabis patient registry card pursuant to

RSA 126:X. The Superior Court granted the request for a temporary injunction ordering the state to provide her with the card, and the order was made permanent at the request of Appellant.

Subsequently Appellant voluntarily stated that it would issue such cards to all qualified patients in New Hampshire and thereafter filed a notice of appeal with this Court that did not seek review of the order to issue a patient ID card to Appellant which had been sought by the Appellant and issued by the Superior Court.

Rather Appellant sought review of two issues not ruled upon by the Superior Court and concerning which Appellant had failed to request findings of fact and rulings of law. Appellant's Notice of Appeal states that it sought review of

“Whether RSA Chapter 126 – X authorizes a New Hampshire patient to obtain or process cannabis from a source other than the alternative treatment center that the patient designated when applying for a registry identification card with the New Hampshire Department of Health and Human Services (DHHS) or otherwise designated with DHHS.”

The Preliminary Injunction issued by the Superior Court did not constitute an order on whether a patient with a therapeutic cannabis card could either “obtain” or “possess” cannabis that was obtained from a source other than the treatment center designated by the patient. Rather both the preliminary and final orders merely ordered the Appellant to issue a card to the Appellee without regard to the uses to which such card could be put.

When the State filed its motion to make the Preliminary Injunction Permanent, it did not even reference any such order concerning any putative right to obtain or possess; rather it described the Court's order as only reaching the question of whether a card should be issued, “Through that order the Court

mandated that DHHS process the Petitioner's application for a registry identification card . . . without undue delay . . . ." Nowhere in its motion did the State put either the Court or the Appellee on notice that it was seeking to make permanent an order on the questions posed in its Notice of Appeal.

Given that the Appellee has died, it is totally impossible for her or any putative representative to have any standing or interest in the issues raised by the Appellant. Even while she lived, there was absolutely nothing in the record to indicate that she had either obtained or possessed cannabis within the State of New Hampshire. During the proceedings she indicated an intention to travel to the State of Maine in order to obtain cannabis there if she received her patient card. (Although it is nowhere in the record of this case, press reports indicated that she did in fact do so). Nothing in the record established either the obtaining or possession of cannabis in New Hampshire by the Appellee.

Nothing in RSA 126:X or any other law of the state of New Hampshire could either authorize or forbid obtaining marijuana in another state. Conduct in another state is governed solely by the laws of that state and any applicable federal law. (All enforcement of federal laws concerning medical marijuana by the Justice Department have been suspended for the last two years by the Budget Reconciliation Acts). No ruling issued by this Court could have either authorized or forbidden the obtaining of marijuana or any chemical derivatives in another

state on the part of the Appellee. The notice of appeal thus raises an issue on which this Court lacks subject matter jurisdiction.

Similarly, there is no personal jurisdiction on the issue of whether a person with a therapeutic cannabis card can possess marijuana not obtained from a NH alternative treatment center and no case or controversy between the State and the Appellee on this issue—both while she was alive and certainly after her death.

Nothing in the record of this case establishes or indicates that Linda Horan possessed marijuana in New Hampshire. The case was solely based upon a request for an order directing the state to issue her a patient ID card. She was never arrested for possession of cannabis and she had no more standing to litigate that issue than any other person in the state. Under the record of this case while alive she had even less ability to litigate the question presented than the undifferentiated taxpayer in *Duncan v. State of New Hampshire*, 166 NH 630 (2014), where the Court held that “Part II, Article 74 does not authorize this Court to render advisory opinions to private individuals... not does it empower the court to ‘issue advisory opinions to either branch of the legislature on existing legislation’” . (at page 640 ).

Once she passed away, Appellant was no longer a person and could not have an interest in the issues presented by this appeal sufficient to establish standing, and no representative appointed in her stead could have any such interest derived from her. The State wishes to litigate important if not critical medical issues

without having presented the issues to the Superior Court and without any party of interest on the other side. In the absence of any opponent whatsoever, never mind one with an actual adverse interest sufficient to establish standing, the State is seeking an advisory opinion forbidden by Article 74 of the New Hampshire Constitution.

The *Duncan* Court held that, except for its power to advise the legislature on proposed laws, “the judicial power in this State is limited to deciding **actual**, and not hypothetical, cases.” (at page 641). The Court also noted that, “(S)tanding under the New Hampshire Constitution requires parties to have personal legal or equitable rights that are adverse to one another...with regard to an actual, not hypothetical, dispute... which is capable of judicial redress” (at p.641 ).

Nothing in the record of this case even suggests that Linda Horan, while alive or deceased, had an actual dispute with the state over the obtaining or possession of cannabis capable of resolution in New Hampshire by New Hampshire courts. Rather, the State is seeking an advisory opinion on a case that doesn't exist with a person or persons who may never exist.

The death of the Appellee, the failure of the state to preserve the issue they seek to appeal by either requesting a ruling of law, the failure of the state to seek to make a permanent order on the two issues raised here through its failure to even mention them in their motion to make the order permanent, the fact that there is no

case or controversy, the prohibition of Article 74 against advisory opinions, and the fact that the Court lacks both personal and subject matter jurisdiction all require that this Court dismiss this appeal pursuant to Rule 29(1).

Respectfully submitted,

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Paul Twomey, Bar No. 2589

cc. Francis Fredericks

Jill Desrochers

NH Dept of Justice