



5501 Eagle Rock Ave. Suite C2
Albuquerque, NM 87113
505.639.5709
505.433.5812 fax
www.rjvlawfirm.com

Attorneys at Law
Ryan J. Villa
ryan@rjvlawfirm.com

Katherine Loewe
kate@rjvlawfirm.com

Richelle Anderson
richelle@rjvlawfirm.com

Kelly K. Waterfall
kelly@rjvlawfirm.com

Daniel C. Chadborn
daniel@rjvlawfirm.com

Jacqueline L. Hoswell
jacqueline@rjvlawfirm.com

November 6, 2025

Via email only

Taylor Rahn
Taylor@roblesrael.com

Re: *McClendon, 95-cv-024 JB/KBM*
Medical CAP production and compliance

Dear Ms. Rahn,

I am writing regarding Defendant's compliance with the new Medical Corrective Action Plan. After Defendant's first production, we briefly addressed the deficiencies in an email on September 29, 2025.¹ These included that:

- of the 17 initial plans that were due, only 5 were provided;
- the dates included in those plans were tentative, despite the fact that the CAP itself contains deadlines;
- and that Defendant indicated it would work through the areas of the CAP as able based on limited human resources versus as required by the agreement.

We set out three examples of specific concerns with Items 6, 11, and 14. We requested evidence of completion for items Defendant was claiming completion of (e.g. Copies of the approved Nursing Guidelines for the identified 10 conditions).

October 14, 2025 Update

The CAP required at a minimum the production of plans for each area in the initial production. Subsequent monthly productions require the production of specific documentation.

On October 14, 2025, Defendant provided its second update on the new Medical CAP. It provided:

¹ This was also attached to our letter to Dr. Kumar and is reattached here.

- 5 plans (Item 1-Staffing Plan, 2-Staffing Levels, 3-Clinical and Nursing Guidelines, 5-Operational Supervision, and 11-PTC Staffing and Patient monitoring)
- The 2025.10.02 CQI Committee Charter
- 2025.10.02 CQI Minutes
- A document called “Intake Process Improvement” which appears to address only the PTC at this time.
- Draft PTC process map which is related to the above document.

The update was not encouraging.

- 12 plans remain outstanding.
- The monthly production items identified in the CAP were largely not provided.
- Multiple deadlines have passed.
- The plans in place do not reflect attention to or compliance with deadlines. **For example, Item 1 – Staffing:**
 - Required Defendant to provide an approved staffing plan by 10/17/2025.
 - The CAP Plan provided by Defendant indicated that Defendant did not start on this item until 9/18/2025.
 - The CQI minutes reflect that sometime after 9/18/2025 Mr. McNease reached out to the staffing consultant to see if they were available to complete the analysis needed for the plan. The consultant was not available.
 - The plan indicates that starting on 10/02/2025 – Defendant will reach out another firm to conduct the analysis with a due date of 10/23/2025.
 - The plan indicates that the staffing analysis will be completed by 11/28/2025.

Without the staffing analysis, Defendant cannot complete the rest of the Staffing Item. Dr. Kumar has recommended Defendant complete this staffing analysis for more than a year prior to the 8/18/2025 start date of the CAP. See, e.g., Dec. 2024 Report at 24, 27. A staffing analysis was part of each draft of the CAP. From our perspective, there is no justification to wait for a date less than a month before the analysis was due to reach out to the consultant to determine their availability, particularly given this long-running recommendation.

- **Item 2** – Staffing Levels plan contains 4 items with start dates of 9/18/2025 – all of which say “not started” for the status.
- **Item 3** – Clinical and Nursing Guidelines – claims completion of 17 tasks, but provides no evidence of completion. Item 3 also requires evidence that all Clinical Practice Guidelines Templates and Nursing Guidelines templates are built in the EMR and are in use by 11/16/2025. The Item 3 Plan sets the “go live with templates” date on 3/06/26, well past the CAP deadline.

At the same time, it appears that templates must also be live and in place as Goal # 5 tracks sustainability and contains audit information for sick calls using nursing nets. This requires explanation.

For Item 3 the CAP requires monthly production as follows, but most items were not provided.

Monthly:

- An updated status report that outlines the current progress of each effort/action step identified in the project plan.
 - Minutes from leadership meetings discussing project progress, challenges, and solutions to meet goals and deadlines.
 - List of guidelines selected by the teamwork group.
 - An IT ticket status tracker⁴.
 - A tracking report that lists staff members requiring training, along with their due dates and training status, including an overdue list.
- **Item 11** – the plan addresses the PTC. By 9/17/2025, Defendant was to demonstrate that 95% of staff were trained on the new forms for the PTC and provide a copy of logs showing that the hourly PTC rounds are documented and reviewed by supervisors. This requires that the PTC be staffed and open. However, the PTC Plan indicates that hiring for the PTC would start after the deadline on 9/18/2025.

October 2025 Visit with Dr. Kumar

During Dr. Kumar’s October 14-16, 2025 site visit we met to address the CAP. Plaintiffs made clear that CAP was not optional. It is an enforceable agreement with deadlines. Dr. Kumar made clear that the dates are reasonable if Defendant takes the necessary and timely steps to achieve them, including requesting the resources it needs to do so. It is the framework on which Defendant will build the foundation for adequate medical care at the facility and meet patients’ basic needs.

November 2025 Update

The CAP sets out clear timeframes and includes lists of what is to be produced initially, monthly, and what is required to show completion. Please review the Time Frames, Monthly Production, Evidence of Completion, and Addendum to ensure compliance with the CAP.

To date, Defendant is non-compliant with the CAP. Defendant is non-compliant because it has not provided the records and information required in the monthly CAP update. Defendant is also non-compliant because deadlines have passed *and* Defendant indicates in each of the 5 plans provided that it intends to be non-compliant with future deadlines. The Court Order has a process to address instances where Defendant determines that a deadline set forth in the CAP has become “unworkable.” Doc. 1785, ¶ 3(a). To date, Defendant has not availed itself of this process.

Defendant must utilize the process set out in Doc. 1785. This is the same process that has been in place for all of UNMH’s tenure. Historically, Defendant has not complied with deadlines or the process, and when Plaintiffs have negotiated new deadlines with Defendant, Defendant has not complied with those.

For deadlines that have already passed, Plaintiffs propose that Defendant immediately utilize the process set out in Doc. 1785 ¶ 3(a) and by **no later than COB on November 13, 2025** alert

Plaintiffs which deadlines it has already missed and propose new deadlines. In doing so, please keep in mind that Plaintiffs could have already moved on these missed deadlines and please provide information as to why a new deadline is needed.

For all items required to be produced by the CAP, please produce these in the November 14, 2025 update.

Meetings

During the site visit, Defendant made the offer to include Plaintiffs' attorneys in meetings regarding the CAP with Dr. Kumar. We accepted this invitation. Please ensure we are included in the meetings as discussed. Regardless of what we learn in meetings, and the forward progress presented, Defendant must still produce documentation required by the CAP.

Conclusion

Please correct us if we overlooked any data or documents provided. Please correct us if we misunderstood information presented.

Sincerely,

Katherine Loewe

Katherine Loewe

cc:

Dr. Kumar
Ken Martinez
Warden Smith
DW Otero
Joseph Sanchez
Natalie Vance
Adrienne Bachtel
Jennifer James
Rodney McNease
Benjamin Fuller
Counsel for Plaintiffs