



CRIME COMMISSION

SEMI-ANNUAL REPORT
Created by Chairman Patricia Lee

December 31, 2012

Members as of last regularly scheduled Commission Meeting i.e. October 10, 2012:

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SUMMARY/OVERVIEW : With the impending 2013 Legislative Session looming, the Commission has been focused on reviewing and vetting various anticipated crime-related BDRs in which the Commission believes the Governor will have an interest. During the October 10, 2012 quarterly meeting of the Commission, several BDRs were identified and preliminarily discussed. Because the BDRs themselves have not yet been published, the Commission endeavored to contact the various proponents of the BDRs to gain additional insight as to what the BDRs would contain. Several legislatures chimed in with varying levels of specificity as to what is intended by their respectively sponsored BDRs, and many of the BDRs were merely resubmitted, after having been rejected or not considered in previous legislative sessions. The following is a summary of the issues discussed during the last Crime Commission meeting as well as a brief forecast of certain issues upon which the Commission intends to follow up.

I. BDR 137 – *(Revises provisions relating to DNA testing of person arrested for and convicted of certain felonies)*

A. What is it?

There were several attempts in past sessions to pass “All Felony Arrestee DNA” Bills, one of which was AB 552, commonly referred to as “Brianna’s Law.” These laws would mandate DNA testing of all persons arrested on felony charges (versus taking samples at the time of conviction). Similar legislation was introduced during the 2009 Legislative Session (AB 234). The law is designed to increase the effectiveness of solving cold cases and identifying suspects in sexual assault cases.

B. Concerns

Generally, the Commission supports the collection of DNA from all felony arrestees, however, there are concerns about funding crime labs, expunging samples and overall logistics, including the amount of time it takes to test collected samples, and the manner in which the samples would be collected, stored and documented. There is also some concern that the law itself may violate a person’s due process rights, although, this appears to be a secondary concern. The primary concern is funding. Other States that have implemented this law have tapped into DMV and/or Court fees.

C. Recommendations/Follow Up

Both Las Vegas and Washoe County police departments are currently working with former Assemblywoman, (now Senator), Debbie Smith and the Denison family to provide some suggested language. Generally speaking, Metro would be opposed to any measures that limit or restrict our current DNA laws, however, Sheriff's and Chiefs would not support it unless there is a reasonable and articulated source of funding for the implementation of the law. There are significant questions that must still be addressed in order to determine the fiscal impact of this law, including (1) how much it will cost to collect and store DNA samples; (2) the percentage of the samples that will actually be tested and under what circumstances those samples will be tested; and (3) the cost projections for the collected samples that will actually be tested. It is presumed that the price differential between simply collecting and storing the samples, will be substantially less than the costs associated with testing the collected samples. The Commission has invited Senator Debbie Smith to attend the next Crime Commission meeting on January 9, 2013 in hopes that she can offer some additional insight on the concerns set forth herein and to further explore whether she or anyone else has looked at similar models in other states for guidance. We are currently awaiting Senator Smith's response.

II. BDR – 15-10 (*Expands Castle Doctrine for Nevada*)

A. What is it?

A Castle Doctrine is an American Legal doctrine that designates a person's abode (or, in some states, any place legally occupied, such as a car or place of work) as a place in which the person has certain protections and immunities and may in certain circumstances use force, up to and including deadly force, to defend against an intruder without becoming liable to prosecution. Nevada's Castle Doctrine is codified in NRS Chapter 200 and currently allows a person to use deadly force when in fear for one's life.

Assemblyman Hambrick explained that the proposed legislation was originally introduced back in 2009, and then again in 2011 (See AB 288). It passed committee both times but for whatever reason, never made it to the floor for a

vote. Assemblyman Hambrick explains that the proposed legislation simply seeks to add civil immunity for those protected under the existing Castle Doctrine. A brief review of the proposed changes reveal three additional material components: (1) adding motor vehicles as a place where deadly force can be used against an intruder; (2) specifying that there is no duty to retreat before exerting deadly force; and (3) implementing a presumption that deadly force is justified when someone has illegally gained entry into your home, car or place of employment.

B. Concerns

The general consensus amongst the Commission is that a person should have the right to defend themselves by using deadly force, if they are in reasonable fear for their lives, no matter where the threat occurs. However, the Commission is skeptical whether expanding the presumption of being in fear for one's own life when an intruder enters one's domicile, to include the additional locations of one's motor vehicle or place of employment, is wise. The Commission did not opine on the proposed language seeking to add civil immunity against any person protected under this statute, as this is largely a civil, and not criminal consideration.

C. Recommendations/Follow Up

The Commission, for now, is satisfied that Nevada's current statutory language is sufficient to allow our citizens to use deadly force to protect themselves when they believe that their lives may be in peril. So long as the victim can justify his or her actions, the law currently provides adequate protections whether the intruder invades the home, car or place of employment. The Commission does not necessarily endorse expanding the scope of the presumption of condoned deadly force for intrusion into one's vehicle or place of employment since the law already allows for self-defense and expanding the law could potentially lead to abuse. Again, the Commission takes no official stance with respect to the civil immunity language proposed in the BDR as this is largely a civil, not criminal concern.

III. BDR 31 (*Provides authority for the Board of Medical Examiners to investigate and prosecute persons who practice medicine without a license in Nevada*):

A. What is it?

According to former Senator Sheila Leslie, the bill's sponsor, she proposed this legislation in response to the rising rate of non-licensed doctors, including those that prey upon the immigrant community, who have caused death or substantial bodily harm. Anecdotally, Senator Leslie relays the case of a gentlemen whose wife had plastic surgery performed in her bathroom and ended up dying as a result. The husband went to the Board of Medical Examiners to seek some recourse, only to learn that the Board has no investigative or prosecutorial authority regarding un-licensed doctors in Nevada. When the widowed husband went to the police, they preliminarily stated that they could not do anything because the Board of Medical Examiners did not act. Ultimately, the perpetrator was arrested and prosecuted. Senator Leslie states that the police do not necessarily have the expertise or resources to determine who is or is not lawfully practicing medicine whereas the Board of Medical Examiners would be a perfectly well suited regulatory agency to investigate and possibly even prosecute this crime. So far, Leslie has not considered the fiscal impact of her proposed bill.

The Board is currently vested with the authority to seek injunctive relief from the Courts to prevent people from continuing to practice medicine unlawfully. But if they are prosecuted, convicted, and imprisoned, then the injunctions are simply redundant since people in jail cannot engage in the unauthorized practice of medicine.

Additionally, the Department of Health and Human Services does field many complaints from victims of or witnesses to the unauthorized practice of medicine, however, that agency is only able to regulate the facilities from which the illegal activity is occurring and nothing else.

B. Concerns

Douglas Cooper, the Executive Director of the Board of Medical Examiners, is adamantly opposed to this type of legislation. NRS Chapter 630 generally governs the conduct of the Board of Medical Examiners. NRS Chapter 630.400 makes it a

Class D Felony to practice medicine without a license. NRS Chapter 360.130(1)(a) generally vests the Board with the authority to enforce the provisions of this Chapter. Mr. Cooper has interpreted this to mean that the Board is vested with the authority to enforce regulatory compliance, but not with criminal investigative or prosecutorial authority. Director Cooper goes on to say that the Board has neither the resources nor the trained staff to act as police officers. Additionally, the costs associated with training, workers' compensation, PERS retirement funding, 24 hour response, etc. would be prohibitive. Director Cooper suggests that increased public awareness within the immigrant community, and forging relationships between the Board and law enforcement agencies, would go a long way in cracking down on this crime (which is essentially the crime of assault and battery according to Cooper). The Board currently does work to some extent with the police officers, DEA and FDA in Northern Nevada to address this issue. Director Cooper further recommends that the AG's office, which already investigates matter such as Medicaid/Medicare fraud, would be well suited to take on the task of investigating and prosecuting this crime.

C. Recommendations/Follow Up

Preliminarily, the Commission generally opposes vesting the Board of Medical Examiners with prosecutorial authority. The Commission would, however, support some form of legislation that encouraged a stronger investigative role for the Board in order to crack down on those practicing without a license, and further strengthens or streamlines the reporting of such crimes between all regulatory and policing agencies and the District Attorney's office. The Commission would also support legislation that prioritized the reporting to, and prosecution of this crime by the Attorney General's Office. It is unclear whether this BDR will continue to be pushed through the legislature in 2013 now that Senator Leslie is no longer holding office.

IV. BDR 37-38 (*Revises provisions governing firearms*)

A. What is it?

According to Senator Settlemeyer, he, together with the Sheriff's and Chief's Association, are looking to propose some language that streamlines the CCW process, including combining the CCW card with your driver's license. Although he states that there has been no real discussion regarding blanket reciprocity with gun owners in other

States that want to carry in Nevada, he did mention that the current laws allow for reciprocity with States that have certification requirements similar to our own. Although it is unclear whether this issue would be incorporated into the not-yet drafted BDR, Senator Settlemeyer did mention that he was not in support of denying CCWs to those who are, were or believed to be or have been in gangs. Creating such a blanket ban would come with serious constitutional concerns.

B. Concerns

Because it is unclear whether the BDR intends to address CCW issuance to purported or known, past or present gang members, the Commission refrained from discussing the same. There were some concerns, however, about the administrative logistics of combining one's CCW with their Driver's License. For instance, the timing of the renewal requirements for one's drivers' license does not necessarily coincide with the timing requirements for CCW renewals, and it is unclear how the DMV would deal with the revocation of one's CCW. It is presumed that a new driver's license would need to be issued in those circumstances, which would place both a monetary and administrative burden on the DMV.

C. Recommendations/Follow Up

In light of the administrative challenges presented by combining one's CCW with one's driver's license, the Commission does not recommend supporting this legislation at this time.

V. BDR 40- -46; 89 (Revises provisions relating to the medical use of marijuana)

A. What is it?

According to former Assemblyman, now Senator Segerblom, his proposal is similar to Colorado's medical marijuana law (prior to the 2012 amendments legalizing marijuana for recreational use) which would allow for tightly regulated grow houses and dispensaries whereat citizens with medical marijuana cards could legally purchase marijuana. This proposed legislation was inspired, in part, by a 2012 District Court decision rendered by Judge Donald Mosley who declared NRS 453A unconstitutional. Generally, the use of marijuana for medicinal purposes is lawful in Nevada. NRS Chapter 453A specifically

outlines the requirements for registration, the issuance of identification cards, exposure to State prosecution for failing to abide by the provisions of the Chapter, a disclaimer of insulation from prosecution on Federal charges, etc. Judge Mosley noted in his decision, (which is not binding precedent as this decision is at the District Court level versus the Nevada Supreme Court level), that the current statute as written falls short in providing a realistic manner in which a qualified purchaser and a qualified distributor of marijuana may function, thus frustrating the clear intent of the Nevada Constitutional Amendment. Article IV, Section 38 of the constitutional mandate commands the Legislature to set forth and authorize an appropriate method for supply of the plant to patients legally eligible to use it. In an apparent effort to comply, the Legislature directed the State Department of Agriculture to establish a program to produce and deliver marijuana for medicinal purposes. This has not been done. The law is apparently all over the place in that NRS 453 A 300 states, in part, that the possession of marijuana, or possession in an effort to “assist” in its medical use (1) “in any public place or in any place open to the public,” strips the offender of any exemption from prosecution. This prevents any store front medical marijuana provider a reasonable business method of making such marijuana available. The reasonable conclusion, held Judge Mosley, is that any such transfer of marijuana needs occur in a private residence or secretly in some back alley.

More perplexing still, is NRS 453A 300(1)(f) which states that there is no exemption from prosecution if the medical marijuana is delivered for “consideration” which, of course, prohibits the sale of the substance. “It is absurd to suppose that from an unspecified source ‘free’ marijuana will be provided to those who are lawfully empowered to receive it.”

Finally, the Court noted the absurd nature of the amounts one is able to legally possess as listed in the statute, to wit: (1) one ounce of usable marijuana; (2) three mature marijuana plants; or (3) four immature marijuana plants. This would effectively mandate that a purveyor/distributor could possess only an amount sufficient to accommodate one recipient/customer at a time. He would then arguably have to go to his supplier for another dose (A supplier who is apparently under the same constraint).

The bill being proposed by Assemblyman Segerblom would seek to substantially mimic the former laws of Colorado and ultimately strives to provide for the tightly regulated and responsible distribution of marijuana to those legally permitted to possess it.

B. Concerns

Mr. Paul Rosario, the ex-officio DEA member of the Crime Commission, emphatically stated that any dispensaries or grow houses would be targeted, raided and shut down by Federal Agents since the use of marijuana for any purpose would be in conflict with current Federal law. Thus, the concern of the Commission, is that passage of this law would expose our citizens to aggressive Federal prosecution, despite being harmonious with the spirit and intent of the constitutional amendment allowing for medical use of the product in our State. The Commission questioned whether or not the Department of Justice's implicit position that it would refrain from prosecuting those in compliance with State law, was an accurate understanding. Mr. Rosario indicated that it was not. The DEA has published its official position on line at:

http://www.justice.gov/dea/docs/marijuana_position_2011.pdf

In this paper, the DEA's introductory language reads:

THE DEA POSITION ON MARIJUANA

Marijuana is properly categorized under Schedule I of the Controlled Substances Act (CSA), 21 U.S.C. § 801, et seq. The clear weight of the currently available evidence supports this classification, including evidence that smoked marijuana has a high potential for abuse, has no accepted medicinal value in treatment in the United States, and evidence that there is a general lack of accepted safety for its use even under medical supervision.

The campaign to legitimize what is called "medical" marijuana is based on two propositions: first, that science views marijuana as medicine; and second, that the DEA targets sick and dying people using the drug. Neither proposition is true. Specifically, smoked marijuana has not withstood the rigors of science—it is not medicine, and it is not safe. Moreover, the DEA targets criminals engaged in the cultivation and trafficking of marijuana, not the sick and dying. This is true even in the 15 states that have approved the use of "medical" marijuana.

On October 19, 2009 Attorney General Eric Holder announced formal guidelines for federal prosecutors in states that have enacted laws authorizing the use of marijuana for medical purposes. The guidelines, as set forth in a memorandum from Deputy Attorney General David W. Ogden, makes clear that the focus of federal resources should not be on individuals whose actions are in compliance with existing state laws, and underscores that the Department will

continue to prosecute people whose claims of compliance with state and local law conceal operations inconsistent with the terms, conditions, or purposes of the law. He also reiterated that the Department of Justice is committed to the enforcement of the Controlled Substances Act in all states and that this guidance does not “legalize” marijuana or provide for legal defense to a violation of federal law. While some people have interpreted these guidelines to mean that the federal government has relaxed its policy on “medical” marijuana, this in fact is not the case. Investigations and prosecutions of violations of state and federal law will continue. These are the guidelines DEA has and will continue to follow.

C. Recommendations/Follow up

This was by far the most controversial of the issues considered by the Commission during its last quarterly meeting. There appears to be a fundamental tension between the Department of Justice’s official position on the prosecution of those in possession of medical marijuana as articulated by Attorney General David W. Ogden, and the DEA’s interpretation of that position. The Commission agrees that the people of the State of Nevada have spoken and have condoned the possession and use of medical marijuana for medicinal purposes. The Commission further agrees that the Nevada constitutional amendment as written, does not outline any realistic guidelines for those with legitimately obtained medical marijuana licenses, to obtain the substance. The Commission believes that further vetting of the proposed bill, and the impact to our citizens, would be useful. Accordingly, the Commission intends to invite Senator Segerblom, as well as a representative from the State’s Attorney General’s Office to attend and offer some additional insight. The Commission attaches various documents produced by Senator Segerblom, including relevant portions of the Colorado law that the Bill hopes to emulate, hereto as Exhibit 1.

VI. BDR 14-94 (*Revises provisions governing aliens unlawfully present in the United States*)

A. What is it?

In the last session of the legislature, Senators Gustavson, Cegavske, Halseth, McGinness and Settlemeyer introduced SB 380 which attempted to revise provisions governing aliens unlawfully present in the United States. The Bill, which was unsuccessful, essentially addressed the following:

Providing under certain circumstances for the verification of the immigration status of persons who are arrested and booked;

Requiring certain applicants for the issuance or renewal of a State business license to submit with the application a copy of certain tax forms;

Requiring the Office of the Attorney General to negotiate and implement a cooperative law enforcement agreement with the Attorney General for the United States regarding the enforcement of federal immigration laws by certain state and local employees;

Requiring public employers to use E-Verify to verify eligibility for employment for current and prospective employees;

Requiring contractors and subcontractors on a public work to use E-Verify to verify eligibility for employment for workers on the public work; and

Prohibiting the misclassification of unauthorized aliens as legal aliens.

In a highly anticipated decision involving a similar law, the Arizona Supreme Court recently struck down three parts of Arizona's controversial SB 1070, i.e. Sections 3, 5C and 6. Section 3 would have made it a state crime for undocumented immigrants not to carry an alien registration document (held to be duplicative of and thus superseded by Federal law). Section 5C would have made it a state crime for undocumented immigrants to look for a job or perform work in Arizona. Section 6 would have allowed a state or local police officer to conduct an arrest without a warrant when police had probable cause to believe an individual committed a felony, a misdemeanor or a crime that would make them removable from the United States.

The Arizona Supreme Court did, however, uphold Section 2B of SB 1070 which states that local law enforcement officers in Arizona are authorized to determine the immigration status of anyone they reasonably suspect might be in the United States illegally. Forms of identification suggested by the Bill include an Arizona driver's license, Arizona ID card, tribal enrollment card or any other official ID issued by a US Federal, State or local government.

According to Assemblyman Hansen, the bill he is proposing is intended to “include everything found in Arizona’s 1070 law that passes US Constitutional muster.” He also intends to include photo ID for voting and e-verify law for all public works jobs.

B. Concerns

The concern echoed by Metro is the same concern felt by the Commission; to wit: implementation of this law would deter immigrants from reporting crimes and it would further strain the relationships that our local law enforcement officers have with the immigrant community. The constitutionality of the law is still in question.

C. Recommendations/Follow up

Preliminarily, and without having the benefit of the proposed BDR, the Commission does not support this law. The Commission does, however, intend to invite Assemblyman Hansen to attend our next quarterly Crime Commission meeting to give some additional insight into the proposed BDR.

VII. Conclusion/Forecast

The Commission intends to remain vigilant before and during the 2013 legislative session and has resigned itself to hold special interim meetings in order to provide the Governor’s Office with any additional reports and recommendations it may need. The Commission again encourages the Office of the Governor to submit any specific requests for vetting to the Commission. Absent any specific requests, the Commission will continue to explore various items of crime related legislation that it deems may be of interest to the Office of the Governor.

Exhibit “1”

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MEMORANDUM

DATE: September 6, 2012
TO: Assemblyman Tick Segerblom
FROM: Kirsten Coulombe, Senior Research Analyst
Research Division
SUBJECT: Bill Draft Request No. 89—Information on Medical Marijuana Programs in
Arizona and Oregon

As requested, this memorandum provides information on Arizona's and Oregon's medical marijuana programs to supplement your Bill Draft Request No. 89.

ARIZONA

The Arizona Medical Marijuana Program was originally proposed in 1996 through a ballot initiative; however, that initiative was overturned as it was deemed invalid because the initiative stated physicians would write a "prescription," which is prohibited by federal law as marijuana is still a Schedule I substance. The Arizona Medical Marijuana Act was ultimately authorized by initiative measure Proposition 203 in November 2010, making Arizona the 14th state to create a medical marijuana program. The program is administered through the Arizona Department of Health Services (ADHS) and began accepting applications on April 14, 2011. As of August 16, 2012, the program has approved 31,112 patients, of which 28 are under 18 years of age, and has issued 952 caregiver cards. The majority (73 percent) of patients are male.

Qualifying Patients

Individuals applying for the program can only apply online and must have one of the approved medical conditions or debilitating diseases as listed in section 36-2801.3(a) to (c) of the Act, or a debilitating medical condition or treatment later approved by ADHS. The program accepts applicants under the age of 18 with a custodial parent or legal guardian completing the application along with the patient. Qualifying patients can also be a designated caregiver for another qualifying patient provided individual criteria is met for both positions.

Patients must have a written certification from a physician, and sign an attestation that they will not divert marijuana to anyone not allowed to possess it. Patients under 18 must have two separate physician certificates, and parents or legal guardians must attest to allowing the minor to use the marijuana.

Qualifying patients are issued a registry identification card which allows them to possess up to 2.5 ounces of usable marijuana that can be obtained within a 14-day period from a dispensary. If patients live 25 miles away from the nearest dispensary, they can cultivate up to 12 marijuana plants.

Caregivers

Qualifying patients can receive assistance with their medical marijuana through a caregiver. Patients under 18 must have their custodial parent or legal guardian as a caregiver. Caregivers must be at least 21 years old, not convicted of an excluded felony offense (as defined in 36-2801.7 of the Act), and undergo a background check. They do not have to be a home health aide or professional caregiver. Caregivers can provide assistance for up to five qualifying patients. They can grow 12 plants per patient, for a total of up to 60 plants, if the patient lives 25 miles outside of dispensary area.

Dispensaries and Dispensary Agents

Dispensary applicants must have documented access to \$150,000 in startup capital 30 days prior to the date of the application. The dispensary must operate as a nonprofit organization although payment can be received towards operating expenses. Principal officers, board members, employees, or volunteers are considered “dispensary agents” and must have a Dispensary Agent Registration Card to work.

Arizona’s Medical Marijuana Act limits the number of dispensaries to coincide with the number of pharmacies resulting in one dispensary for every ten pharmacies. Arizona is geographically divided into Community Health Analysis Areas (CHAAs) based on population. As of January 2012, the ADHS estimated that 126 dispensary certificates would be available. Because of the limit on dispensaries, ADHS has a two-step process for determining which dispensary applications will be granted a registration certificate. First, the Department uses a random selection process for any CHAA that receives more than one application for a dispensary unless a CHAA has only one applicant. Once awarded a certificate, a dispensary must then apply for approval to operate within 60 days of the registration certificate and subsequently have a facility inspection before an operating license is issued.

In regards to product, a dispensary can acquire its initial inventory from other registered nonprofit dispensaries or from a registered qualifying patient or designated caregiver if the patient or caregiver is not compensated for the marijuana. Dispensaries are not limited in the amount of medical marijuana they can grow or retain, although they must have procedures for securing, storing, and tracking the marijuana.

Physicians

The Act identifies four different physician types who can certify a patient for the program: a doctor of medicine (MD), a doctor of osteopathic medicine (DO), a naturopathic physician (ND), and a homeopathic physician [MD(H) or DO(H)]. Physicians' responsibilities include checking a patient's profile in Arizona's Controlled Substance Prescription Monitoring Program Database (central repository of all dispensed controlled substances for Schedule II, III, and IV) to identify and deter drug abuse. Certifying physicians must perform an in-person physical exam within the preceding 90 days of qualifying a patient, and also review a patient's medical records for the previous 12 months.

Currently, Arizona is the first, and only state, that requires dispensaries to have a physician function as a medical director onsite or by telephone. In addition, medical directors are expected to provide annual training to dispensary agents, assist in the development of educational materials for patients and caregivers, as well as establish a system to track patients' symptoms and side effects from marijuana usage. More information about a physician's role can be found in a [presentation](#) on the ADHS website dated August 16, 2012.

Program Fees

Fees are included for all program applications; they are the same for new or renewal applications. Patients eligible for the United States Department of Agriculture Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps) can qualify for a reduced application fee for a registry identification card. Current fees are detailed below by participant:

Qualifying Patient:

- \$150 for a new or renewal application or \$75 if SNAP eligible.

Designated Caregiver:

- \$200 for a new or renewal application; and
 - A caregiver must apply separately for a card for every patient under their care (up to five patients).

Dispensary:

- \$500 for a new or renewal application for a registry identification card;
- \$5,000 for an initial application for a dispensary registration certificate;
 - The application fee is nonrefundable except in the circumstance that a certificate is not issued, then \$1,000 is refundable;
- \$1,000 for a renewal dispensary registration certificate;
- \$2,500 to change the location of a dispensary or cultivation facility; and
- \$10 to amend, change, or replace a registry identification card.

Registry Cards

Identification cards for patients, caregivers, and dispensary agents include identifying information such as: name, address, date of birth, cultivation ability, and a photograph submitted by the individual. The cards contain a date of issuance and expiration. They also have a magnetic strip and a 20-digit barcode that includes the cardholder's name and registry identification number. Security features include an ultraviolet image of the DHS logo and clear laminate hologram on each card. Patient cards are to be swiped every time marijuana is purchased to ensure the patient does not exceed the maximum allowable amount of 2.5 ounces every two weeks. Caregiver cards include registry identification numbers for both the designated caregiver and his or her patient.

Verification System

Representatives from law enforcement agencies, dispensaries, and employer organizations can verify a person's registry identification card with Arizona's Medical Marijuana Card Verification website. The website will provide the cardholder's name and the amount of marijuana dispensed in the last 60 days if available.

OREGON

The Oregon Medical Marijuana Act was adopted by voters during the November 3, 1998, general election as Ballot Measure No. 67. The Act was subsequently amended during the 1999 Legislative Session by House Bill 3052, and again during the 2005 Legislative Session by Senate Bill 1085. The Public Health Division of the Oregon Health Authority (OHA) administers the Oregon Medical Marijuana Program (OMMP). As of July 1, 2012, the program had 54,280 patients; 2,090 associated physicians; and 27,188 caregivers.

The Oregon Administrative Rules are 333-008-000 through 333-008-0120. A more consumer-friendly program handbook (24 pages) is available on the Department's website as well as a handbook specific for law enforcement officials. Individuals can apply directly with the Public Health Division or with a county health department which will transmit an application within five days of receipt to the state authority. The Division previously had a customer service window for applicants to submit their paperwork and payment, but that in-person service was eliminated effective March 5, 2012. Currently, Oregon accepts applications by mail or a drop box, although it is looking to develop an online process for applications and a system to accept online payments by credit or debit card.

Patients

Individuals applying for a registry card must have a debilitating condition as prescribed in Section 3 of 475.302 of the Act. Patients are not required to have assistance, although they can use one designated caregiver and are also limited to one grow site. Patients convicted of a Class A or Class B felony for the manufacture or delivery of Schedule I or Schedule II controlled substances are limited to one ounce of usable marijuana at any given time.

Caregivers

Individuals providing care to medical marijuana patients must be over 18, have “significant” responsibility for managing the care of the patient, and cannot be a patient’s attending physician. According to staff of the OMMP, there is no limit to the number of patients that a caregiver can assist.

Marijuana Grow Site and Growers

A person who produces marijuana for a patient or caregiver is called a grower, and the location of the production is known as the grow site. A grower may provide marijuana for up to four patients or caregivers and be reimbursed for the cost associated with the production of marijuana; however, costs such as labor are not reimbursable. Inventory of seedlings, plants, and usable marijuana are considered property of the patient or caregiver; inventory must be returned when the grower stops producing for such person.

If authorized to grow marijuana, criminal background checks are conducted on growers and also patients or caregivers, The following is an excerpt from section 475.304 of the Oregon Revised Statutes (ORS):

(6)(a) The authority shall conduct a criminal records check under ORS 181.534 of any person whose name is submitted as a person responsible for a marijuana grow site.

(b) A person convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(c) A person convicted more than once of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

Physicians

A patient’s attending physician must be a doctor of medicine (MD) or a doctor of osteopathy (DO). Naturopaths, chiropractors, and nurse practitioners are not authorized to document a person’s debilitating condition. Each attending physician’s license and disciplinary standing are verified with the Oregon Medical Board by the OMMP.

Program Fees

The OMMP is supported through fees generated through the program and does not receive state funds. The following is a list of program fees:

Patient:

- \$200 for new or renewal applications;
 - \$100 if eligible for Oregon Health Plan (Oregon's Medicaid program) or SNAP (food stamps); and
 - \$20 if eligible for Social Security's Supplemental Security Income (SSI).

Grow site:

- \$50 for new or renewal applications.

Replacement cards:

- \$100 for lost or stolen cards, or a change in caregivers, growers, or grow sites.

Verification System

The Public Health Division maintains the Oregon State Police Law Enforcement Data System that allows state and local law enforcement agencies to verify that a patient, caregiver, grower, or grow site is registered with the OMMP. The Division also manages a telephone line specific to agency officials during business hours.

Advisory Committee

Oregon has an Advisory Committee on Medical Marijuana that is administratively supported by the OHA. The director of the OHA appoints the 11 members of the Committee, which is comprised of registry participants, caregivers, and advocates of the Oregon Medical Marijuana Act. Meeting at least four times a year, the Committee reviews current and proposed administrative rules and policies to advise the director and provide annual input regarding the fee structure of the program.

COMPARISON OF PROGRAMS

Attached is a chart comparing program components for Arizona, Colorado (previous memorandum dated July 6, 2012), Nevada, and Oregon. Primary variations among the programs pertain to the use of dispensaries, caregiver duties, types of manufacturers, overall regulations, and amounts of possession authorized to participants.

CONCLUDING REMARKS

I hope this information is useful. Should you have any questions on the information provided, please do not hesitate to contact me at (775) 684-6825 or kcoulombe@lcb.state.nv.us.

KC/jc:W122157
Att.

Comparison of Medical Marijuana Programs 2012

Program Components	Arizona	Colorado	Nevada	Oregon
Administration	<p>Department of Health Services</p>	<ul style="list-style-type: none"> ▪ Department of Public Health and Environment (registry) ▪ Department of Revenue (enforcement division) 	<ul style="list-style-type: none"> ▪ Health Division, Department of Health and Human Services (registry) ▪ Department of Motor Vehicles (registry cards) 	<p>Public Health Division, Oregon Health Authority</p>
Patients	<ul style="list-style-type: none"> ▪ 18 years of age and older ▪ Under 18 with consent ▪ Can be a caregiver to other qualifying patients 	<ul style="list-style-type: none"> ▪ 18 years of age and older ▪ Under 18 with consent ▪ Can be a caregiver to another qualifying patient 	<ul style="list-style-type: none"> ▪ 18 years of age and older ▪ Under 18 with consent 	<ul style="list-style-type: none"> ▪ 18 years of age and older ▪ Under 18 with consent ▪ Can be a caregiver to other patients
Caregivers	<ul style="list-style-type: none"> ▪ 21 years of age and older ▪ Assist up to five patients ▪ Grow 12 plants per patient for a total of 60 plants 	<ul style="list-style-type: none"> ▪ 18 years of age and older ▪ Assist up to five patients or more with a waiver ▪ Must provide more than medical assistance (meals, housekeeping, transportation) 	<ul style="list-style-type: none"> ▪ 18 years of age and older ▪ Assist one patient ▪ Must be approved by attending physician 	<ul style="list-style-type: none"> ▪ 18 years of age and older ▪ Assist unlimited number of patients ▪ Cannot be patient's physician
Manufacturers	<ul style="list-style-type: none"> ▪ Dispensaries <ul style="list-style-type: none"> ○ Required to have Medical Director 	<ul style="list-style-type: none"> ▪ Medical Marijuana Centers ▪ Optional Premise Cultivations ▪ Marijuana Infused Product Manufacturers 	<p>Not Applicable</p>	<p>Grow Sites and Growers</p>
Physicians	<ul style="list-style-type: none"> ▪ Medical ▪ Osteopathic ▪ Naturopathic ▪ Homeopathic 	<ul style="list-style-type: none"> ▪ Medical ▪ Osteopathic 	<ul style="list-style-type: none"> ▪ Medical ▪ Osteopathic 	<ul style="list-style-type: none"> ▪ Medical ▪ Osteopathic
Registry	<ul style="list-style-type: none"> ▪ Patients, caregivers, and dispensary agents ▪ Lottery process for selection of dispensaries 	<ul style="list-style-type: none"> ▪ Patients ▪ Separate caregiver registry (voluntary) 	<p>Patients</p>	<ul style="list-style-type: none"> ▪ Patients ▪ Caregivers ▪ Growers

Comparison of Medical Marijuana Programs 2012

Program Components	Arizona	Colorado	Nevada	Oregon
Possession	<p>Patient</p> <ul style="list-style-type: none"> ▪ 2.5 usable ounces and ▪ 12 plants if 25 miles away from dispensary <p>Caregiver</p> <ul style="list-style-type: none"> ▪ 2.5 usable ounces and ▪ 12 plants per patient for a total of up to 60 plants <p>Dispensary</p> <ul style="list-style-type: none"> ▪ No limit on amount to grow and retain in inventory 	<p>Patient/Caregiver</p> <ul style="list-style-type: none"> ▪ 2 usable ounces ▪ 3 immature plants ▪ 3 mature plants <p>Infused Product Licensee or Optional Premises Cultivation</p> <ul style="list-style-type: none"> ▪ No more than 500 plants 	<p>Patient</p> <ul style="list-style-type: none"> ▪ 1 usable ounce ▪ 3 mature plants ▪ 4 immature plants 	<p>Patient/Caregiver</p> <ul style="list-style-type: none"> ▪ 18 marijuana seedlings ▪ 24 ounces usable marijuana or 1 ounce if conviction ▪ 6 mature plants <p>Growers (up to 4 cardholders)</p> <ul style="list-style-type: none"> ▪ 18 marijuana seedlings ▪ 6 mature plants ▪ 24 ounces usable marijuana
Program Fees	<p>Patient</p> <ul style="list-style-type: none"> ▪ \$150 for applicant or \$75 for SNAP (food stamps) eligible <p>Caregiver</p> <ul style="list-style-type: none"> ▪ \$200 per patient card <p>Dispensary</p> <ul style="list-style-type: none"> ▪ \$5,000 for initial application ▪ \$500 for agent registry card ▪ \$1,000 renewal certificate ▪ \$2,500 to change location 	<p>Patient</p> <ul style="list-style-type: none"> ▪ \$35 for two-year application ▪ Fee waived if income at 185 percent of Federal Poverty Level 	<p>Patient</p> <ul style="list-style-type: none"> ▪ \$200 new and renewal application 	<p>Patient</p> <ul style="list-style-type: none"> ▪ \$200 new or renewal application <ul style="list-style-type: none"> ○ \$100 if eligible for Oregon Health Plan (Medicaid) or SNAP (food stamps) ○ \$20 if eligible for Supplemental Security Income (SSI) <p>Grow site/Grower</p> <ul style="list-style-type: none"> ▪ \$50 new or renewal application
Advisory Committee	<p>No</p>	<p>12 member committee (inactive)</p>	<p>No</p>	<p>11 member committee</p>

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MEMORANDUM

DATE: July 6, 2012
TO: Assemblyman Tick Segerblom
FROM: Kirsten Coulombe, Senior Research Analyst
Research Division
SUBJECT: Bill Draft Request No. 89—Colorado's Medical Marijuana Program

The memorandum provides information on Colorado's Medical Marijuana Program to supplement your Bill Draft Request No. 89.

BACKGROUND

The Colorado Department of Public Health and Environment (DPHE) was tasked with implementing and administering the Medical Marijuana Registry program due to Amendment 20 of the *Colorado Constitution*, which was passed in the November 2000 General Election. In March of 2001, the State of Colorado Board of Health approved administrative regulations for the program. By June 1, 2001, the Registry began accepting and processing applications for registry identification cards. The cost to administer the program is funded through the collection of program fees.

The following statistics were obtained from the DPHE website <http://www.cdph.state.co.us/hs/Medicalmarijuana/statistics.html>. As of April 30, 2012:

- 96,709 patients hold valid registry identification cards;
- 68 percent of approved applicants are male;
- Average age of registry patients is 42;
- 53 percent of patients have a designated primary caregiver;
- The debilitating condition of "severe pain" accounts for 94 percent of all reported conditions with muscle spasms being the second-most reported condition; and
- Over 900 different physicians have signed on behalf of patients.

PROGRAM STRUCTURE

Colorado has one of the most highly regulated medical marijuana programs in the country. The following is a general overview of the program's structure. Both websites for the Colorado Department of Public Health and Environment and Department of Revenue contain detailed information on program rules, regulations, and laws applicable to the program. Attached for your review are two different statutes relevant to the program.

Medical Marijuana Registry

The registry is maintained by the DPHE and is a confidential database of patients who applied for a registry identification card. The registry identification cards are available to Colorado residents and are only valid in Colorado. Potential applicants who receive treatment for a "debilitating" condition may qualify for the program, and the DPHE maintains a list of approved and denied debilitating conditions on its website. Patient applications have a non-refundable application fee of \$35 for a two-year license which is waived for patients with household incomes below 185 percent of the Federal Poverty Level. Also attached is a list of the DPHE regulations.

Caregivers

Caregivers must be 18 years of age or older and manage the well-being of a patient who has a debilitating medical condition. A patient with a primary caregiver cannot also be a primary caregiver to another patient. The patient-caregiver relationship must provide more than medical marijuana services such as housekeeping, meal preparation, shopping, transportation, or arranging access to medical care or other services unrelated to medical marijuana.

Medicinal Marijuana Businesses

Licensure, operation, and regulation of medicinal marijuana businesses are enforced through the Colorado Department of Revenue. Attached for your review, Article 43.3, Title 12 of *Colorado Revised Statutes* "Colorado Medical Marijuana Code," Section 12-43.3-401 through 12-43.3-404, details the three types of medical marijuana business licenses: Medical Marijuana Centers (MCC); Optional Premise Cultivations (OPC); and Marijuana Infused Product (MIP) manufacturers. As a general overview, MCCs are the dispensaries where patients with approved registry identification cards can obtain the medicinal marijuana. In addition, the centers are required to grow 70 percent of their inventory. Therefore, the centers must own and operate an OPC which is licensed separately from the center. According to staff at Colorado's Legislative Council, there are no independent, free-standing OPCs to help regulators track the growth of marijuana. The MIP manufacturers make and sell edible items or beverages infused with marijuana. The MCCs may contract with a MIP for prepackaged and labeled products.

Businesses must be bonded and seek a business license with their local authority and a state license through the Department of Revenue. Dispensaries, manufacturers, and employees are required to pay a fee to cover the costs for operating the state and local licensing authorities. Attached for your review is a complete list of the business fee schedule.

Medical Marijuana Enforcement Division

Medical marijuana businesses are required to submit several forms to the Enforcement Division to ensure compliance with regulations. The following is an example of the type of forms required:

- Monthly summary of transfers, sales, and purchases;
- Physical inventory sheet;
- Secure facility form—all medical marijuana business must have security/video surveillance systems installed in each business location;
- Transportation manifests; and
- Monthly patient and employee lists for the business.

The Division conducts announced and unannounced inspections for licensure compliance. A list of the range of penalties for noncompliance can be found on page 21 of the attached rules for the Enforcement Division.

Advisory Committee

Upon the enactment of the medical marijuana program, Colorado saw an increase of registry identified cardholders and growth in medical marijuana dispensaries. As a response to the new industry, an advisory committee was created in 2010 to advise the Executive Director of DPHE on rule-making by including input from stakeholders. The committee held monthly meetings from July 2010 through July 2011. It has since concluded its mission although the committee can reconvene as necessary.

The 12 member committee consisted of the following stakeholders:

- Patient holding a medical marijuana registration card;
- Primary caregiver for a patient holding a medical marijuana registration card;
- Owner and operator of a Medical Marijuana Center;
- Licensed physician who recommends medical marijuana to patients in their practice;
- Licensed health care worker specializing in addiction medicine;
- Licensed health care worker specializing in chronic pain management;
- Licensed health care worker specializing in oncology/cancer care;
- Representative of Colorado law enforcement community;
- Colorado District Attorney or representative of the district attorney community;
- Representative of a county or district public health agency;
- Director of the Medical Marijuana Registry; and
- Executive Director and Chief Medical Officer of the Department of Public Health and Environment.

CONCLUDING REMARKS

I hope this information is useful. Should you have any questions on the information provided or would like additional material, please do not hesitate to contact me at (775) 684-6825 or kcoulombe@lcb.state.nv.us.

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Att.

25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - created - repeal.

(1) **Legislative declaration.** (a) The general assembly hereby declares that it is necessary to implement rules to ensure that patients suffering from legitimate debilitating medical conditions are able to safely gain access to medical marijuana and to ensure that these patients:

(I) Are not subject to criminal prosecution for their use of medical marijuana in accordance with section 14 of article XVIII of the state constitution, this section, and the rules of the state health agency; and

(II) Are able to establish an affirmative defense to their use of medical marijuana in accordance with section 14 of article XVIII of the state constitution, this section, and the rules of the state health agency.

(b) The general assembly hereby declares that it is necessary to implement rules to prevent persons who do not suffer from legitimate debilitating medical conditions from using section 14 of article XVIII of the state constitution as a means to sell, acquire, possess, produce, use, or transport marijuana in violation of state and federal laws.

(2) **Definitions.** In addition to the definitions set forth in section 14 (1) of article XVIII of the state constitution, as used in this section, unless the context otherwise requires:

(a) "Bona fide physician-patient relationship", for purposes of the medical marijuana program, means:

(I) A physician and a patient have a treatment or counseling relationship, in the course of which the physician has completed a full assessment of the patient's medical history and current medical condition, including an appropriate personal physical examination;

(II) The physician has consulted with the patient with respect to the patient's debilitating medical condition before the patient applies for a registry identification card; and

(III) The physician is available to or offers to provide follow-up care and treatment to the patient, including but not limited to patient examinations, to determine the efficacy of the use of medical marijuana as a treatment of the patient's debilitating medical condition.

(b) "Executive director" means the executive director of the state health agency.

(c) "In good standing", with respect to a physician's license, means:

(I) The physician holds a doctor of medicine or doctor of osteopathic medicine degree from an accredited medical school;

(II) The physician holds a valid license to practice medicine in Colorado that does not contain a restriction or condition that prohibits the recommendation of medical marijuana or for a license issued prior to July 1, 2011, a valid, unrestricted and unconditioned license; and

(III) The physician has a valid and unrestricted United States department of justice federal drug enforcement administration controlled substances registration.

(d) "Medical marijuana program" means the program established by section 14 of article XVIII of the state constitution and this section.

(d.5) "Primary caregiver" means a natural person, other than the patient or the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition.

(e) "Registry identification card" means the nontransferable confidential registry identification card issued by the state health agency to patients and primary caregivers pursuant to this section.

(f) "State health agency" means the public health-related entity of state government designated by the governor by executive order pursuant to section 14 of article XVIII of the state constitution.

(3) **Rule-making.** (a) The state health agency shall, pursuant to section 14 of article XVIII of the state constitution, promulgate rules of administration concerning the implementation of the medical marijuana program that specifically govern the following:

(I) The establishment and maintenance of a confidential registry of patients who have applied for and are entitled to receive a registry identification card. The confidential registry of patients may be used to determine whether a physician should be referred to the Colorado board of medical examiners for a suspected violation of section 14 of article XVIII of the state constitution, paragraph (a), (b), or (c) of subsection (5) of this section, or the rules promulgated by the state health agency pursuant to this subsection (3).

(II) The development by the state health agency of an application form and the process for making the form available to residents of this state seeking to be listed on the confidential registry of patients who are entitled to receive a registry identification card;

(III) The verification by the state health agency of medical information concerning patients who have applied for a registry identification card or for renewal of a registry identification card;

(IV) The development by the state health agency of a form that constitutes "written documentation" as defined and used in section 14 of article XVIII of the state constitution, which form a physician shall use when making a medical marijuana recommendation for a patient;

(V) The conditions for issuance and renewal, and the form, of the registry identification cards issued to patients, including but not limited to standards for ensuring that the state health agency issues a registry identification card to a patient only if he or she has a bona fide physician-patient relationship with a physician in good standing and licensed to practice medicine in the state of Colorado;

(VI) Communications with law enforcement officials about registry identification cards that have been suspended when a patient is no longer diagnosed as having a debilitating medical condition;

(VII) The manner in which the state health agency may consider adding debilitating medical

conditions to the list of debilitating medical conditions contained in section 14 of article XVIII of the state constitution; and

(VIII) A waiver process to allow a homebound patient who is on the registry to have a primary caregiver transport the patient's medical marijuana from a licensed medical marijuana center to the patient.

(b) The state health agency may promulgate rules regarding the following:

(I) What constitutes "significant responsibility for managing the well-being of a patient"; except that the act of supplying medical marijuana or marijuana paraphernalia, by itself, is insufficient to constitute "significant responsibility for managing the well-being of a patient";

(II) The development of a form for a primary caregiver to use in applying to the registry, which form shall require, at a minimum, that the applicant provide his or her full name, home address, date of birth, and an attestation that the applicant has a significant responsibility for managing the well-being of the patient for whom he or she is designated as the primary caregiver and that he or she understands and will abide by section 14 of article XVIII of the state constitution, this section, and the rules promulgated by the state health agency pursuant to this section;

(III) The development of a form that constitutes "written documentation", as defined and used in section 14 of article XVIII of the state constitution, which form a physician shall use when making a medical marijuana recommendation for a patient; and

(IV) The grounds and procedure for a patient to change his or her designated primary caregiver.

(c) Repealed.

(4) Notwithstanding any other requirements to the contrary, notice issued by the state health agency for a rule-making hearing pursuant to section 24-4-103, C.R.S., for rules concerning the medical marijuana program shall be sufficient if the state health agency provides the notice no later than forty-five days in advance of the rule-making hearing in at least one publication in a newspaper of general distribution in the state and posts the notice on the state health agency's web site; except that emergency rules pursuant to section 24-4-103 (6), C.R.S., shall not require advance notice.

(5) **Physicians.** A physician who certifies a debilitating medical condition for an applicant to the medical marijuana program shall comply with all of the following requirements:

(a) The physician shall have a valid and active license to practice medicine, which license is in good standing.

(b) After a physician, who has a bona fide physician-patient relationship with the patient applying for the medical marijuana program, determines, for the purposes of making a recommendation, that the patient has a debilitating medical condition and that the patient may benefit from the use of medical marijuana, the physician shall certify to the state health agency that the patient has a debilitating medical condition and that the patient may benefit from the use of medical marijuana. If the physician certifies that the patient would benefit from the use of medical marijuana based on a chronic or debilitating disease or medical condition, the physician shall specify the chronic or debilitating disease or medical condition and, if known, the cause or

source of the chronic or debilitating disease or medical condition.

(c) The physician shall maintain a record-keeping system for all patients for whom the physician has recommended the medical use of marijuana, and, pursuant to an investigation initiated pursuant to section 12-36-118, C.R.S., the physician shall produce such medical records to the Colorado state board of medical examiners after redacting any patient or primary caregiver identifying information.

(d) A physician shall not:

(I) Accept, solicit, or offer any form of pecuniary remuneration from or to a primary caregiver, distributor, or any other provider of medical marijuana;

(II) Offer a discount or any other thing of value to a patient who uses or agrees to use a particular primary caregiver, distributor, or other provider of medical marijuana to procure medical marijuana;

(III) Examine a patient for purposes of diagnosing a debilitating medical condition at a location where medical marijuana is sold or distributed; or

(IV) Hold an economic interest in an enterprise that provides or distributes medical marijuana if the physician certifies the debilitating medical condition of a patient for participation in the medical marijuana program.

(6) **Enforcement.** (a) If the state health agency has reasonable cause to believe that a physician has violated section 14 of article XVIII of the state constitution, paragraph (a), (b), or (c) of subsection (5) of this section, or the rules promulgated by the state health agency pursuant to subsection (2) of this section, the state health agency may refer the matter to the state board of medical examiners created in section 12-36-103, C.R.S., for an investigation and determination.

(b) If the state health agency has reasonable cause to believe that a physician has violated paragraph (d) of subsection (5) of this section, the state health agency shall conduct a hearing pursuant to section 24-4-104, C.R.S., to determine whether a violation has occurred.

(c) Upon a finding of unprofessional conduct pursuant to section 12-36-117 (1) (mm), C.R.S., by the state board of medical examiners or a finding of a violation of paragraph (d) of subsection (5) of this section by the state health agency, the state health agency shall restrict a physician's authority to recommend the use of medical marijuana, which restrictions may include the revocation or suspension of a physician's privilege to recommend medical marijuana. The restriction shall be in addition to any sanction imposed by the state board of medical examiners.

(d) When the state health agency has objective and reasonable grounds to believe and finds, upon a full investigation, that a physician has deliberately and willfully violated section 14 of article XVIII of the state constitution or this section and that the public health, safety, or welfare imperatively requires emergency action, and the state health agency incorporates those findings into an order, the state health agency may summarily suspend the physician's authority to recommend the use of medical marijuana pending the proceedings set forth in paragraphs (a) and (b) of this subsection (6). A hearing on the order of summary suspension shall be held no later than thirty days after the issuance of the order of summary suspension, unless a longer time is

agreed to by the parties, and an initial decision in accordance with section 24-4-105 (14), C.R.S., shall be rendered no later than thirty days after the conclusion of the hearing concerning the order of summary suspension.

(7) **Primary caregivers.** (a) A primary caregiver may not delegate to any other person his or her authority to provide medical marijuana to a patient nor may a primary caregiver engage others to assist in providing medical marijuana to a patient.

(b) Two or more primary caregivers shall not join together for the purpose of cultivating medical marijuana.

(c) Only a medical marijuana center with an optional premises cultivation license, a medical marijuana-infused products manufacturing operation with an optional premises cultivation license, or a primary caregiver for his or her patients or a patient for himself or herself may cultivate or provide marijuana and only for medical use.

(d) A primary caregiver shall provide to a law enforcement agency, upon inquiry, the registry identification card number of each of his or her patients. The state health agency shall maintain a registry of this information and make it available twenty-four hours per day and seven days a week to law enforcement for verification purposes. Upon inquiry by a law enforcement officer as to an individual's status as a patient or primary caregiver, the state health agency shall check the registry. If the individual is not registered as a patient or primary caregiver, the state health agency may provide that response to law enforcement. If the person is a registered patient or primary caregiver, the state health agency may not release information unless consistent with section 14 of article XVIII of the state constitution. The state health agency may promulgate rules to provide for the efficient administration of this paragraph (d).

(e) A primary caregiver who cultivates medical marijuana for his or her patients shall register the location of his or her cultivation operation with the state medical marijuana licensing authority and provide the registration identification number of each patient to the state licensing authority. The information provided to the state medical marijuana licensing authority pursuant to this paragraph (e) shall not be provided to the public and shall be confidential. The state licensing authority shall verify the location of a primary caregiver cultivation operation to a local government or law enforcement agency upon receiving an address-specific request for verification. The location of the cultivation operation shall comply with all applicable local laws, rules, or regulations.

(8) **Patient - primary caregiver relationship.** (a) A person shall be listed as a primary caregiver for no more than five patients on the medical marijuana program registry at any given time; except that the state health agency may allow a primary caregiver to serve more than five patients in exceptional circumstances. In determining whether exceptional circumstances exist, the state health agency may consider the proximity of medical marijuana centers to the patient. A primary caregiver shall maintain a list of his or her patients including the registry identification card number of each patient at all times.

(b) A patient shall have only one primary caregiver at any given time.

(c) A patient who has designated a primary caregiver for himself or herself may not be designated as a primary caregiver for another patient.

(d) A primary caregiver may not charge a patient more than the cost of cultivating or purchasing the medical marijuana, but may charge for caregiver services.

(e) (I) The state health agency shall maintain a secure and confidential registry of available primary caregivers for those patients who are unable to secure the services of a primary caregiver.

(II) An existing primary caregiver may indicate at the time of registration whether he or she would be willing to handle additional patients and waive confidentiality to allow release of his or her contact information to physicians or registered patients only.

(III) An individual who is not registered but is willing to provide primary caregiving services may submit his or her contact information to be placed on the primary caregiver registry.

(IV) A patient-primary caregiver arrangement secured pursuant to this paragraph (e) shall be strictly between the patient and the potential primary caregiver. The state health agency, by providing the information required by this paragraph (e), shall not endorse or vouch for a primary caregiver.

(V) The state health agency may make an exception, based on a request from a patient, to paragraph (a) of this subsection (8) limiting primary caregivers to five patients. If the state health agency makes an exception to the limit, the state health agency shall note the exception on the primary caregiver's record in the registry.

(f) At the time a patient applies for inclusion on the confidential registry, the patient shall indicate whether the patient intends to cultivate his or her own medical marijuana, both cultivate his or her own medical marijuana and obtain it from either a primary caregiver or licensed medical marijuana center, or obtain it from either a primary caregiver or a licensed medical marijuana center. If the patient elects to use a licensed medical marijuana center, the patient shall register the primary center he or she intends to use.

(9) Registry identification card required - denial - revocation - renewal. (a) To be considered in compliance with the provisions of section 14 of article XVIII of the state constitution, this section, and the rules of the state health agency, a patient or primary caregiver shall have his or her registry identification card in his or her possession at all times that he or she is in possession of any form of medical marijuana and produce the same upon request of a law enforcement officer to demonstrate that the patient or primary caregiver is not in violation of the law; except that, if more than thirty-five days have passed since the date the patient or primary caregiver filed his or her medical marijuana program application and the state health agency has not yet issued or denied a registry identification card, a copy of the patient's or primary caregiver's application along with proof of the date of submission shall be in the patient's or primary caregiver's possession at all times that he or she is in possession of any form of medical marijuana until the state health agency issues or denies the registry identification card. A person who violates section 14 of article XVIII of the state constitution, this section, or the rules promulgated by the state health agency may be subject to criminal prosecution for violations of section 18-18-406, C.R.S.

(b) The state health agency may deny a patient's or primary caregiver's application for a registry

identification card or revoke the card if the state health agency, in accordance with article 4 of title 24, C.R.S., determines that the physician who diagnosed the patient's debilitating medical condition, the patient, or the primary caregiver violated section 14 of article XVIII of the state constitution, this section, or the rules promulgated by the state health agency pursuant to this section; except that, when a physician's violation is the basis for adverse action, the state health agency may only deny or revoke a patient's application or registry identification card when the physician's violation is related to the issuance of a medical marijuana recommendation.

(c) A patient or primary caregiver registry identification card shall be valid for one year and shall contain a unique identification number. It shall be the responsibility of the patient or primary caregiver to apply to renew his or her registry identification card prior to the date on which the card expires. The state health agency shall develop a form for a patient or primary caregiver to use in renewing his or her registry identification card.

(d) If the state health agency grants a patient a waiver to allow a primary caregiver to transport the patient's medical marijuana from a medical marijuana center to the patient, the state health agency shall designate the waiver on the patient's registry identification card.

(e) A homebound patient who receives a waiver from the state health agency to allow a primary caregiver to transport the patient's medical marijuana to the patient from a medical marijuana center shall provide the primary caregiver with the patient's registry identification card, which the primary caregiver shall carry when the primary caregiver is transporting the medical marijuana. A medical marijuana center may provide the medical marijuana to the primary caregiver for transport to the patient if the primary caregiver produces the patient's registry identification card.

(10) Renewal of patient identification card upon criminal conviction. Any patient who is convicted of a criminal offense under article 18 of title 18, C.R.S., sentenced or ordered by a court to drug or substance abuse treatment, or sentenced to the division of youth corrections, shall be subject to immediate renewal of his or her patient registry identification card, and the patient shall apply for the renewal based upon a recommendation from a physician with whom the patient has a bona fide physician-patient relationship.

(11) A parent who submits a medical marijuana registry application for his or her child shall have his or her signature notarized on the application.

(12) Use of medical marijuana. (a) The use of medical marijuana is allowed under state law to the extent that it is carried out in accordance with the provisions of section 14 of article XVIII of the state constitution, this section, and the rules of the state health agency.

(b) A patient or primary caregiver shall not:

(I) Engage in the medical use of marijuana in a way that endangers the health and well-being of a person;

(II) Engage in the medical use of marijuana in plain view of or in a place open to the general public;

(III) Undertake any task while under the influence of medical marijuana, when doing so would

constitute negligence or professional malpractice;

(IV) Possess medical marijuana or otherwise engage in the use of medical marijuana in or on the grounds of a school or in a school bus;

(V) Engage in the use of medical marijuana while:

(A) In a correctional facility or a community corrections facility;

(B) Subject to a sentence to incarceration; or

(C) In a vehicle, aircraft, or motorboat;

(VI) Operate, navigate, or be in actual physical control of any vehicle, aircraft, or motorboat while under the influence of medical marijuana; or

(VII) Use medical marijuana if the person does not have a debilitating medical condition as diagnosed by the person's physician in the course of a bona fide physician-patient relationship and for which the physician has recommended the use of medical marijuana.

(c) A person shall not establish a business to permit patients to congregate and smoke or otherwise consume medical marijuana.

(13) **Limit on cultivation of medical marijuana.** Only registered patients, licensed primary caregivers, medical marijuana-infused products manufacturing operations with an optional premises cultivation license, and licensed medical marijuana centers with optional premises cultivation licenses may cultivate medical marijuana.

(14) **Affirmative defense.** If a patient or primary caregiver raises an affirmative defense as provided in section 14 (4) (b) of article XVIII of the state constitution, the patient's physician shall certify the specific amounts in excess of two ounces that are necessary to address the patient's debilitating medical condition and why such amounts are necessary. A patient who asserts this affirmative defense shall waive confidentiality privileges related to the condition or conditions that were the basis for the recommendation. If a patient, primary caregiver, or physician raises an exception to the state criminal laws as provided in section 14 (2) (b) or (2) (c) of article XVIII of the state constitution, the patient, primary caregiver, or physician waives the confidentiality of his or her records related to the condition or conditions that were the basis for the recommendation maintained by the state health agency for the medical marijuana program. Upon request of a law enforcement agency for such records, the state health agency shall only provide records pertaining to the individual raising the exception, and shall redact all other patient, primary caregiver, or physician identifying information.

(15) (a) Except as provided in paragraph (b) of this subsection (15), the state health agency shall establish a basic fee that shall be paid at the time of service of any subpoena upon the state health agency, plus a fee for meals and a fee for mileage at the rate prescribed for state officers and employees in section 24-9-104, C.R.S., for each mile actually and necessarily traveled in going to and returning from the place named in the subpoena. If the person named in the subpoena is required to attend the place named in the subpoena for more than one day, there shall be paid, in advance, a sum to be established by the state health agency for each day of attendance to cover the expenses of the person named in the subpoena.

(b) The subpoena fee established pursuant to paragraph (a) of this subsection (15) shall not be applicable to any federal, state, or local governmental agency.

(16) **Fees - repeal.** (a) The state health agency may collect fees from patients who, pursuant to section 14 of article XVIII of the state constitution, apply to the medical marijuana program for a registry identification card for the purpose of offsetting the state health agency's direct and indirect costs of administering the program. The amount of the fees shall be set by rule of the state health agency. The amount of the fees set pursuant to this section shall reflect the actual direct and indirect costs of the state licensing authority in the administration and enforcement of this article so that the fees avoid exceeding the statutory limit on uncommitted reserves in administrative agency cash funds as set forth in section 24-75-402 (3), C.R.S. The state health agency shall not assess a medical marijuana registry application fee to an applicant who demonstrates, pursuant to a copy of the applicant's state tax return certified by the department of revenue, that the applicant's income does not exceed one hundred eighty-five percent of the federal poverty line, adjusted for family size. All fees collected by the state health agency through the medical marijuana program shall be transferred to the state treasurer who shall credit the same to the medical marijuana program cash fund, which fund is hereby created.

(b) (I) The fees collected pursuant to paragraph (a) of this subsection (16) may be used for the direct and indirect costs to the state board of medical examiners associated with investigating and prosecuting up to five of the referrals of physicians received per year from the state health agency in relation to the medical marijuana program.

(II) This paragraph (b) is repealed, effective July 1, 2012.

(17) **Cash fund - repeal.** (a) The medical marijuana program cash fund shall be subject to annual appropriation by the general assembly to the state health agency for the purpose of establishing, operating, and maintaining the medical marijuana program. All moneys credited to the medical marijuana program cash fund and all interest derived from the deposit of such moneys that are not expended during the fiscal year shall be retained in the fund for future use and shall not be credited or transferred to the general fund or any other fund.

(b) (Deleted by amendment, L. 2010, (HB 10-1284), ch. 355, p. 1677, § 2, effective July 1, 2010.)

(b.5) Notwithstanding any provision of paragraph (a) of this subsection (17) to the contrary, on June 30, 2011, the state treasurer shall deduct three million dollars from the medical marijuana program cash fund and transfer such sum to the general fund.

(c) (I) The state health agency shall transfer from the medical marijuana program cash fund to the department of regulatory agencies for allocation to the state board of medical examiners moneys to cover the direct and indirect costs associated with investigating and prosecuting up to five of the referrals of physicians received per year from the state health agency in relation to the medical marijuana program.

(II) This paragraph (c) is repealed, effective July 1, 2012.

(18) This section is repealed, effective July 1, 2019.

Source: **L. 2003:** Entire article added, p. 686, § 2, effective July 1. **L. 2009:** (3) amended, (SB 09-208), ch. 149, p. 624, § 20, effective April 20. **L. 2010:** Entire section amended, (SB 10-109), ch. 356, p. 1691, § 1, effective June 7; (17)(b.5) added, (HB 10-1388), ch. 362, p. 1716, § 1, effective June 7; entire section amended, (HB 10-1284), ch. 355, p. 1677, § 2, effective July 1. **L. 2011:** (2)(c)(II), (5)(a), and (16)(a) amended and (7)(e) added, (HB 11-1043), ch. 266, pp. 1211, 1212, §§ 19, 20, 22, 21, effective July 1.

Editor's note: (1) This section is similar to former § 25-1-107 (1)(jj) as it existed prior to 2003.

(2) Amendments to this section by Senate Bill 10-109 and House Bill 10-1284 were harmonized.

(3) Subsection (17)(b.5) was added as subsection (3)(c) by House Bill 10-1388. That provision was harmonized with Senate Bill 10-109 and House Bill 10-1284 resulting in its relocation.

(4) Subsection (3)(c)(II) provided for the repeal of subsection (3)(c), effective July 1, 2011. (See L. 2010, p. 1677.)

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RULES
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General Background Information:

Article 43.3 of Title 12 of the Colorado Revised Statutes (House Bill 10-1284) went into effect on July 1, 2010. Known as the Colorado Medical Marijuana Code ("Code"), the Code gives the State Medical Marijuana Licensing Authority the ability to promulgate rules necessary for the proper regulation and control of the cultivation, manufacture, distribution, and sale of medical marijuana and the enforcement of the Code. In addition, section 12-43.3-202(2)(a)(I), C.R.S., allows the State Licensing Authority to promulgate rules for compliance with and enforcement of any provision of the Code and section 12-43.3-202(2)(a)(XX), C.R.S., allows the state licensing authority to address such other matters as are necessary for the fair, impartial, stringent, and comprehensive administration of the Code.

When the General Assembly implemented the Code, it sought to create a *vertically integrated* closed-loop commercial medical marijuana regulatory scheme by: (1) the formation of a dual licensing system with a local option opt-out provision; (2) the establishment of suitability standards for ownership and employment based on Colorado residency and a determination of good moral character; (3) the promulgation of a set of minimum security, surveillance, and reporting rules; and (4) requirements aimed at ensuring public safety, facilitating full operational transparency, and eliminating illicit diversion of marijuana.

During the period of August 27, 2010 through December 15, 2010, the Medical Marijuana Enforcement Division ("Division" or "MMED") consulted with interested parties from the medical marijuana industry, the legal profession, and local and state government to draft the proposed rules and ensure adequate oversight and regulation of the medical marijuana industry. In addition, in January, 2011, the State Licensing Authority conducted a public rulemaking in accordance with the requirements of section 24-4-103, C.R.S., of the Administrative Procedure Act, and allowed all interested persons the opportunity to submit their views and opinions regarding the rules.

Definitions – The following definitions of terms, in addition to those set forth in section 12-43.3-104, C.R.S., shall apply to all rules and regulations promulgated pursuant to Article 43.3 of Title 12, of the Colorado Revised Statutes, unless the context otherwise requires:

Clone – refers to a nonflowering medical marijuana plant that is no taller than eight (8) inches and no wider than eight (8) inches that is in a growing container that is no larger than two (2) inches wide and two (2) inches tall that is sealed on the sides and bottom, although the seal on the bottom may contain ventilation or drainage holes.

Code – refers to the Colorado Medical Marijuana Code found at sections 12-43.3-101 *et seq.* C.R.S.

Division – refers to the Medical Marijuana Enforcement Division.

Division Director – refers to the Director of the Medical Marijuana Enforcement Division.

MMC – acronym for Medical Marijuana Center.

MMED – acronym for the Medical Marijuana Enforcement Division.

MIP – acronym for Medical Marijuana Infused Product.

OPC – acronym for Optional Premises Cultivation Operation.

State Licensing Authority – See section 12-43.3-201(1), C.R.S.

CHAPTER 1
--- General Rules and Regulations ---

100's --- Compliance

Regulation 1.001 - Severability. *[Effective: 7/01/11]*

If any portion of the rules adopted in March, 2011, and effective on July 1, 2011, is found to be invalid, the remaining portion of the rules shall remain in force and effect.

1.100 - Engaging in Business. *[Effective: 7/01/11]*

No person shall engage in the business of cultivating, possessing, selling, or offering to sell medical marijuana unless said person is duly licensed by the state and relevant local licensing authorities.

1.105 - Optional Premises Cultivation License – Prohibited Activity.

[Effective: 7/01/11]

Any person licensed pursuant to section 12-43.3-404, C.R.S, with an OPC license, shall use 100% of the medical marijuana it cultivates for only those purposes described in section 12-43.3-104(9), C.R.S., and it shall be unlawful to sell, give away or transfer any of the marijuana that it cultivates in any other form, substance or matter to any person.

1.110 - Infused Products Contracts. *[Effective: 7/01/11]*

Any contract required pursuant to section 12-43.3-404(3), C.R.S., shall contain such minimum requirements as to form and substance as approved by the MMED. These minimum statutory requirements will be posted on the MMED website.

1.115 - Interference with Officers. *[Effective: 7/01/11]*

No licensee or person shall by force or threat of force, including any letter or other communication threatening such force, endeavor to intimidate, obstruct or impede investigators of the MMED, their supervisors, or any peace officers from exercising their duties. The term "threat of force" includes, but is not limited to, the threat of bodily harm to the officer or to a member of his/her family.

1.120 - Duty to Report Offenses. [Effective: 7/01/11]

Any person licensed pursuant to the Code, and any associated or key persons to a licensee, or any occupational licensee must make written notification to the Division of any criminal conviction and criminal charge pending against such person within ten days of such person's arrest, summons, or conviction. This notification requirement shall not apply to non-felony traffic violations unless the violations result in suspension or revocation of a driver's license, the violations are based on allegations of driving under the influence or impairment of intoxicating liquor or drugs, or result in the person being taken into custody. Failure to make proper notification to the Division may be grounds for a disciplinary action.

200's --- Enforcement

1.200 - Registration of a Primary Center. [Effective: 7/01/11]

A Center licensed pursuant to section 12-43.3-402, C.R.S., shall not allow a patient to register the Center as a Primary Center if the patient has previously designated another Center as its Primary Center at anytime during the past one-hundred twenty (120) days. Should a patient desire to designate a new Primary Center after the one-hundred twenty (120) days timeframe, the patient must advise the new Primary Center of the number of plants being cultivated at its former Primary Center and the new Primary Center must validate that any existing plants at the former Primary Center have been assigned to new patients at that Center or that all plants previously assigned to the patient have matured and been cultivated and harvested. The new Primary Center shall also maintain written authorization from the patient and any relative plant count waivers to support the number of plants designated for that patient and shall report the assignment by a patient of its Primary Center to MMED within seventy-two (72) hours.

1.205 – Medical Marijuana Center Inventory – Definition, How Determined & Approved Handling Procedures. [Effective: 7/01/11]

- A. "Inventory" - shall be measured by common weights and measures and consist of both:
1. Plant count within a licensee's OPC and MMC which shall not exceed six (6) plants per patient designated to the MMC including marijuana clones placed in a growing medium; and
 2. The total weight of all packaged or bulk *Cannabis* such as but not limited to flowers, kief, leaf, shake, concentrates, and oils not subject

to section 12-43.3-104 (9), C.R.S., located on the licensed premises of a MMC, not to exceed two (2) ounces per primary center patient.

B. Notwithstanding the requirements of subsection (A) of this section to the contrary, a licensee may, in the case of a patient authorized to possess more than six (6) plants and two (2) ounces, possess such additional medical marijuana as provided by section 12-43.3-901(4)(e), C.R.S.

C. Inventory Determination.

1. All plants of the genus *Cannabis*, including marijuana clones placed in a growing medium, in possession of a licensee while at an OPC facility and MMC shall be considered plant inventory.
2. Propagation includes but is not limited to the reproduction of *Cannabis* plants by seeds, cuttings or grafting in a designated limited access area only of an OPC facility that is monitored by one or more surveillance cameras as required by rule. The propagation space shall be clearly identified by signage designated by the MMED and all marijuana located in the propagation space shall be accounted for as inventory. Propagation shall only be allowed upon an OPCL licensed premises.
3. Vegetation is the sporophytic state of the *Cannabis* plant which is a form of asexual reproduction in plants during which plants do not produce resin or flowers and are bulking up to a desired production size for flowering in a designated limited access area monitored by one or more surveillance cameras as provided by rule. The vegetation space shall be clearly identified by signage designated by the MMED and all marijuana located in the vegetation space within a limited access area of an OPC facility shall be accounted for as inventory. Vegetation may only occur within a limited access area upon the licensed premises of an OPC facility.
4. Flowering is the gametophytic or reproductive state of *Cannabis* in which the plant is in a designated flowering space that is a limited access area monitored by one or more surveillance cameras within an OPC facility with a light cycle intended to produce flowers, trichomes and cannabinoids characteristic of medical marijuana. The flowering space shall be clearly identified by signage designated by the MMED and all marijuana shall be accounted for as inventory. Flowering plants may only be possessed within a limited access area of a licensed OPC facility.
5. Throughout the propagation and vegetation phases, an OPC licensee shall tag and maintain a true and accurate accounting of all non-

flowering *Cannabis* plants including those destroyed or transferred to the MMC for sale. All accounting reports shall be made available to the State Licensing Authority, or other local authority, on demand.

- D. Once harvested, tagged medical marijuana plants shall be combined in batches for tracking through the entire manufacturing process with the tags for each medical marijuana plant accompanying each batch at each stage of manufacture. Each batch will be identified by listing the identifying markers from the individual plants from the designated flowering area and a data collection point will occur in which the batch will be weighed, duly recorded and clearly identified within sight of a video camera and the "wet" weight of buds, stems and leaf duly recorded as unprocessed product, wholesale byproduct, and waste. The identifying markers associated with each batch shall be prominently displayed on drying racks or wires and curing containers throughout the manufacturing process.
- E. "Processed" as used in this rule shall mean the final dried, finished and useable marijuana product having been sifted and sorted to remove plant waste, stems, and/or seeds and other byproducts prepared for final packaging and transport to the licensed center as permitted in law.
- F. Prior to packaging, the processed medical marijuana plants shall be weighed before transfer to the MMC or MIPs, and the weight of unfinished product, wholesale byproduct and waste as a data collection point recorded. Processed marijuana shall be immediately packaged, sealed, weighed and stored in an approved secure transportation container for transport to the licensed premises of the MMC. Medical marijuana packaging shall be in sealed containers/packaging with tamper-proof bands.
- G. All medical marijuana shall be weighed in a limited access area of an OPC facility monitored by one or more cameras before and after packaging to determine product weight and total package weight and tagged with both weights before being transported to the MMC.
- H. For inventory purposes, all inventory packaged and stored in an approved secure transportation container shall be accounted for as inventory of the MMC.
- I. Processed medical marijuana plants shall be packaged in units of one pound or less and tagged with the total weight of the packaged product and securely sealed in a tamper-proof manner. The packages will be transported to the MMC within forty-eight (48) hours and recorded as inventory at the receiving MMC.

- J. Packaged medical marijuana shall be weighed, logged out, and transported directly from the OPC facility to the MMC's licensed premises in a secure fashion and out of plain sight.
- K. Transport will be made by an individual licensed by the State Licensing Authority and as authorized pursuant to these rules.
- L. On arrival at the licensed center, all packages containing medical marijuana shall be re-weighed within eight (8) hours in a limited access area of the MMC and monitored by one or more cameras and logged in to the licensed MMC's on hand inventory.
- M. If medical marijuana product is intended for wholesale distribution to another licensed MMC licensed premises, it shall be weighed in a limited access area of the center and monitored by one or more cameras as provided in rule and logged out of the originating center for pickup and transport to the receiving licensed center or MIP as authorized by law.
- N. Licensed facilities, as it relates to inventory control and tagging, shall follow procedures, tag type and inventory controls as set forth by the MMED.

1.210 – Medical Marijuana Center Inventory Purchase and Sale Restrictions (30% Rule). [Effective: 7/01/11]

During the hours established in section 12-43.3-901 (4) (I), C.R.S., medical marijuana manufactured by a medical marijuana center licensee within its licensed OPC facility, may be sold to other licensed MMCs or licensed MIP facilities, only under the following conditions:

- A. Pursuant to section 12-43.3-402 (4), C.R.S., a MMC may purchase not more than thirty percent (30%) of its total on-hand medical marijuana inventory from another licensed medical marijuana center in Colorado. A medical marijuana center may sell no more than thirty percent (30%) of its total on-hand medical marijuana inventory to another Colorado medical marijuana licensee.
- B. Total on-hand inventory as used in section 12-43.3-402(4), C.R.S., shall only include medical marijuana grown on the MMC's identically licensed OPC premises, which has been "processed" as defined in Regulation 1.205.E and the total amount or quantity has been accounted for in the licensed MMC's inventory during the previous calendar year, or in the case of a newly licensed business, its first 12 months of business.

- C. A MMC licensee may also contract for the manufacture of marijuana infused products with MIP licensees utilizing a contract as provided for in Regulation 1.110. Medical marijuana distributed to a MIPs licensee by a MMC licensee pursuant to such a contract for use solely in product(s) that are returned to the contracting MMC shall not be included for purposes of determining compliance with subsection A.
- D. All parties to the buying and selling transactions shall verify the license status of the other licensee(s).
- E. It shall be a violation for any MMC to sell or purchase more than thirty percent (30%) of its total on-hand inventory as defined in subsection (B) of this regulation, during any calendar year, or in the case of a newly licensed business, its first 12 months of business.

300's --- Violations

1.300 - Complaints Against licensees - Suspension and Revocation of Licensees. [Effective: 7/01/11]

- A. Whenever a written complaint is filed with the licensing authority, charging any licensee with a violation of the Code, the rules promulgated pursuant to the Code, or an order of a state or local licensing authority, the licensing authority shall determine by investigation or otherwise the probable truth of such charges.
- B. If the licensing authority has probable cause to believe that a licensee has violated the Code, the rules promulgated pursuant to the Code, or an order of a state or local licensing authority, the licensing authority shall issue and cause to be served upon such licensee a notice of hearing and order to show cause why its license should not be suspended or revoked or otherwise subject to disciplinary action.
- C. A hearing shall be held at a place and time designated by the licensing authority on the day stated in the notice, or upon such other day as may be set for good cause shown. Evidence in support of the charges shall be given first, followed by cross-examination of those testifying thereto. The licensee, in person or by counsel, shall then be permitted to give evidence in defense and in explanation, and shall then be allowed to give evidence and statements in mitigation of the charges. In the event the licensee is found to have committed the violation charged or any other violation, evidence and statements in aggravation of the offense shall also be permitted.

- D. If the evidence presented at the hearing does not support the charges stated in the notice and order served upon the licensee, but standing alone establishes that the licensee has engaged in a different violation of the Code, the rules promulgated pursuant to the Code, or an order of a state or local licensing authority, the licensee shall be permitted to give evidence and statement in defense, explanation and mitigation if then prepared to do so. If such evidence is not then available, but can be obtained by the licensee, the licensee shall state the substance thereof and upon his request the hearing may be recessed for not more than ten (10) days, and shall then continue under the same procedure as through no recess had occurred.
- E. In the event the licensee is found not to have violated the Code, any rule promulgated pursuant to the Code, or any order of a state or local licensing authority, the charges will be dismissed. If the licensee is found to have violated the Code, any rule promulgated pursuant to the Code, or any order of a state or local licensing authority, his license may be suspended or revoked or otherwise subject to disciplinary action.
- F. Every MMC licensee or MIP licensee whose license has been suspended by any licensing authority shall, if ordered by the licensing authority, post two notices in conspicuous places, one on the exterior and one on the interior of its premises, for the duration of the suspension. The notices shall be two feet in length and fourteen inches in width containing lettering not less 1/2" in height, and shall be in the following form:

**NOTICE OF SUSPENSION
MEDICAL MARIJUANA LICENSES ISSUED
FOR THESE PREMISES HAVE BEEN
SUSPENDED BY ORDER OF THE STATE OR LOCAL LICENSING
AUTHORITY FOR VIOLATION OF THE COLORADO MEDICAL
MARIJUANA CODE**

Advertising or posting signs to the effect that the premises have been closed or business suspended for any reason other than by order of the licensing authority suspending the medical marijuana license, shall be deemed a violation of this rule.

- G. During any period of active license suspension, when such suspension has not otherwise been stayed by the licensing authority through the payment of a fine pursuant to section 12-43.3-601(3) through (7), C.R.S., the MMC licensee shall not permit the selling, serving, giving away, distribution or possession of medical marijuana on the licensed premises.
- H. A MMC may maintain its on hand inventory and care for its OPC area during a period of suspension unless a licensing authority has revoked its license or has otherwise ordered. However, no medical marijuana shall be removed

from the licensed premises at any time during a suspension except for purpose of destruction with the permission of the licensing authority.

- I. A MIP licensee may maintain its infused products or other butters, oil, or tinctures on the licensed premises during any period of suspension unless a licensing authority has revoked its license or has ordered otherwise. However, no medical marijuana in any form shall be sold, exchanged, given away or removed from the licensed premises during a suspension except for purpose of destruction with the permission of the licensing authority.

1.305 - Temporary-Summary Suspension of Licenses. [Effective: 7/01/11]

- A. Where the licensing authority has objective and reasonable grounds to believe and finds, after a full investigation, that a licensee has been guilty of a deliberate and willful violation of any applicable law or regulation or that the public health, safety or welfare imperatively requires emergency action and incorporates such findings in its order, it may temporarily or summarily suspend the license pending proceedings for suspension or revocation which shall be promptly instituted and determined.
- B. During any period of active temporary suspension, unless otherwise ordered by a licensing authority, the licensee shall be allowed to maintain and care for its licensed OPC, its MIP facility and any related on premises inventory, but the licensee shall not be allowed to sell, transfer, exchange or remove any of its inventory from the licensed premises except for purpose of destruction with the permission of the licensing authority.
- C. Every MMC licensee or MIP licensee whose license has been suspended by any licensing authority shall, if ordered by the licensing authority, post two notices in conspicuous places, one on the exterior and one on the interior of its premises, for the duration of the suspension. The notices shall be two feet in length and fourteen inches in width containing lettering not less 1/2" in height, and shall be in the following form:

**NOTICE OF SUSPENSION
MEDICAL MARIJUANA LICENSES ISSUED
FOR THESE PREMISES HAVE BEEN
SUSPENDED BY ORDER OF THE STATE OR LOCAL LICENSING
AUTHORITY FOR VIOLATION OF THE COLORADO MEDICAL
MARIJUANA CODE**

Advertising or posting signs to the effect that the premises have been closed or business suspended for any reason other than by order of the licensing authority suspending the medical marijuana license, shall be deemed a violation of this rule.

1.310 - Declaratory Orders Concerning the Colorado Medical Marijuana Code. [Effective: 7/01/11]

- A. Any person, municipality, county, or city and county, may petition the MMED for a statement of position concerning the applicability to the petitioner of any provision of the Code, or any regulation of the State Licensing Authority. The Division shall respond with a written statement of position within thirty (30) days of receiving such petition.
- B. Any person who has petitioned the Division for a statement of position and who is dissatisfied with the statement of position or who has not received a response within thirty (30) days, may petition the State Licensing Authority for a declaratory order pursuant to section 24-4-105(11), C.R.S. Any petitioner who has not received a statement of position within thirty (30) days may petition the State Licensing Authority at any time thereafter. Such petition shall set forth the following:
 - 1. The name and address of the petitioner, whether the petitioner is licensed pursuant to the Code and if so, the type of license and address of the licensed premises.
 - 2. The statute, rule or order to which the petition relates.
 - 3. A concise statement of all of the facts necessary to show the nature of the controversy or the uncertainty as to the applicability to the petitioner of the statute, rule or order to which the petition relates.
 - 4. A concise statement of the legal authorities, if any, and such other reasons upon which petitioner relies.
 - 5. A concise statement of the declaratory order sought by the petitioner.
- C. The State Licensing Authority will determine, in its discretion without prior notice to the petitioner, whether to entertain any petition. If the State Licensing Authority decides it will not entertain a petition, it shall promptly notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a petition:

1. The petitioner has failed to petition the Division for a statement of position, or if a statement of position has been issued, the petition for declaratory order was filed with the State Licensing Authority more than thirty (30) days after issuance of the statement of position.
 2. A ruling on the petition will not terminate the controversy nor remove uncertainties concerning the applicability to petitioner of the statute, rule or order in question.
 3. The petition involves a subject, question or issue which is currently involved in a pending hearing before the state or any local licensing authority, or which is involved in an on-going investigation conducted by the Division or which is involved in a written complaint previously filed with the State Licensing Authority.
 4. The petition seeks a ruling on a moot or hypothetical question.
 5. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colo R. Civ. Pro. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule or order.
- D. If the State Licensing Authority determines that it will entertain the petition for declaratory order, it shall notify the petitioner within thirty (30) days, and the following procedures shall apply:
1. The State Licensing Authority may expedite the hearing, where the interests of the petitioner will not be substantially prejudiced thereby, by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the Division to submit additional evidence and legal argument in writing.
 2. In the event the State Licensing Authority determines that an evidentiary hearing or legal argument is necessary to a ruling on the petition, a hearing shall be conducted in conformance with section 24-4-105, C.R.S.
 3. In ruling on a petition, the State Licensing Authority may take administrative notice of general, technical or scientific facts within its knowledge, so long as the fact is specified in the record or is brought to the attention of the parties before final decision and every party is afforded an opportunity to controvert the fact so noticed.
 4. Every declaratory order shall be promptly decided and issued in writing, specifying the basis in fact and law for the order.

5. The parties to any proceeding pursuant to this rule shall be the petitioner and the Division. Any other interested person may seek leave of the State Licensing Authority to intervene in the proceeding and such leave may be granted if the licensing authority determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.
 6. The declaratory order shall constitute agency action subject to judicial review pursuant to section 24-4-106, C.R.S.
- E. A copy of any petition for a statement of position to the Division and of any petition for a declaratory order to the State Licensing Authority shall be mailed, on the same day that the petition is filed with the Division or authority, to the individual county or municipality within which the petitioner's licensed premises, or premises proposed to be licensed, are located. Any petition filed with the Division or authority shall contain a certification that the mailing requirements of this paragraph have been met.
 - F. Files of all petitions, requests, statements of position, and declaratory orders will be maintained by the Division. Except with respect to any material required by law to be kept confidential, such files shall be available for public inspection.
 - G. The Division shall post a copy of all statements of positions or declaratory orders constituting final agency action on the Division's web site.

CHAPTER 2

--- Duties of Officers and Employees of the State Licensing Authority ---

100's --- Investigators and Medical Marijuana Supervisors

2.100 - Investigators and Medical Marijuana Supervisors – Powers and Authority. *[Effective: 7/01/11]*

The investigators of the MMED and their supervisors, while actually engaged in performing their duties and while acting under proper orders or regulations, shall have and exercise all the powers vested in peace officers of this state and shall enforce all laws of the state of Colorado.

CHAPTER 3
--- Instructions for Local Licensing Authorities
and Law Enforcement Officers ---

---RESERVED---

CHAPTER 4

--- Inspections, Investigations, and Searches and Seizures ---

100's --- Inspections (RESERVED)

200's --- Investigations (RESERVED)

300's --- Searches and Seizures (RESERVED)

**CHAPTER 5
--- Range of Penalties ---**

100's --- General Provisions

5.100 – Penalty Schedule, with suggested aggravating and mitigating factors. [Effective: 7/01/11]

<u>Code Violation:</u>	<u>Suspension/Abeyance</u>	<u>Fine Okay?</u>
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1. Sale to nonqualified persons.

First offense – 1 count	30 & 15	Fine Okay
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Second offense within 1 year: Go to Hearing

Note: Criminal charges should also be filed and upon conviction of a drug related felony the license must also be revoked.

Mitigation: 1st offense wherein the patient has been a regular and the licensee was shown prior identification and/or management was not involved. Patient registry card shown and had just expired.

Aggravation: No identification or registry card presented or checked and/or management involved.

2. Sale after Hours.

First offense	Written Warning - 10 days	Fine Okay
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Second offense	10 & 20	
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Third Offense	Go to Hearing	
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Mitigation: 1st offense occurring in close proximity to lawful business hours, i.e., 7:05 PM ; management was not involved with the sale made to the patron. Single, isolated offense

Aggravation: Management participated in or endorsed sale after the lawful hours; violation occurred well after the lawful hours, i.e., 3:00 AM; there were multiple offenses.

3. Failure to meet the 70/30 requirement.

1st offense	Written warning – 10 days	Fine Okay
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	4 months to correct	
Second offense in 1 year	20/10 4 months to correct	Fine Okay
Subsequent offenses	Go to hearing	

Mitigation: An audit reveals evidence of consistent compliance, grow was lost and sales reflect that licensee is generally very close to the 70/30 requirement. No prior violations; licensee has not been licensed for an extended period of time. Licensee is close to percentage requirement, but acquires marijuana from other licensed sources due to loss of grow.

Aggravation: Audit reveals little or no evidence of compliance. Licensee doesn't have a functioning grow; Licensee relies solely on purchases from external sources; multiple violations present.

4. Purchase of Marijuana from Unlicensed Sources.

First offense Go to Hearing

License should be revoked immediately as these violations are generally indicative of the presence of other criminal activity.

5. Unlawful Consumption/Medication on the Licensed Premises.

First offense 5 & 10 Fine Okay

Second offense Abeyance Time & up to 30 days

Third Offense Go to Hearing

Mitigation: 1st offense involving termination of the employee and management not directly involved.

Aggravation: Multiple offenses, long term investigation disclosing a pattern of violations and/or other criminal activity, management involved or aware of activity.

6. Failure to Maintain adequate Books and Records.

First offense Written warning - 10 days Fine Okay

Second offense 15 & 15

Third Offense Go to Hearing

Mitigation: Issue is disclosed through routine compliance inspection and absent hidden ownership allegations (small business owner who is a sloppy record keeper); no intent to deceive.

Aggravation: Uncovered through investigation of complaint alleging hidden ownership. Records supporting allegation are missing.

7. Violations on inspection issues detected within the previous year.

1 & 2 for each violation initially disclosed Fine (Internal assessment Okay)

Mitigation: Employee signed for warning and management was not directly involved in violation.

Aggravation: Management directly involved or directed employee to violate or not conform to request. Multiple offenses in a short time frame.

8. Failure to register or report manager, corporate or financial changes.

First offense Written warning - 30 Days. Fine Okay

Second offense Go to Hearing

Mitigation: Violations detected through routine inspection; violations resulting from recent statutory changes; registration of manager; minor financial changes requiring reports which do not involve new persons.

Aggravation: Changes requiring a transfer of ownership resulting in hidden ownership or create unlawful financial interest/ownership. Persons involved have an extensive record that has not been disclosed (intent) and may not otherwise qualify for a license.

9. Employing Underage Persons.

First offense 10 & 20 Fine Okay

Second offense To Hearing

Mitigation: . Licensee not directly involved with violation and employee did NOT have access to marijuana or limited access areas.

Aggravation: Management involvement with violation and/or employee had access to marijuana or limited access areas.

10. Hidden Ownership – Unlawful Financial Interest.

First offense 30 days to transfer or to Hearing

Mitigation: Change of entity involving same owners, i.e., partnership between a husband and wife, who incorporate. License must be transferred to the new entity (Corporation). Issue Notice of Proposed Denial (“N.O.P.D”) on new entity resulting in suspension with fine or 3 days. (3 day suspension) Fine OK.

Aggravation: True hidden ownership involving transfer of business assets to an unrelated 3rd party; ownership creates prohibited financial interest; business continues to operate. Show Cause should be issued for current Licensee. N.O.P.D. should be issued for new owner. If severe aggravation exists (Licensee fails to respond to allegations and take responsibility for business or new owner fails to comply and seek its own license/temporary permit), recommend revocation of current license and denial of new owners license.

11. Failure to meet sanitary standards.

First offense 5-10 Fine OK

Second offense 20 & 10

Third offense To Hearing

Mitigation: Minor offense, management not involved. Issue resolved immediately.

Aggravation: On-going violations, health safety issues identified. Multiple patients filing complaints and being harmed by contaminants; management involved.

12. Failure to properly display credentials.

First offense Warning -10 Fine OK

Second Offense 10 & 20 + Abeyance time

Third offense To Hearing

Mitigation: Person held valid license and forgot to display it. Management takes immediate action or detected violation and self reported. All medical marijuana properly accounted for.

Aggravation: Multiple offenses or multiple persons involved. Unlicensed persons present and/or management involvement or awareness. Medical marijuana inventory cannot be properly accounted for.

CHAPTER 6
--- Unfair and Prohibited Practices ---

100's --- Advertising Practices

6.100 - Medical Marijuana Center Sales. *[Effective: 7/01/11]*

A. Advertising Practices.

1. No MMC licensee shall display upon or in proximity to, or referring to the licensed premises, use, publish or exhibit, or permit to be used, or published, any sign, advertisement, display, notice, symbol or other device which are inconsistent with the local laws and regulations in which the licensee operates.
2. No MMC licensee shall display upon or in proximity to, or referring to the licensed premises, use, publish or exhibit, or permit to be used, or published, any sign, advertisement, display, notice, symbol or other device which uses misleading, deceptive, or false advertising.

CHAPTER 7
--- Informational and Product Displays ---

--- RESERVED ---

CHAPTER 8
--- Identification Card and Background Checks ---

100's --- General Provisions

8.100 - Occupational Licenses Required. *[Effective: 7/01/11]*

- A. A person shall not be employed or under contract by a licensee to perform any work, employment or any other task for the licensed business, without first applying for and successfully obtaining a valid license issued by the Division.
1. The following occupational license categories shall apply:
 - a. Key - persons performing duties that are key to the operations and have the highest level of responsibility (example in this category would be a manager or bookkeeper);
 - b. Support - persons performing duties that support the operations of the licensee and while they have a responsibility to conduct themselves professionally, they have limited decision making authority and routinely fall under the supervision of a Key Employee (example in this category may be a sales clerk or cook); and
 - c. Registration - businesses or persons performing other practices or duties in or for the operations of the licensee and while they have a responsibility to conduct themselves professionally, they have no decision making authority for the licensee and always fall under the supervision of a Key Employee (example in this category may be a laboratory or security system contractor).
 2. The Director of the Division shall establish appropriate sub-categories within each occupational (license) category to reflect the nature of the activity to be performed.
 3. Persons required to be licensed shall submit a completed application on forms furnished by the Division, accompanied by the fee set by the licensing authority and shall obtain approval prior to commencement of activities permitted by such license.
 4. This rule shall not apply to any person employed or contracted to perform activities not directly related to the possession, cultivation, dispensing, selling, serving, delivering or giving of marijuana as permitted by law. By way of example, employment or contracts for

services such as advertising, legal, or emergency HVAC shall be exempt from licensure pursuant to this rule.

- B. Applicants for initial licensure and all renewal applicants shall be fingerprinted. Applicants shall also be fingerprinted if for any reason they have been asked by the Division to submit a new application. These reasons may include, but are not limited to, someone reapplying after more than one (1) year has elapsed since the expiration of the most recent license, if someone has been denied or revoked by an action of the State Licensing Authority or Division, or when additional information may be needed to proceed with a background investigation.
- C. Any applicant for a license may be required to establish his/her identity and age by the presentation of a certified birth certificate and other valid identification containing a photograph as required for a determination of lawful presence.
- D. All application forms supplied by the Division and filed by an applicant for license shall be accessible by local and state licensing authorities and any law enforcement agent.
- E. It is the duty of each licensee to promptly advise the Division in writing of any change in their current mailing address with 10 days of any change.
- F. Every licensee and its supervisors shall be responsible for insuring that every employee or contractor is licensed with the Division .
- G. Within three (3) business days, licensees shall report any criminal actions, rule violations or other suspicious acts involving the sale, cultivation, distribution or manufacturing of medical marijuana or any medical marijuana infused products by any person to the Division or Division Representative and shall cooperate in subsequent investigations. If an employee or contractor is discharged for alleged violations of the law or these regulations, the employer shall make every effort to insure that any employee or other persons so discharged surrender their license(s) as required by section 12-43.3-310(3), C.R.S.
- H. All licenses shall remain the property of the State Licensing Authority and shall be returned to the Division upon demand of the State Licensing Authority, the Division, or its agents.

CHAPTER 9
--- State Licensees ---

100's --- General Disclosure Requirements

9.100 - Unlawful Financial Assistance. [Effective: 7/01/11]

- A. Each license must be held by the owner of the licensed establishment.
"Owner" means the person or persons whose proprietary interest is such that they bear risk of loss other than as an insurer, and have opportunity to gain profit from the operation or sale of the establishment.

In determining who is the owner, elements considered in addition to risk of loss and opportunity for profit include: (1) possession; (2) who controls the license; (3) who guarantees the establishment's debts or production levels; (4) who is beneficiary under the establishment's insurance policies; and (5) who acknowledges liability for the business' federal, state, or local taxes.

- B. Owners may hire managers, and managers may be compensated on the basis of profits made, gross or net. A MMC, OPC or MIP license may not be held in the name of the manager.
- C. A spouse of a licensee may hold a license in his or her own right if he or she is the owner of the licensed establishment, regardless of whether the spouses file separate or joint income tax returns.
- D. A partnership interest, limited or general, a joint venture interest, ownership of a share or shares in a corporation or a limited liability company which is licensed, or having a secured interest in furniture, fixtures, equipment or inventory constitutes ownership and a direct financial interest. Each individual with this type of ownership or direct financial interest must have an appropriate license.
- E. Any person who guarantees production levels, yields, quantities produced or any other obligations of the licensee or its operation shall be deemed to have a financial interest.

9.105 - Transfer of Ownership and Changes in Licensed Entities.

[Effective: 7/01/11]

- A. As it relates to Corporations and limited liability companies;
1. If the applicant for any license pursuant to the Code is a corporation or limited liability company, it shall submit with the application the names, addresses, and Key/Associated persons background forms of all of its

principal officers, directors, or Managers, and a copy of its articles of incorporation or articles of organization; and evidence of its authorization to do business within this State. In addition, each applicant shall submit the names, addresses and Key/Associated person's background forms of all persons owning any of the outstanding or issued capital stock, or of any persons holding a membership interest.

2. Any proposed transfer of capital stock or any change in principal officers or directors of any corporation holding a license under the provisions of the Code shall be reported to the respective licensing authorities prior to such transfer or change. With the report, the licensee shall submit the names, addresses, and Key/Associated person's background forms for any new officer, director, or stockholder acquiring any outstanding capital stock.
3. Any proposed transfer of membership interest or any change in managers of any limited liability company holding a license shall be reported to the respective licensing authorities prior to such transfer or change. With the report, the licensee shall submit the names, addresses, and Key/Associated person's background forms for any new manager, or member acquiring a membership interest.

B. As it pertains to Partnerships;

1. If the applicant for any license pursuant to the Code is a general partnership, limited partnership, limited liability partnership, or limited liability limited partnership, it shall submit with the application the names, addresses, and Key/Associated persons background forms of all of its partners and a copy of its partnership agreement
2. Any proposed transfer of partnership interest or any change in general or managing partners of any partnership holding a license shall be reported to the respective licensing authorities prior to such transfer or change. With the report, the licensee shall submit the names, addresses, and Key/Associated person's background forms for any new partner, or any other partner acquiring a partnership interest.

C. As it relates to Entity Conversions;

1. Any licensee that qualifies for an entity conversion pursuant to sections 7-90-201, C.R.S., et. seq., shall not be required to file a transfer of ownership application pursuant to section 12-43.3-309, C.R.S., upon statutory conversion, but shall submit a report containing suitable evidence of its intent to convert at least thirty (30) days prior to such conversion. Such evidence shall include, but not be limited to, any conversion documents or agreements for conversion at least ten (10) days prior to the date of recognition of conversion by the Colorado Secretary of State. In addition, prior to the date of the conversion, the licensee shall submit the names, addresses, and

Key/Associated persons background forms of any new officers, directors, managers, general or managing partners, and all persons having an ownership interest.

- D. All reports required by this regulation shall be made on forms supplied by the Department of Revenue, Medical Marijuana Enforcement Division.
- E. No application for a transfer of ownership may be received or acted upon by either the state or local licensing authority if the previous licensee has surrendered its license and had it canceled by either local or state authority prior to the submission of the transfer application. In cases where cancellation has occurred prior to the submission of a transfer of ownership application, the license applicant shall follow the procedures for a new license application pursuant to section 12-43.3-305, C.R.S.
- F. No change shall be effective as it pertains to any licensee, until and unless the proposed transfer of ownership has been approved by the appropriate local and state licensing authorities.

CHAPTER 10
--- Security Requirements ---

100's --- General Provisions

10.100 - Limited Access Areas. *[Effective: 7/01/11]*

- A. All limited access areas must be identified by the posting of a sign which shall be a minimum of 12" X 12" which shall state in the English language "Do Not Enter - Limited Access Area – Access limited to Licensed owners, employees and contractors only" in lettering no smaller than ½ inch in height.
- B. All limited access areas shall be clearly described by the filing of a diagram of the licensed premises reflecting walls, partitions, counters and all areas of ingress and egress. Said diagram shall also reflect all propagation, vegetation, flowering, hashish manufacturing and all retail sales areas.
- C. Notwithstanding the requirements of subsection A of this regulation, nothing shall prohibit members of the state or local licensing authorities or law enforcement from entering a limited access area.

10.105 - Display of License Required–Limited Access Area.

[Effective: 7/01/11]

All persons in a limited access area as provided for in section 12-43.3-105, C.R.S., shall be required to hold and properly display a current validated license badge issued by the Division at all times while in any limited access areas. Failure of any person to properly display such a license badge may constitute grounds for discipline. Proper display of the license badge shall consist of wearing the badge plainly visible at or above the waist, with the photo of the licensee readily visible to any observer. The licensee shall not alter, obscure, damage, or deface the badge, including the photographic image of the licensee, and any information contained or represented thereon, in any way.

All outside vendors, contractors or visitors must obtain a visitor identification badge, prior to entering a restricted or secure area, from a key licensee and shall be escorted at all times by that representative of the facility except as set forth and unless otherwise authorized by the Division Director. The visitor identification badge must be visibly displayed at all times while the visitor is in any limited access area. All visitors must be logged in and out, and that log shall be available for inspection by Division personnel at all times. All visitor identification badges shall be returned to the issuing facility upon exiting the limited access area.

200's --- Alarm Systems

10.200 - Security Alarm Systems-Minimum Requirements. [Effective: 7/01/11]

A. Definitions.

1. **Alarm Administrator** means the Director of the MMED or his designee charged with recording the details of the Security Alarm Systems and approved Alarm Installation Companies and Monitoring Companies.
2. **Alarm Installation Company** means a Person in the business of selling, providing, maintaining, servicing, repairing, altering, replacing, moving or installing a Security Alarm System in an Alarm Site.
3. **Security Alarm System** means a device or series of devices, including, but not limited to, hardwired systems and systems interconnected with a radio frequency method such as cellular or private radio signals, which emit or transmit a remote or local audible, visual or electronic signal indicating an alarm condition and is intended to summon law enforcement response.
4. **Alarm User** means any Person, who has contracted for Monitoring, repair, installation or maintenance service from an Alarm Installation Company or Monitoring Company for a Security Alarm System, or who owns or operates a Security Alarm System which is not monitored, maintained or repaired under contract.
5. **Arming Station** means a device that allows control of a Security Alarm System.
6. **Automatic Voice Dialer** means any electrical, electronic, mechanical, or other device capable of being programmed to send a prerecorded voice message, when activated, over a telephone line, radio or other communication system, to a law enforcement, public safety or emergency services agency requesting dispatch.
7. **Duress Alarm** means a silent Security Alarm System signal generated by the entry of a designated code into an Arming Station in order to signal that the Alarm User is being forced to turn off the system.
8. **Holdup Alarm** means a silent alarm signal generated by the manual activation of a device intended to signal a robbery in progress.

9. **License** means a license issued by the State of Colorado or local government to an Alarm Installation Company or Monitoring Company to sell, install, monitor, repair, or replace Security Alarm Systems.
10. **Local Security Alarm System** means any Security Alarm System, which is not monitored, that annunciates an alarm only at the Alarm Site.
11. **Monitoring** means the process by which a Monitoring Company receives signals from a Security Alarm System and relays an Alarm Dispatch Request to a law enforcement agency for the purpose of summoning an officer to the Alarm Site.
12. **Monitoring Company** means a Person in the business of providing Monitoring services at a central monitoring station 24 hours a day.
13. **One Plus Duress Alarm** means the manual activation of a silent alarm signal by entering at an Arming Station a code that adds one to the last digit of the normal arm/disarm code (e.g., normal code = 1234, One Plus Duress Code = 1235)
14. **Panic Alarm** means an audible Security Alarm System signal generated by the manual activation of a device intended to signal a life threatening or emergency situation requiring a deputy's response.
15. **Person** means an individual, corporation, partnership, association, organization or similar entity.
16. **Zones** means division of devices into which a Security Alarm System is divided to indicate the general location from which a Security Alarm System signal is transmitted.

B. Duties of the Alarm User and Alarm Installation Companies.

1. At a minimum, each licensed medical marijuana premises must have a closed-circuit Security Alarm System on all perimeter entry points and perimeter windows installed by an Alarm Installation Company and monitored by a Monitoring Company. Motion detectors, pressure switches, Duress, Panic and Hold Up Alarms may also be utilized.
2. The Alarm User will report the location of each Security Alarm System, the Alarm Installation Company and the Monitoring Company to the Alarm Administrator.

3. All Security Alarm Systems installed by any Alarm Installation Company shall conform to the Alarm User's applicable local code, rule or ordinance regarding installation, repair, alteration, maintenance and programming of Security Alarm Systems.
4. An Alarm User shall:
 - a. maintain the Alarm Site and the Security Alarm System in a manner that will minimize or eliminate False Alarms;
 - b. make every reasonable effort to have a Responder to the Security Alarm System's location within 30 minutes when requested by the law enforcement agency in order to:
 - (1) deactivate a Security Alarm System;
 - (2) provide access to the Alarm Site; and/or
 - (3) provide alternative security for the Alarm Site.
 - c. not activate a Security Alarm System for any reason other than an occurrence of an event that the Security Alarm System was intended to report.
5. An Alarm User shall adjust the mechanism or cause the mechanism to be adjusted so that an alarm signal audible on the exterior of an Alarm Site will sound for no longer than ten (10) minutes after being activated.
6. An Alarm User shall have an Alarm Installation Company inspect the Security Alarm System after two (2) False Alarms in a one (1) year period. The Alarm Administrator may waive a required inspection if it determines that a False Alarm(s) could not have been related to a defect or malfunction in the Security Alarm System. After four (4) False Alarms within a one (1) year period, the Alarm User must have an Alarm Installation Company modify the Security Alarm System to be more false alarm resistant or provide additional user training.
7. An Alarm User shall maintain at each Alarm Site, a set of written operating instructions for each Security Alarm System.
8. An Alarm User will report all false and real alarms to the Alarm Administrator.

C. License or licensing.

All Alarm Installation Companies and Monitoring Companies shall maintain a License, if required by the State of Colorado or local licensing authority.

D. Duties and Authority of the Alarm Administrator.

1. The Alarm Administrator shall:

- a. approve Alarm Installation Companies and Monitoring Companies prior to them being utilized by the Alarm User.
- b. maintain a record of all Alarm Users, Alarm Sites, their Installation Company and Monitoring Company.
- c. maintain date and time records of false alarms and work with the Alarm user and the Alarm Installation Company to minimize false alarms.

E. Confidentiality.

Unless otherwise provided by law, all records maintained by the Alarm Administrator shall be held in confidence by all employees or representatives of the MMED.

300's --- Lock Standards

10.300 - Lock Standards in Medical Marijuana Licensed Premises – Minimum Requirements. [Effective: 7/01/11]

Commercial-grade II, non-residential locks are required at all point of ingress/egress, as well as the surveillance room or area which is defined at Regulation 10.400.B.2.p.

400's --- Video Surveillance

10.400 - Specifications for Video Surveillance and Recording of Medical Marijuana Licensed Premises – Minimum Requirements. [Effective: 7/01/11]

A. STATEMENT OF PURPOSE.

This regulation outlines the functional and performance requirements for a complete video surveillance and recording system within all medical marijuana licensed premises as deemed necessary to ensure control by the State of Colorado. This specification includes image acquisition, video recording, management and monitoring hardware and support systems.

Submission of all system information, system layout, and remote access information must be submitted to the MMED using an “MMED Secure Facility submission/Application Form.” All systems shall be subject to the approval of MMED.

B. SURVEILLANCE SYSTEM STANDARDS.

1. GENERAL.

- a. Surveillance system standards apply to all licensed categories in section 12-43.3-401, C.R.S., in which medical marijuana is possessed, stored, grown, harvested, cultivated, cured, sold, or where laboratory analysis is performed.
- b. Licensees with limited access areas as defined in the Code shall be required to install a video surveillance and camera recording system that is fully digital and meets the requirements outlined in this section by July 1, 2011.
- c. All surveillance systems and camera coverage areas must be physically inspected for compliance and receive approval from the MMED prior to being utilized. After the initial approval, the licensee and the MMED shall approve all modifications to any approved cameras prior to any changes.
- d. All personnel installing, cleaning, maintaining and repairing surveillance equipment on site must be licensed by the State Licensing Authority.
- e. Time is to be measured in accordance with the official United States time established by the National Institute of Standards and Technology and the U.S. Naval Observatory at <http://www.time.gov/timezone.cgi?Mountain/d/-7/java>.
- f. Licensees are responsible for ensuring all surveillance equipment is properly functioning and the playback quality meets MMED requirements
- g. The licensee must have all documentation, approvals, and variances, or copies thereof, relating to surveillance, kept in a locked room or locked secure area, and all documentation, approvals, and variances, or copies thereof shall be available to the MMED upon request. No cultivation operations shall occur within this room or secure area which may damage the system due to high temperature or humidity conditions.
- h. Wireless connections for cameras that use wireless G or N protocol (2.4 gigahertz minimum) are allowed. The MMED may approve others that contain the same or higher security encryption protocol.

2. DEFINITIONS.

- a. Blue-ray Disc – a high-density optical disc format for the storage of digital media, including high-definition video.
- b. CIF – Common Interface Format - defines a frame rate of 30000/1001 (roughly 29.97) in NTSC format.
- c. Critical areas - include all limited access areas, points of ingress/egress and all active and inactive point of sale areas.
- d. DVI – digital visual interface. DVI is a video interface standard designed to maximize the visual quality of digital display devices such as flat panel LCD computer displays and digital projectors.
- e. DVR – digital video recorder. See ‘MMED Approved DVR/NVR List.’
- f. Fields – one field is defined as half of one frame. See ‘MMED Approved DVR/NVR List.’
- g. Fixed Cameras – a fixed camera which once installed and approved by the MMED, cannot be moved or modified to change the angle or field of view. FPS – frame rate or frame frequency per second. FPS is the measurement of the frequency (rate) at which an imaging device produces unique consecutive images called frames. Each frame consists of two fields.
- h. FPS – frame rate or frame frequency per second. FPS is the measurement of the frequency (rate) at which an imaging device produces unique consecutive images called frames. Each frame consists of two fields.
- i. IP – Internet Protocol – network-layer (Layer 3) protocol that contains addressing information and some control information that enables a remote network connection.
- j. MMED approved standards and approved DVR/NVR list – Document provided by the Medical Marijuana Enforcement Division to licensees and licensed security providers, to give examples of required camera views, angles and clarity. Additionally, the MMED shall provide a list of approved DVR/NVR recorders that meet the minimum standards as set forth in this rule.

- k. Megapixel camera – a camera capable of capturing an image containing at least 1 million pixels.
- l. NVR - Network Video Recorder
- m. PTZ - pan-tilt-zoom camera; or PT - pan-tilt camera.
- n. Port – port number to be used in conjunction with the IP address for remote connectivity.
- o. Size of monitor – the display area measured diagonally and excludes the cabinet.
- p. Surveillance Room/Area - Secure area away from unlicensed personnel where video recording equipment is installed and operated. DVR/NVR shall be housed in a secure locked box.
- q. TVL – total video lines of resolution.

3. SPECIFIC STANDARDS.

Fixed position or remote video cameras will be network accessible using MMED Approved DVR/NVR software or be IP in design and shall meet or exceed the following minimum specifications:

	Analog Cameras		
	Interior Fixed	Exterior Fixed	Pan Tilt / Pan Tilt Zoom
Min Resolution	480TVL	480TVL	480TVL
Image Sensor	1/3" CCD	1/3" CCD	1/4" CCD
Min. Illumination	.1 Lux	.01 Lux	.1 Lux
Auto Gain Control	Yes	Yes	Yes
Auto White Balance	Yes	Yes	Yes
Power Req.	12V DC/ 24V AC	12V DC/ 24V AC	12V DC/ 24V AC
Day/Night Required	Yes	Yes	No
Illumination Distance	20 ft	40 ft	
Zoom Factor			10 Times (PTZ Only)

Auto Focus			Yes
Housing Rating	Dependant on Location	IP67	IP66
Heater/Blower		Optional	Optional

	IP Cameras		
	Interior Fixed	Exterior Fixed	Pan Tilt / Pan Tilt Zoom
Min Resolution	640 X 480	640 X 480	640 X 480
Image Sensor	1/3" CCD	1/3" CCD	1/4" CCD
Video Compression	H.264	H.264	H.264
Frame Rate	30fps	30fps	30fps
Min. Illumination	.1 Lux	.01 Lux	.1 Lux
Auto Gain Control	Yes	Yes	Yes
Auto White Balance	Yes	Yes	Yes
Power Req.	12V DC/ 24V AC / POE	12V DC/ 24V AC / POE	12V DC/ 24V AC / POE
Day/Night Required	Yes	Yes	No
Radiant Distance	20 ft	40 ft	
Zoom Factor		N/A	10 Times (PTZ Only)
Auto Focus		N/A	Yes
Housing Rating	Dependant on Location	IP67	IP66
Heater/Blower		Optional	Optional

4. EQUIPMENT.

- a. All new and replacement cameras for critical areas and the PTZ cameras within those areas must meet minimum requirements as set forth in Specific Standards, section 3 above.
- b. Megapixel cameras are allowed, as long as the camera interfaces with the licensee's current surveillance system. If a megapixel camera is used autonomously from the primary DVR/NVR system, direct remote network connection information must be submitted to the MMED.
- c. At least one 19" or greater call up monitor attached to the DVR/NVR or a playback station with a 19" monitor or greater is required and must be accessible to DVR/NVR controls for playback operation.

- d. All other monitors must have a minimum resolution of 1280 x 1024.
- e. All cameras must be viewable in multiplex mode from a 19" or greater monitor when used in critical areas and be able to pull a single camera (live and on playback).
- f. The licensee must have a failure notification system that provides an audible and/or text and visual notification of any failure in the surveillance system. The Failure Notification system must provide an alert to the licensee within five minutes of the failure, either by phone, email, or SMS alert contact.
- g. The licensee must be able to immediately produce a clear color still photo from any camera image (live or recorded). Each facility shall have a minimum of one color printer that produces a minimum of 9600 dpi.
- h. PTZ cameras must be 360 degree functional in customer areas and must be enclosed in a shaded housing, so that it is hidden from view. PT or PTZ camera that are mounted adjacent to walls must have a minimum of 270 degrees of functionality.
- i. After July 1, 2011, the use of multiplexer and quad recorders is not authorized in any area.
- j. A date/time must be embedded on all recordings of customer areas. The date and time must be synchronized and set correctly and must not significantly obscure the picture.
- k. All recordings must be erased or destroyed prior to disposal, sale to another licensee or manufacturer, or when discarded by any other means, except that the recordings must be retained for the period of time set forth in paragraph 6.d of this rule. Notwithstanding this rule, recordings may not be destroyed if the licensee is aware of a pending criminal, civil or administrative investigation or legal proceedings for which the recording may contain relevant information.

5. PLACEMENT OF CAMERAS/REQUIRED COVERAGE.

- a. All camera placements shall be inspected and approved prior to issuance of a satisfactory inspection report by the State Licensing Authority.

- b. All limited access areas, point of sale areas, security rooms/areas and all points of ingress/egress to limited access areas and all points of ingress/egress to the exterior of the licensed premises must have fixed camera coverage capable of identifying any activity occurring within a minimum of twenty (20) feet of all entry and exit points.
- c. All medical marijuana licensed premises shall have camera placement which allows for the clear and certain identification of any individual in and/or on the licensed premises.
- d. All medical marijuana shall be placed on a Department of Agriculture approved and calibrated weight scale so that the amount removed from the licensed premises is captured through the licensed premises' point of sale system.
- e. All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points, and capable of clearly identifying the individual entering or exiting the facility.
- f. The system shall be capable of clearly identifying any activities occurring within the facility or within the grow rooms in low light conditions.
- g. Areas where medical marijuana is grown, cured or manufactured shall have a camera placement in the room facing the primary entry door, and in adequate fixed positions, at a height which will provide a clear unobstructed view of the regular activity without a sight blockage from lighting hoods, fixtures, or other equipment, allowing for the clear and certain identification of persons and activities therein at all times.
- h. Cameras shall be placed at each location where weighing, packaging or tagging activities occur. These cameras shall allow for the clear and certain identification of all individuals and activities therein at all times.
- i. All limited access or critical areas shall have sufficient fixed cameras allowing for the clear and certain identification of any transacting individual(s) in that area.
- j. All outdoor optional premises growing areas must meet the same requirements for any other limited access areas or other low light areas.

6. OTHER STANDARDS.

- a. All camera views of customer areas must be continuously recorded twenty-four (24) hours a day. The use of motion detection is authorized with a minimum of ten (10) second pre- and post- event recording.
- b. Complete index and guide to the center cameras, technical documentation, monitors and controls must be available in the surveillance room. This guide must include a map of the camera locations, direction of coverage, camera numbers and operating instructions for the surveillance equipment.
- c. A chronological point of sale transaction log must be made available to be used in conjunction with recorded video of those transactions.
- d. All surveillance recordings must be kept for a minimum of twenty (20) days on the licensee's recording device (DVD, NVR) and an additional consecutive twenty (20) days must be kept on a cd or external hard-drive. Any destruction of the recordings after this period of time must comply with the requirements of paragraph 4.k of this rule. Notwithstanding this rule, recordings may not be destroyed if the licensee is aware of a pending criminal, civil or administrative investigation or legal proceeding for which the recording may contain relevant information.
- e. Access to surveillance rooms/areas shall be limited to employees that are essential to surveillance operations, law enforcement agencies, service personnel, and others when approved by MMED. The facility or surveillance room manager has final authority regarding the authorization of access by center personnel, except when the MMED requires or authorizes access. A current list of authorized employees and service personnel that have access to the surveillance room must be posted in the surveillance room. All activity (maintenance work, electronic work, etc.) shall be logged in a manner approved by the MMED. Offsite monitoring, management and storage by the licensee or independent company shall be allowed as long as they meet or exceed all standards for onsite monitoring. Independent companies and their employees shall be licensed by the State Licensing Authority.
- f. Each licensed center located in a common or shared building or area must have a surveillance room/area in-house. Exceptions would only be for commonly owned centers, which are within the same municipality. The surveillance room must be within one of the commonly owned centers. The center will provide a review station,

printer, map of cameras, and communication in the property that does not house the surveillance room if the centers are not contiguous. All equipment and security standards in the review station room will meet the minimum criteria set forth by this section.

- g. Surveillance rooms must remain locked. Licensees that have other functions housed in the surveillance room must receive MMED approval. At least one surveillance camera must be in the surveillance room or view access to the surveillance area and record and be able to clearly identify any person who accesses any surveillance or non-surveillance equipment. At a minimum off site transfer and storage of data from this camera must be maintained for seventy-two (72) hours.
- h. Surveillance recordings and clear still photos must be made available to the MMED and law enforcement upon an administrative or law enforcement request demonstrating that the information sought is relevant and material to a legitimate regulatory or law enforcement inquiry

7. DIGITAL VIDEO RECORDING AND MANAGEMENT.

- a. All video signals shall be recorded in either a DVR, Hybrid DVR or a NVR capable of meeting or exceeding the following specifications. The MMED will maintain a list of approved DVR, Hybrid DVR and NVR all such installed equipment must be on the approved list to meet requirements.
- b. All recorded resolutions for cameras shall be at least 1CIF (352 x 288) and meet all other requirements contained within this rule. However, all recorded resolutions for cameras installed after July 1, 2011, shall be at least 2 CIF (704 x 288).
- c. All camera recording shall have a recorded frame rate of at least fifteen (15) fps when motion is detected in the image.
- d. Video shall be recorded with acceptable resolution and image quality showing less than five percent (5%) of artifacting across the recorded image.
- e. The video recording shall allow for the exporting of still images in an industry standard image format, including .jpg, .bmp, and .gif.
- f. Recordings must have the ability to be archived to DVD-R, CD-R, Blue Ray or USB Drive as required by the MMED.

- g. Exported video must have the ability to be archived in a proprietary format that ensures authentication of the video and guarantees that no alteration of the recorded image has taken place.
- h. A freely distributable standalone player must be available.
- i. Exported video must also have the ability to be saved in an industry standard file format that can be played on a standard PC using either Apple QuickTime or Windows Media Player.

8. VIDEO CAMERA HOUSINGS AND MOUNTS.

- a. All cameras shall be in a housing coordinated with the facility to ensure proper operation in all anticipated conditions.
- b. All housings shall be sufficiently moisture resistant to withstand any environmental conditions expected in their specified location.
- c. All cameras located in areas where conditions are subject to extremes temperatures shall be in housings equipped with heaters and/or blowers as required.
- d. All housings must allow for sufficient room for ease of servicing and adjustment to each camera.
- e. All mounts holding devices exceeding 5 pounds in weight shall be equipped with a safety cable attached to nearby structure or be properly mounted using anchors which are properly weight rated.
- f. Outdoor camera housings must be rated International Protection Rating of 67 or above.

9. CABLING.

- a. All cabling for camera transmission should be unshielded twisted pair Category 5e or RG-59u cable coupled with low-voltage cable (Siamese cable.)
- b. All cabling shall be Ethernet compliant and shall conform to the Ethernet guidelines for distance and installation on all IP-based cameras.

10. REMOTE VIDEO MONITORING AND RETRIEVAL.

- a. The DVR or NVR system shall be capable of providing remote viewing via the internet of both live and recorded video.

- b. DVR or NVR systems shall be approved by the MMED.
- c. DVR or NVR must allow for remote connection and control over all cameras.
- d. Internet Connectivity must allow for at least 384k upstream.
- e. Static IP address and port or a web based application with a user name and password control is required to allow for remote connection to the DVR/NVR(s).

11. POINT OF SALE AND VIDEO SURVEILLANCE CAPTURED DATA.

- a. Data which is captured from licensee point of sale and video surveillance systems shall be held in confidence by all employees or representatives of the State Licensing Authority and the MMED, and shall only be disclosed upon an administrative or law enforcement request demonstrating that the information sought is relevant and material to a legitimate regulatory or law enforcement inquiry.

12. POWER BACKUP.

- a. All cameras, recording equipment and associated network switching shall have sufficient battery backup to support fifteen (15) minutes of recording in the event of a power outage.

The MMED must have full control capability over the camera operation and over all other remote access service equipment.

CHAPTER 11
--- Storage and Transportation ---

100's --- General Provisions for Storage

11.100 - Storage-Warehouse Storage Permit. [Effective: 7/01/11]

- A. No medical marijuana shall be stored or kept in or upon any premises which shall not be duly licensed, provided however, that the State Licensing Authority, upon approval by the local licensing authority, may issue a warehouse storage permit to licensees for the storage of permitted medical marijuana in one location other than the licensed premises.

No such permit shall be granted in any county or municipal jurisdiction that has made a legislative determination not to engage in licensing under the Code or where registered electors have voted to prohibit the cultivation or sale of medical marijuana.

- B. Title to all medical marijuana stored or kept pursuant to a warehouse storage permit shall be vested in such permit holder.
- C. Medical marijuana may not be sold or delivered from the premises used pursuant to a warehouse storage permit.
- D. Any licensee obtaining a warehouse storage permit shall provide a copy of said permit to the local licensing authority and display such permit and a copy thereof, in a prominent place within their licensed premises and within the permitted storage premises.
- E. Any storage warehouse storing medical marijuana must meet all video and security requirements as any other licensed premises.
- F. Any medical marijuana stored in a storage warehouse licensed premises shall be packaged, sealed, weighed and recorded on video before it is transported directly to or from the storage warehouse directly from or to the primary licensed premises only. Any discrepancy in weight shall be documented and reported to the MMED within twenty-four (24) hours. It shall be unlawful to open a pre-sealed package of medical marijuana except upon the primary licensed premises.
- G. Any medical marijuana removed from a Licensee's OPC licensed premises may only be transported directly to the Licensee's MMC or its MIP's licensed premises on file and registered as required by law. Said marijuana shall be weighed and prepackaged and recorded on video upon the licensed premises before it is transported. All persons transporting said medical

marijuana shall be licensed or registered as provided in section 12-43.3-401, C.R.S.

200's --- General Provisions for Transportation

11.200 - Transportation—Authorization and Licenses Required.

[Effective: 7/01/11]

- A. Any person who transports medical marijuana or medical marijuana infused products pursuant to section 12-43.3-310(5), C.R.S., and these rules must be licensed by the State Licensing Authority.
- B. All non-infused medical marijuana shall be packaged in a sealed package or container approved by the MMED for transportation. Each container shall be packaged and weighed prior to leaving the origination location. Each container shall be sealed by MMED-approved tamperproof tape and each tagged and labeled pursuant to these rules.
- C. All medical marijuana-infused products shall be packaged in a sealed package or container approved by the MMED for transportation. Each container shall be packaged and all items shall be inventoried and accounted for on video prior to leaving the origination location. Each container shall be sealed and each item tagged and labeled as required in these rules.
- D. Transportation of medical marijuana or medical marijuana-infused products shall in all instances be accompanied by a manifest that is approved by the MMED. The manifest shall be created online on the MMED website and a printed copy shall be carried at all times with the products being transported. The licensee shall complete and submit a form provided by the MMED, in cases where an electronic record cannot be recorded or evidence printed. That form shall be submitted via fax to the MMED prior to any transportation of medical marijuana or medical marijuana-infused products. The manifest shall include the following:
 - 1. Name of the licensed entity;
 - 2. Date completed;
 - 3. Name, location and license number of the origination location;
 - 4. Name, location and license number of the destination(s) location(s);
 - 5. Products and quantities being delivered to each location if more than one;
 - 6. Date and approximate time of departure;
 - 7. Date and estimated time of arrival;
 - 8. Route to be traveled;
 - 9. Vehicle make and model, together with license plate number;

10. Name and signature of the licensed person transporting product; and
11. Date.

E. When determining and reporting the route to take, licensees should select the best direct route that provides efficiency and safety. When medical marijuana or medical marijuana-infused products are transported in the manner described by the MMED through these regulations, it may be transported on any public road through any city, town, city and county or county, whether or not that city, town, city and county or county has allowed for medical marijuana licensees to operate there.

CHAPTER 12
--- Sanitary Requirements ---

100's --- Physical Premises

12.100 – Medical Marijuana Infused Products – Reasonable Measures and Precautions. [Effective: 7/01/11]

A. Definitions:

1. “Employees” - for purposes of this regulation, means any person working at any premises licensed pursuant to section 12-43.3-401 C.R.S., who transports medical marijuana, infused products or MIPs containers, who engages in preparation or service, or who comes in contact with any medical marijuana, medical marijuana infused product utensils or equipment.
2. “Medical Marijuana-Infused Product” or “MIP” - shall be as defined in section 12-43.3-104(9), C.R.S.
3. “Sanitization” – for purposes of this regulation, means the application of cumulative heat or chemicals on cleaned surfaces that when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to 99.999% reduction, of representative disease organisms of public health importance. Chemicals approved for use as a sanitizer can be found at Food and Drug Administration, Department of Health and Human Services, 21 C.F.R. 178.1010 (2010).

B. The Licensee shall take all reasonable measures and precautions to ensure the following:

1. That any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with preparation surfaces for medical marijuana or MIPs shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected.
2. That all persons working in direct contact with preparation of medical marijuana or MIPs shall conform to hygienic practices while on duty, including:
 - a. Maintaining adequate personal cleanliness.

- b. Washing hands thoroughly in an adequate hand-washing area(s) before starting work and at any other time when the hands may have become soiled or contaminated.
 - c. Hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Hand-washing facilities shall be located in the facility in MIP preparation areas and where good sanitary practices require employees to wash and/or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices.
 - d. Refraining from having direct contact with preparation of medical marijuana or MIPs if the person has or may have an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, until such condition is corrected.
3. That there is sufficient space for placement of equipment and storage of materials as is necessary for the maintenance of sanitary operations for production of medical marijuana or MIPs.
 4. That litter and waste are properly removed, and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where medical marijuana or MIPs are exposed.
 5. That floors, walls, and ceilings are constructed in such a manner that they may be adequately cleaned and kept clean and kept in good repair.
 6. That there is adequate safety-type lighting in all areas where medical marijuana or infused product is processed or stored, and where equipment or utensils are cleaned.
 7. That the facility provides adequate screening or other protection against the entry of pests. Rubbish shall be disposed of so as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage or breeding place for pests.
 8. That buildings, fixtures, and other physical facilities are maintained in a sanitary condition.
 9. That all contact surfaces, including utensils and equipment used for preparation of medical marijuana or MIPs shall be cleaned and sanitized as frequently as necessary to protect against contamination. Equipment and utensils shall be so designed and of such material and

workmanship as to be adequately cleanable, and shall be properly maintained. Only EPA registered sanitizing agents shall be used in medical marijuana or MIPs facilities and used in accordance with labeled instructions.

10. That toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of medical marijuana or MIPs.
11. That the water supply shall be sufficient for the operations intended and shall be derived from a source that is a regulated water system. Private water supplies shall be from a water source that is capable of providing a safe, potable and adequate supply of water to meet the facility's needs.
12. That plumbing shall be of adequate size and design and adequately installed and maintained to carry sufficient quantities of water to required locations throughout the plant; and properly convey sewage and liquid disposable waste from the facility. There shall be no cross-connections between the potable and waste water lines.
13. That each facility shall provide its employees with adequate, readily accessible toilet facilities that are maintained in a sanitary condition and good repair.
14. That all operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of medical marijuana or MIPs shall be conducted in accordance with adequate sanitation principles.
15. That medical marijuana or MIPs that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.
16. That storage and transportation of finished medical marijuana or MIPs shall be under conditions that will protect medical marijuana or MIPs against physical, chemical, and microbial contamination as well as against deterioration of the medical marijuana or MIP and the container.
17. That all sanitary requirements shall also apply to any person making hashish on the premise of an OPC licensee. Production of water based hashish may only be made in an area so designated clearly on the diagram of the premises on file with the licensing authority. All other methods of extraction shall meet these standards and only be produced in a facility licensed to manufacture MIPs.

200's --- Waste Disposal

12.200 – Minimum Requirements for Disposal of Medical Marijuana Waste. [Effective: 7/01/11]

- A. Medical marijuana waste must be stored, secured and managed in accordance with applicable state statutes and regulations.
- B. Medical marijuana waste must be stored secured and managed in accordance with local and state regulations, ordinances and other requirements.
- C. Liquid waste from medical marijuana facilities shall be disposed of in compliance with the applicable Water Quality Control Division statutes and regulations found at sections 25-8-101 *et seq*, C.R.S., and in the Code of Colorado Regulations at 5 CCR 1002 and 1003.
- D. Medical marijuana waste must be made unusable prior to leaving a registered facility's secured storage and management area.
- E. Medical marijuana waste shall be rendered unusable through the following methods:
 - 1. By grinding and incorporating the medical marijuana waste with non-consumable, solid wastes listed below such that the resulting mixture is at least fifty percent non marijuana waste:
 - a. Paper waste,
 - b. Plastic waste,
 - c. Cardboard waste,
 - d. Food waste,
 - e. Grease or other compostable oil waste,
 - f. Bokashi, or other compost activators,
 - g. Other wastes approved by the MMED that will render the medical marijuana waste unusable, or
 - h. Soil.

2. By incorporating the medical marijuana waste with non-consumable, recyclable solid wastes listed below:
 - a. Grease or other compostable oil waste,
 - b. Bokashi, or other compost activators, or
 - c. Other wastes approved by the MMED that will make the medical marijuana waste unusable.
- F. After the medical marijuana waste is made unusable, then the solid waste shall be:
1. Disposed of as a solid waste at solid waste site and disposal facility that has a Certificate of Designation from the local governing body and that is approved by the MMED,
 2. Deposited at a compost facility that has a Certificate of Designation from the Department of Public Health and Environment and approved by the MMED, or
 3. Composted on-site at a facility owned by the generator and operated in compliance with the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1) in the Colorado Department of Public Health and Environment.

CHAPTER 13
--- Verifying a Sale ---

100's --- General Provisions

13.100 – Acceptable Identification. *[Effective: 7/01/11]*

- A. Licensees shall refuse to sell medical marijuana to any patient or caregiver permitted to deliver medical marijuana to homebound patients as permitted by section 25-1.5-106(7)(d), C.R.S., unable to produce a valid patient registry card and adequate, currently valid proof of identification. As long as it contains a picture and date of birth, the kind and type of identification deemed adequate shall be limited to the following:
1. An operator's, chauffeur's or similar type driver's license, issued by any state within the United States, any U.S. Territory.
 2. An identification card, issued by any state for the purpose of proof of identification and age as in accordance with sections 42-2-302 and 42-2-303, C.R.S.
 3. A military identification card.
 4. A passport.
- B. Upon entry into a licensed facility by a patient or caregiver, the licensee shall physically view and inspect the patient or caregiver's registry card and proof of identification to confirm the information contained on the documents and also to judge the authenticity of the documents presented.

CHAPTER 14
--- Labeling Standards ---

100's --- General Provisions

14.100 - Product Labeling, Substitution, Sampling and Analysis.

[Effective: 7/01/11]

- A. No licensee shall sell, transfer or give away any medical marijuana that does not contain a label with a list of all ingredients, including all chemical additives, including but not limited to nonorganic pesticides, herbicides, and fertilizers that were used in its cultivation and production.
1. In addition, all labels for non-infused products shall include:
 - a. the license number of the OPC licensee, the MMC if medical marijuana was obtained from a center not licensed the same as the OPC facility, or if being sold by a different licensed MMC, that Center's license number;
 - b. the date of sale; and
 - c. the patient registry number of the purchaser.
 2. All medical marijuana-infused products which are sold, offered for sale or exposed for sale, or transported within the State of Colorado for sale shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information, which statement shall not be modified or obscured in the labeling or on another label attached to the product:
 - a. an identity statement;
 - b. a net weight statement;
 - c. a list of ingredients;
 - d. a recommended use by or expiration date;
 - e. batch tracking information;
 - f. basic medical and/or legal warning information; and
 - g. statement of the company name and State Licensing Authority license number, together with the company's telephone number or mailing address or website information;
 3. The minimum print size for each of the three required statements for non-infused products and for each of the seven required statements for medical marijuana-infused products is 1/16 inch. The size of the characters in the net weight statement is determined by the area of the principal display panel and may be greater than 1/16 inch.

4. For medical marijuana-infused products, the product identity and net weight statements must appear on the portion of the label displayed to the consumer.
5. When a medical marijuana-infused product is made specifically for a designated patient, the label of that product shall state the patient's Medical Marijuana Registry number.
6. The list of ingredients and company name statements must be conspicuously listed on the medical marijuana-infused product package.
7. A nutrition facts panel may be required if nutritional claims are made on the label of any medical marijuana-infused product.
8. All "edibles" shall also contain the following statement:

"This product is infused with medical marijuana and was produced without regulatory oversight for health, safety or efficacy and there may be health risks associated with the consumption of the product."

- B. All licensees for the sale of medical marijuana shall, upon request of the MMED or any of its officers, make available to the person so requesting a sufficient quantity of such medical marijuana to enable laboratory or chemical analysis thereof. The licensee shall be notified of the results of the analysis.
- C. The Director of the MMED may contract with a laboratory to conduct independent testing of medical marijuana products. Testing may be conducted for determining if samples of medical marijuana contain molds, pesticides or other substances that may be present. To ensure integrity such testing shall be conducted by a laboratory that does not process samples for any licensee.
- D. In addition to the requirements listed above, nothing shall preclude the manufacturer from making recommended guidelines for dosage and usage of medical marijuana in any form as long as the statement includes language that the recommended guidelines have not been scientifically validated. By way of example, the recommendations may include language that substantially states:
 1. "The appropriate dose of medical marijuana may be different for each patient and medical condition. Please consult your physician or medical marijuana center" and/or;
 2. "Levels of active components of medical marijuana reported on product labels are not subject to independent verification and may differ from actual levels".

- E. The following chemicals which have been banned by federal and state agriculture authorities shall not be used in the cultivation of marijuana for medical purposes by Licensees. Possession of chemicals and/or containers from these chemicals upon the licensed premises shall be a violation. These include:

Chemical Name
CAS Registry Number (or EDF Substance ID)
ALDRIN
309-00-2
ARSENIC OXIDE (3)
1327-53-3
ASBESTOS (FRIABLE)
1332-21-4
AZODRIN
6923-22-4
1,4-BENZOQUINONE, 2,3,5,6-TETRACHLORO-
118-75-2
BINAPACRYL
485-31-4
2,3,4,5-BIS (2-BUTENYLENE) TETRAHYDROFURFURAL
126-15-8
BROMOXYNIL BUTYRATE
EDF-186
CADMIUM COMPOUNDS
CAE750
CALCIUM ARSENATE [2ASH3O4.2CA]
7778-44-1
CAMPHECHLOR
8001-35-2
CAPTAFOL
2425-06-1
CARBOFURAN
1563-66-2
CARBON TETRACHLORIDE
56-23-5
CHLORDANE
57-74-9
CHLORDECONE (KEPONE)
143-50-0
CHLORDIMEFORM
6164-98-3
CHLOROBENZILATE
510-15-6
CHLOROMETHOXYPROPYLMERCURIC ACETATE [CPMA]

EDF-183
COPPER ARSENATE
10103-61-4
2,4-D, ISOOCTYL ESTER
25168-26-7
DAMINOZIDE
1596-84-5
DDD
72-54-8
DDT
50-29-3
DI(PHENYLMERCURY)DODECENYLSUCCINATE [PMDS]
EDF-187
1,2-DIBROMO-3-CHLOROPROPANE (DBCP)
96-12-8
1,2-DIBROMOETHANE
106-93-4
1,2-DICHLOROETHANE
107-06-2
DIELDRIN
60-57-1
4,6-DINITRO-O-CRESOL
534-52-1
DINITROBUTYL PHENOL
88-85-7
ENDRIN
72-20-8
EPN
2104-64-5
ETHYLENE OXIDE
75-21-8
FLUOROACETAMIDE
640-19-7
GAMMA-LINDANE
58-89-9
HEPTACHLOR
76-44-8
HEXACHLOROBENZENE
118-74-1
1,2,3,4,5,6-HEXACHLOROCYCLOHEXANE (MIXTURE OF ISOMERS)
608-73-1
1,3-HEXANEDIOL, 2-ETHYL-
94-96-2
LEAD ARSENATE
7784-40-9

LEPTOPHOS
21609-90-5
MERCURY
7439-97-6
METHAMIDOPHOS
10265-92-6
METHYL PARATHION
298-00-0
MEVINPHOS
7786-34-7
MIREX
2385-85-5
NITROFEN
1836-75-5
OCTAMETHYLDIPHOSPHORAMIDE
152-16-9
PARATHION
56-38-2
PENTACHLOROPHENOL
87-86-5
PHENYLMERCURIC OLEATE [PMO]
EDF-185
PHOSPHAMIDON
13171-21-6
PYRIMINIL
53558-25-1
SAFROLE
94-59-7
SODIUM ARSENATE
13464-38-5
SODIUM ARSENITE
7784-46-5
2,4,5-T
93-76-5
TERPENE POLYCHLORINATES (STROBANE6)
8001-50-1
THALLIUM(I) SULFATE
7446-18-6
2,4,5-TP ACID (SILVEX)
93-72-1
TRIBUTYLTIN COMPOUNDS
EDF-184
2,4,5-TRICHLOROPHENOL
95-95-4
VINYL CHLORIDE
75-01-4

F. The use of Dimethylsulfoxide (DMSO) in the production of medical marijuana products shall be prohibited and possession of DMSO upon the licensed premises is prohibited.

CHAPTER 15
--- Record Retention by Licensee and Access by Others ---

--- RESERVED ---

CHAPTER 16
--- State Licensing Procedures ---

100's --- Initial Licenses

16.100 – Residency Requirements. *[Effective: 12/30/10]*

1. An applicant other than a natural person may meet the residency requirement of section 12-43.3-307(1)(a)(XIII), C.R.S., if all owners, officers, managers and employees of the applicant are residents as required by section 12-43.3-310(6), C.R.S.

2. Any natural person applying for a license or serving as an owner, officer, manager or employee of an applicant for licensure must establish Colorado residency as required by sections 12-43.3-307(1)(a)(XIII) and 12-43.3-310(6), C.R.S.

a. The location of a natural person's principal or primary home or place of abode ("primary home") may establish Colorado residency. A natural person's primary home is that home or place in which a person's habitation is fixed and to which the person, whenever absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of such absence. A primary home is a permanent building or part of a building and may include by way of example a house, condominium, apartment, room in a house, or mobile home. No rental property, vacant lot, vacant house or cabin, or other premises used solely for business purposes shall be considered a primary home. The State Licensing Authority considers the following types of evidence to be generally reliable indicators that a person's primary home is in Colorado:

- i. Evidence of business pursuits, place of employment, income sources, residence for income or other tax purposes, age, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, existence of any other residences outside of Colorado and the amount of time spent at each such residence, and any motor vehicle or vessel registration.
- ii. Duly authenticated copies of the following documents may be taken into account: A current driver's license with address, recent property tax receipts, copies of recent income tax returns, current voter registration cards, current motor vehicle or vessel registrations, and other public records evidencing place of abode or employment.
- iii. Other types of reliable evidence.
- iv. The State Licensing Authority will review the totality of the evidence, and any single piece of evidence regarding the location of a person's primary home will not necessarily be determinative.

- b. The following natural persons are presumed to be Colorado residents:
- i. Members of the armed services of the United States or any nation allied with the United States who are on active duty in Colorado under permanent orders and their spouses;
 - ii. Personnel in the diplomatic service of any nation recognized by the United States who are assigned to duty in Colorado and their spouses;
 - iii. Full-time students who are enrolled in any accredited trade school, college, or university in Colorado. For purposes of this paragraph, the spouse of any such student shall also be considered a resident. The temporary absence of such student or the student's spouse from this state while the student is still enrolled at any such trade school, college, or university shall not be deemed to terminate their residency. A student shall be deemed "full-time" if considered full-time under the rules or policy of the educational institution he or she is attending.

A natural person who is a Colorado resident pursuant to this rule does not terminate Colorado residency upon entering the armed services of the United States. A member of the armed services on active duty who resided in Colorado at the time the person entered military service and the person's spouse are presumed to retain their status as residents of Colorado throughout the member's active duty in the service, regardless of where stationed or for how long.

16.101 - Application - General Provisions. [Effective: 7/01/11]

- A. All applications for state licenses authorized pursuant to section 12-43.3-401, C.R.S., shall be made upon forms prescribed by the MMED. No application will be considered which is not complete in every material detail, nor which is not accompanied by a remittance in full for the whole amount of the annual state application and license fees. Each application for a new license shall contain a report of the local licensing authority of the town, city, county, or city and county in which the applicant proposes to conduct its business, which report shall comply with the Code, and provide a written approval of the local licensing authority.
- B. If the applicant for a license is a partnership, except as between a husband and wife, it shall submit with the application a certificate of co-partnership.
- C. Upon request of any licensing authority, each applicant for license shall provide suitable additional evidence of its citizenship, residence, and good character and reputation, and licensees shall also submit upon request of any licensing authority all required information concerning financial and management associations and interests of other persons in the business,

and the deed, lease, contract, or other document governing the terms and conditions of occupancy of the premises licensed or proposed to be licensed.

- D. All information submitted to any licensing authority, by application for license or otherwise, shall be given fully, faithfully, truthfully and fairly.

16.105 - Change in Class of License. *[Effective: 7/01/11]*

A request for a change in the class of license from that presently held by a licensee shall be considered as an application for a new license.

16.110 - Change of Location. *[Effective: 7/01/11]*

- A. In the event any licensee licensed pursuant to section 12-43.3-401(1)(a), (b), or (c), C.R.S., desires to change its place of business from that named in an existing license, it shall make application to the MMED for permission to change location to the place where such license is to be exercised.
- B. Each such application shall be made upon forms prescribed by the Medical Marijuana Enforcement Division, shall be verified, and shall be complete in every detail. Each such application shall show thereon the reason for requesting such change, and in case of a retail license, shall be supported by evidence that the application complies with any local requirements of the neighborhood in the vicinity of the new location. In the case of the change of location of a license, each such application shall contain a report of the local licensing authority of the town, city, county, or city and county in which the license is to be exercised, which report shall show the opinion of the local licensing authority with respect to the new location.
- C. No change of location shall be permitted until after the MMED considers the application and such additional information as it may require, and issues to the applicant a permit for such change. The permit shall be effective on the date of issuance, and the licensee shall, within one-hundred twenty (120) days, change the location of its business to the place specified therein and at the same time cease to conduct the sale of medical marijuana from the former location. The permit shall be conspicuously displayed at the new location, immediately adjacent to the license to which it pertains. For good cause shown, the one-hundred twenty (120) day deadline may be extended for an additional ninety (90) days.
- D. No change of location will be allowed except to another place within the same city, town, county or city and county in which the license as originally issued was to be exercised.

- E. Upon application for change of location, public notice if applicable shall be required by the local licensing authority in accordance with section 12-43.3-302, C.R.S.
- F. There shall be no public notice requirements when requesting a change of location for an OPC license.

16.115 - Changing, Altering, or Modifying Licensed Premises.

[Effective: 7/01/11]

- A. After issuance of a license, the licensee shall make no physical change, alteration or modification of the licensed premises which materially or substantially alters the licensed premises or the usage of the licensed premises from the plans and specifications submitted at the time of obtaining the original license without the prior written consent of the local and state licensing authorities. For purposes of this regulation, physical changes, alterations or modifications of the licensed premises, or in the usage of the premises requiring prior written consent, shall include, but not be limited to, the following:
 - 1. Any increase or decrease in the total physical size or capacity of the licensed premises.
 - 2. The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway or passage alters or changes the cultivation, harvesting of, or sale or distribution of medical marijuana within the licensed premises.
 - 3. Any substantial or material enlargement of a sales counter, or relocation of a sales counter, or addition of a separate sales counter.
 - 4. Any material change in the interior of the premises that would affect the basic character of the premises or the physical structure that existed in the plan on file with the latest prior application.

The foregoing shall not apply to painting and redecorating of premises; the installation or replacement of electric fixtures or equipment; the lowering of ceiling; the installation and replacement of floor coverings; the replacement of furniture and equipment, and other similar changes, nor to any non-structural remodeling of a licensee's premises where the remodel does not expand the existing approved areas.

- B. In making its decision with respect to any proposed changes, alterations or modifications, the licensing authority must consider whether the premises, as changed, altered or modified, will meet all of the pertinent requirements of the Code and the Regulations promulgated there under. Factors to be taken into account by the licensing authority include, by way of illustration but not limited to, the following:
1. The possession, by the licensee, of the changed premises by ownership, lease, rental or other arrangement.
 2. Compliance with the applicable zoning laws of the municipality, city and county or county.
 3. Compliance with the distance prohibition in regard to any public or parochial school or the principal campus of any college, university, or seminary, child care center or drug treatment center.
 4. The legislative declaration that the Code is an exercise of the police powers of the state for the protection of the economic and social welfare and the health, peace, and morals of the people of this state.
- C. If permission to change, alter or modify the licensed premises is denied, the licensing authority shall give notice in writing and shall state grounds upon which the application was denied. The licensee shall be entitled to a hearing on the denial if a request in writing is made to the licensing authority within thirty days after the date of notice. At no time shall the address of the OPC license be disclosed.

16.120 - Change of Trade Name. [Effective: 7/01/11]

No licensee shall change the name or trade name of the licensed premises without submitting written notice to the local and state licensing authorities at least ten (10) days prior to the change.

200's --- Renewals (RESERVED)

300's --- Reinstatements (RESERVED)

400's --- Payment of License Fees (RESERVED)

CHAPTER 17
--- Sales Tax ---

100's --- General Provisions

17.100 - Reporting and Transmittal of Monthly Tax Payments.

[Effective: 7/01/11]

All state and state collected sales and use tax returns must be filed and all taxes must be paid to the Department of Revenue on or before the 20th day of the month following the reporting month. For example, a January return and remittance will be due to the Department of Revenue by February 20th. If the due date (20th of the month) falls on a weekend or holiday, the next business day is considered the due date for the return and remittance. Evidence that this requirement has been met shall be reported to the MMED on a monthly basis as directed. This report shall include the full amount of sales tax reported.

CHAPTER 18
--- Access to Licensing Information by Department of Revenue ---

--- RESERVED ---

CHAPTER 19
--- Administrative Citations ---

100's --- Practice and Procedure

19.100 – Definitions, Proceedings, Citation Violation List and Schedule of Penalties for Administrative Citations. [Effective: 7/01/11]

A. Applicability.

This regulation provides for administrative citations that the State Licensing Authority may pursue, in its sound discretion, to address alleged violations of the Colorado Medical Marijuana Code and its rules. The State Licensing Authority maintains its authority to pursue all other legal remedies available to it.

B. Citation – Defined.

A complete written notice, issued to a licensee by the Division on an approved form and by means of which the Division alleges the licensee has violated one or more sections of the Colorado Medical Marijuana Code or the rules promulgated pursuant to the Code.

C. Administrative Citation.

1. The State Licensing Authority delegates to the Division Director or the Division Director's designees the authority to issue citations according to the Citation Violation List and Schedule of Penalties. The State Licensing Authority also delegates to the Division Director the authority to rescind any citation and cancel its associated penalty, in the event that the citation has not been issued according to the provisions of the Citation Violation List and Schedule of Penalties, or has, otherwise, been inappropriately issued.
2. Each administrative citation shall contain the following information:
 - a. The date(s) of the violation(s) or, if the date of the violation(s) is/are unknown, then the date the violation(s) is/are identified;
 - b. The address or a definite description of the location where the violation(s) occurred;
 - c. The section(s) of the Colorado Medical Marijuana Code or rule(s) violated and a description of the violation(s);
 - d. The amount of the fine for the violation(s);

- e. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
- f. An order prohibiting the continuation or repeated occurrence of the violation(s) described in the administrative citation;
- g. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place to which the request must be made; and
- h. The name and signature of the citing enforcement officer.

D. Fine and Late Payment Fee.

1. Fines and any late charges due shall be made payable to the Department of Revenue and paid at such location or address as stated in the citation, or as may otherwise be designated by the State Licensing Authority.
2. The due date for payment of a fine shall be twenty-one (21) calendar days from the date of issuance of the citation.
3. Any person who fails to pay the State Licensing Authority any fine imposed pursuant to the provisions of this rule on or before the date that fine is due also shall be liable for the payment of any applicable late payment charges.
4. Payment of the fine shall not excuse or discharge the licensee from the duty to immediately stop violating the Colorado Medical Marijuana Code or rules, nor from any other responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Code or rules.
5. Abatement of a violation shall not excuse the obligation of the licensee to pay a fine, or any late charge imposed on the untimely payment of the fine.

E. Violation - Defined.

1. For purposes of penalty assessments, a violation of the Colorado Medical Marijuana Code or rules is classified as a general violation unless otherwise specified.

- a. A general violation is defined as a violation which is specifically determined not to be of a serious nature, but has a relationship to the Colorado Medical Marijuana Code or rules.
2. A general violation can be deemed aggravated and the penalty assessment increased when any relevant circumstances, supported by evidence, are present to cause the harshest penalty allowed under the Colorado Medical Marijuana Code or any of the rules promulgated thereunder.

F. Citation Violation List and Schedule of Penalties.

Description of Violation	Authority	1st Violation	2nd Violation	3rd Violation
Working without a badge	§12-43.3-202(2)(a)(I), C.R.S.	\$50	\$100	\$200
Misuse of license	§12-43.3-202(2)(a)(I), C.R.S.	\$50	\$100	\$200
Failure to have employee properly licensed	§12-43.3-202(2)(a)(I), C.R.S.	\$50	\$100	\$200
Failure to have license validated/ current	§12-43.3-202(2)(a)(I), C.R.S.	\$50	\$100	\$200
Failure to display an occupational license in a restricted area	§12-43.3-202(2)(a)(IX), C.R.S.	\$50	\$100	\$200
Failure to perform proper maintenance	§12-43.3-202(2)(a)(XI), C.R.S.	\$50	\$100	Hearing
Failure to have business facility in proper condition	§12-43.3-202(2)(a)(XI), C.R.S.	\$50	\$100	Hearing
Failure to have all documentation, approvals, and	§12-43.3-202(2)(a)(X), C.R.S.	\$50	\$100	\$200

variances, or copies thereof, relating to surveillance				
Allowing, having, or bringing unauthorized person(s) into restricted areas	§12-43.3-202(2)(a)(I), C.R.S.	\$100	\$200	Hearing
Failure to take all reasonable measures and precautions to establish and maintain sanitary conditions	§12-43.3-202(2)(a)(XII), C.R.S.	\$100	\$250	Hearing
Failure to report transmittal of monthly sales tax payments	§12-43.3-202(2)(a)(XVIII), C.R.S.	\$50	\$100	Hearing
Incorrect or misleading labeling	§12-43.3-202(2)(a)(XIV), C.R.S.	\$100	\$150	\$200
Prohibited conduct in restricted area	§12-43.3-202(2)(a)(I), C.R.S.	\$100	\$200	Hearing
Failure to tag or label any plant or product as required by statute or regulation	§12-43.3-202(2)(a)(I), C.R.S.	\$200	\$300	Hearing
Failure to use scale or weight specifications as required by statute or regulation	§12-43.3-202(2)(a)(XX), C.R.S.	\$100	\$200	Hearing

G. Hearing Request for Administrative Citations.

1. All requests for a hearing to challenge a citation, must be made in writing within twenty (20) days of the date of the citation unless otherwise provided by these rules. The request shall include the grounds for the hearing requested. If no written request is made within twenty (20) days, the aggrieved person shall be deemed to have waived any right to challenge the citation.
2. When a licensee requests a hearing, the Division Director shall review the citation. For any citation that the Division Director or their designee determines there should be a hearing, the State Licensing Authority shall assign the hearing according to the provisions of this rule to the Department of Revenue Hearings Division for assignment to a Hearing Officer. The Division or the Department of Revenue Hearings Division shall provide notice to the licensee according to the provisions of this rule, and shall conduct the hearing pursuant to this rule.

H. Hearing Officer.

Pursuant to section 12-43.3-202(1)(c), C.R.S., the State Licensing Authority may delegate to the Department of Revenue Hearing Officers the authority to conduct licensing, disciplinary and rulemaking hearings under section 24-4-105, C.R.S. Unless otherwise provided for in this rule, the Hearing Officer shall conduct the hearing in compliance with the Administrative Procedure Act.

I. Hearing Procedure For Administrative Citations.

1. The hearing shall be on the merits to determine whether the charged violation did occur. After the matter has been heard, the Hearing Officer shall make findings of fact and shall issue an order on behalf of the State Licensing Authority. The order of the Hearing Officer shall constitute an initial decision appealable to the Executive Director of the Department of Revenue under the Colorado Administrative Procedures Act. If the charged violation is found to have occurred, then the order from the hearing shall uphold the citation in full, shall not increase the penalty, shall require the fine(s) to be paid pursuant to this rule, and shall reset the payment date based upon the date of the Ruling. If the charged violation(s) are found to have not occurred, then the ruling from the hearing shall dismiss the citation with prejudice and cancel the associated penalty.
2. If the licensee fails to appear for the hearing and no continuance has been granted, the Hearing Officer shall call the case and make a record of the proceedings, the licensee's request for an appeal hearing shall be deemed to be abandoned, the original citation shall be upheld without change, and the citation's fines ordered to be paid

pursuant to this rule, with the payment date reset based upon the date of the order.

J. Recovery of Administrative Citation Fines and Costs.

The State Licensing Authority may collect any past due administrative citation fine or late payment charge by use of all available legal means. The State Licensing Authority also may recover its collection costs as provided by law.

K. Administrative Citations - Notices.

1. Whenever a notice is required to be given under this rule, unless different provisions herein are otherwise specifically made, such notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such person to be notified at his last-known business or residence address as the same appears in the records of the State Licensing Authority. Service by mail shall be deemed to have been completed at the time of deposit in the post office.
2. Failure to receive any notice specified in this regulation does not affect the validity of proceedings conducted hereunder.

CHAPTER 20

--- RESERVED ---

ARTICLE 43.3
MEDICAL MARIJUANA

Cross references: For the medical marijuana program and medical review board, see § 25-1.5-106.

Law reviews: For article, "The New, More Regulated Frontier for Medical Marijuana", see 39 Colo. Law. 29 (November 2010).

Section

PART 1 COLORADO MEDICAL
MARIJUANA CODE

- 12-43.3-101. Short title.
- 12-43.3-102. Legislative declaration.
- 12-43.3-103. Applicability.
- 12-43.3-104. Definitions.
- 12-43.3-105. Limited access areas.
- 12-43.3-106. Local option.

PART 2 STATE LICENSING AUTHORITY

- 12-43.3-201. State licensing authority - creation.
- 12-43.3-202. Powers and duties of state licensing authority.

PART 3 STATE AND LOCAL LICENSING

- 12-43.3-301. Local licensing authority - applications - licenses.
- 12-43.3-302. Public hearing notice - posting and publication.
- 12-43.3-303. Results of investigation - decision of authorities.
- 12-43.3-304. Medical marijuana license bond.
- 12-43.3-305. State licensing authority - application and issuance procedures.
- 12-43.3-306. Denial of application.
- 12-43.3-307. Persons prohibited as licensees - repeal.
- 12-43.3-308. Restrictions for applications for new licenses.
- 12-43.3-309. Transfer of ownership.
- 12-43.3-310. Licensing in general.
- 12-43.3-311. License renewal.
- 12-43.3-312. Inactive licenses.
- 12-43.3-313. Unlawful financial assistance.

PART 4 LICENSE TYPES

- 12-43.3-401. Classes of licenses.
- 12-43.3-402. Medical marijuana center license.
- 12-43.3-403. Optional premises cultivation license.
- 12-43.3-404. Medical marijuana-infused products manufacturing license.

PART 5 FEES

12-43.3-501. Medical marijuana license cash fund.

12-43.3-502. Fees - allocation.

12-43.3-503. Local license fees.

PART 6 DISCIPLINARY ACTIONS

12-43.3-601. Suspension - revocation - fines.

12-43.3-602. Disposition of unauthorized marijuana or marijuana-infused products and related materials.

PART 7 INSPECTION OF BOOKS AND RECORDS

12-43.3-701. Inspection procedures.

PART 8 JUDICIAL REVIEW

12-43.3-801. Judicial review.

PART 9 UNLAWFUL ACTS - ENFORCEMENT

12-43.3-901. Unlawful acts - exceptions.

PART 10 SUNSET REVIEW

12-43.3-1001. Sunset review - article repeal.

Current MMED Fees and Charges

State Administrative and Legal Fees	
Subpoena (for the first four hours of appearance, or on-call, or travel time to court)	\$200.00
All hours in excess of 4	Actual Hourly Rate
Mileage, meals and lodging	State Employee per-diem
Copy Cost	\$.25/page
Administrative Service Fees	
Change of Ownership on Business License or Application (this includes the cost of one new owners background check)	\$2,500.00
* Each additional new owner or associated person	\$1,000.00
Corporation or LLC Structure Change (per person)	\$1,000.00
Change of Trade Name	\$50.00
Change of Location	\$150.00
Modification of Premises	\$150.00
Duplicate Business License or Certificate of Application	\$50.00
Duplicate Occupational License	\$10.00
Duplicate Business/Vendor Registration License	\$50.00
Application Fees	
Occupational Key Employee (includes employee badge if background check is passed)	\$250.00
Occupational Support Employee (includes employee badge if background check is passed)	\$75.00
Business Registration (includes one Key Employee badge – if background check is passed)	\$250.00
All above fees are in effect and due upon receipt of service	

MMED Business License Fees	
Type 1 Center	\$3,750.00
Type 2 Center	\$8,750.00
Type 3 Center	\$14,000.00
Optional Premise Cultivation	\$2,750.00
Infused Product Manufacturer	\$2,750.00
Above fees are in effect and due once business is deemed eligible for a license	

Upcoming Registrations - Not Yet Available	
Warehouse	\$1,000.00
Caregiver	\$20.00
These services are not yet available and no fee is currently in effect	

July 1, 2012 business license application fees have not yet been set



**Colorado Department
of Public Health
and Environment**

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
Health and Environmental Information and Statistics Division**

5 CCR 1006-2

MEDICAL USE OF MARIJUANA

**(PROMULGATED BY THE STATE BOARD OF HEALTH)
Last amended 11/16/11, effective 12/30/11**

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Health and Environmental Information and Statistics Division

MEDICAL USE OF MARIJUANA

5 CCR 1006-2

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Regulation 1: Establishment and confidentiality of the registry for the medical use of marijuana

- A. The Colorado Department of Public Health and Environment ("the department") shall create and maintain a confidential registry ("the registry") of patients who have applied for and are entitled to receive a registry identification card.
1. All personal medical records and personal identifying information held by the department in compliance with these regulations shall be confidential information.
 2. No person shall be permitted to gain access to any information about patients in this registry, or any information otherwise maintained in the registry by the department about physicians and primary care-givers of patients in the registry, except for authorized employees of the department in the course of their official duties and authorized employees of state and local law enforcement agencies which have stopped or arrested a person who claims to be engaged in the medical use of marijuana and in possession of a registry identification card issued pursuant to regulations two and three, or the functional equivalent of the registry identification card.
 - a. Department employees may, upon receipt of an inquiry from a state or local law enforcement agency, confirm that a registry identification card has been suspended when a patient is no longer diagnosed as having a debilitating medical condition.
 - b. Authorized department employees may respond to an inquiry from state or local law enforcement regarding the registry status of a patient or primary care-giver by confirming that the person is or is not registered. The information released to state and local law enforcement must be the minimum necessary to confirm registry status.
 - c. Authorized state and local law enforcement employees shall validate their inquiry of a patient or primary care-giver by producing the registry identification card number of a patient, or name, date of birth, and last four digits of the individual's social security number of the individual under inquiry if the person does not have a registry identification card.
 - d. Authorized department employees may confirm a waiver for homebound or minor patients' transportation of medical marijuana from a medical marijuana center or a waiver for a primary care-giver serving more than five patients, upon state or local law enforcement inquiry. The minimum necessary information shall be communicated to confirm or deny a waiver.

3. The department may release information concerning a specific patient to that patient with the written authorization of such patient.
 4. Primary care-givers and potential primary care-givers may authorize the inclusion of their contact information in the voluntary caregiver registry maintained by the department to allow authorized department staff to release their contact information to new registry patients only in accordance with Regulation 9(c) below.
- B. Any officer or employee or agent of the department who violates this regulation by releasing or making public confidential information in the registry shall be subject to any existing statutory penalties for a breach of confidentiality of the registry.

Regulation 2: Application for a registry identification card

A. DEFINITIONS

- i) An "adult applicant" is defined as a patient eighteen years of age or older. A "minor applicant" is defined as a patient less than eighteen years of age.
 - ii) "Primary care-giver" means a person other than the patient and the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition. A person shall be listed as a primary care-giver for no more than five patients in the medical marijuana program registry at any given time unless a waiver has been granted for exceptional circumstances, as per Regulation Ten below.
 - iii) "Significant responsibility for managing the well-being of a patient" means, in addition to the ability to provide medical marijuana, regularly assisting a patient with activities of daily living, including but not limited to transportation or housekeeping or meal preparation or shopping or making any necessary arrangement for access to medical care or other services unrelated to medical marijuana. The act of supplying medical marijuana or marijuana paraphernalia, by itself, is insufficient to constitute "significant responsibility for managing the well-being of a patient."
- B. In order to be placed in the registry and to receive a registry identification card, an adult applicant must reside in Colorado and complete an application form supplied by the department, and have such application notarized and signed and include the fee payment. The adult applicant must provide the following information with the application:
1. The applicant's name, address, date of birth, and social security number;
 2. The name and address of the applicant's primary care-giver or medical marijuana center, if either one is designated at the time of application. Only a homebound or minor patient may have both a primary care-giver and a medical marijuana center designated;
 3. Written documentation from the applicant's physician that the applicant has been diagnosed with a debilitating medical condition as defined in regulation six and the physician's conclusion that the applicant might benefit from the medical use of marijuana;
 4. A statement from the physician if the patient is homebound, if applicable;
 5. The name, address, and telephone number of the physician who has concluded the applicant might benefit from the medical use of marijuana; and

6. A copy of a secure and verifiable identity document, in compliance with the Secure and Verifiable Document Act, C.R.S. §24-72.1-101 *et seq.*, for the patient and primary care-giver, if any is designated.

C. In order for a minor applicant to be placed in the registry and to receive a registry identification card, the minor applicant must reside in Colorado and a parent residing in Colorado must consent in writing to serve as the minor applicant's primary care-giver. Such parent must complete an application form supplied by the department, and have such application notarized, signed and include fee payment. The parent of the minor applicant must provide the following information with the application:

1. The applicant's name, address, date of birth, and social security number;
2. Written documentation from two of the applicant's physicians that the applicant has been diagnosed with a debilitating medical condition as defined in regulation six and each physician's conclusion that the applicant might benefit from the medical use of marijuana;
3. The name, address, and telephone number of the two physicians who have concluded the applicant might benefit from the medical use of marijuana;
4. Consent from each of the applicant's parents residing in Colorado that the applicant may engage in the medical use of marijuana;
5. Documentation that one of the physicians referred to in (iii) has explained the possible risks and benefits of medical use of marijuana to the applicant and each of the applicant's parents residing in Colorado; and
6. The name and address of the applicant's medical marijuana center, if one is designated at the time of application.

D. To maintain an effective registry identification card, a patient must annually resubmit to the department, at least thirty days prior to the expiration date, but no sooner than sixty days prior to the expiration date, updated written documentation of the information required in paragraphs B and C of this regulation. In addition, the patient must provide the name and address of the primary care-giver, or the name and address of a medical marijuana center, if either is designated at such time.

E. A patient may change his or her primary care-giver or medical marijuana center no more than once per month. A patient may change his or her primary care-giver or medical marijuana center by submitting such information on the form and in the manner as directed by the department within ten days of the change occurring.

F. Rejected applications. Rejected applications shall not be considered pending applications, and shall not be subject to the requirement in the Constitution that applications be deemed approved after thirty-five days. The department may reject as incomplete any patient application for any of the following reasons:

1. If information contained in the application is illegible or missing;
2. If the application is not notarized; or
3. The physician(s) is/are not eligible to recommend the use of marijuana.
4. An applicant shall have (60) days from the date the department mails the rejected application to make corrections and resubmit the application.

G. Denied applications. The department may deny an application for any of the following reasons:

1. The physician recommendation is falsified;
2. Any information on the application is falsified;
3. The identification card that is presented with the application is not the patient's identification card;
4. The applicant is not a Colorado resident;
5. If the department has twice rejected the patient's application, and the applicant's third submission is incomplete.

If the department denies an application, then the applicant may not submit a new application until six months following the date of denial and may not use the application as a registry card. If the basis for denial is falsification, law enforcement shall be notified of any fraud issues.

H. The department may revoke a registry identification card for one year if the patient has been found to have willfully violated the provisions of article xviii, section 14 of the Colorado Constitution or C.R.S. § 25-1.5-106.

I. A patient who has been convicted of a criminal offense under article 18 of title 18, C.R.S., sentenced or ordered by a court to drug or substance abuse treatment, or sentenced to the division of youth corrections shall be subject to immediate renewal of his/her registry identification card. Such patient may only reapply with a new physician recommendation from a physician with whom the patient has a bona fide relationship.

1. The patient shall remit the registry card to the department within 24 hours of the conviction/sentence/court order.
2. The patient may complete and submit a renewal application for a registry card including a new recommendation from a physician with a bona fide relationship.

J. Appeals. If the department denies an application or, suspends or, revokes a registry identification card, the department shall provide the applicant/patient with notice of the grounds for the denial, suspension, or revocation, and shall inform the patient of the patient's right to request a hearing.

1. A request for hearing shall be submitted to the department in writing within thirty (30) calendar days from the date of the postmark on the notice.
 - a. If a hearing is requested, the patient shall file an answer within thirty (30) calendar days from the date of the postmark on the notice.
 - b. If a request for a hearing is made, the hearing shall be conducted in accordance with the state Administrative Procedures Act, § 24-4-101 *et seq.*, C.R.S.
 - c. If the patient does not request a hearing in writing within thirty (30) calendar days from the date of the notice, the patient is deemed to have waived the opportunity for a hearing.

Regulation 3: Verification of medical information; issuance, denial, revocation, and form of registry identification cards

- A. The department shall verify medical information contained in the patient's application within thirty days of receiving the application. Verification of medical information shall consist of determining that there is documentation stating the applicant has a current diagnosis with a debilitating medical condition as defined in regulation six, by a physician who has a current active, unrestricted and unconditioned license as defined in Regulation 8 to practice medicine issued by the State of Colorado, which license is in good standing, and who has a bona fide physician patient relationship with the patient as defined in regulation eight.
- B. No more than five days after verifying medical information of the applicant, the department shall issue a serially numbered registry identification card to the patient. The card shall state the following:
- i) The patient's name, address, date of birth, and social security number;
 - ii) That the patient's name has been certified to the department as a person with a debilitating medical condition, whereby the person may address such condition with the medical use of marijuana;
 - iii) The date of issuance of such card and the date of expiration, which shall be one year from the date of issuance;
 - iv) The name and address of the patient's primary care-giver, if any is designated at the time of application;
 - v) How to notify the department of any change in name, address, medical status, physician, or primary care-giver.
- C. Except for minor applicants, where the department fails within thirty-five days of receipt of application to issue a registry identification card or fails to issue verbal or written notice of denial of such application, the patient's application for such card will be deemed to have been approved. "Receipt" shall be deemed to have occurred upon delivery to the department or deposit in the United States mail. No application shall be deemed received prior to June 1, 2001.
- D. The department shall deny the application if it determines that information has been falsified or it cannot verify the medical information as provided in paragraph A of this regulation. A patient whose application has been denied by the department may not reapply during the six months following the date of denial. The denial of a registry identification card shall be considered a final agency action.
- E. In addition to any other penalties provided by law, the department shall revoke for a period of one year the registry identification card of any patient found to have willfully violated the provisions of Section 14 of Amendment 20 of the Colorado Constitution or the implementing legislation of Section 14.

Regulation 4: Change in applicant information

- A. When there has been a change in the name, address, physician or primary care-giver of a patient who has been issued a registry identification card, that patient must notify the department within ten days by submitting a completed and notarized Change of Address or Care-giver form as prescribed by the Department. A patient who has not designated a primary care-giver at the time of application to the department may do so in writing at any time during the effective period of the registry identification card, and the primary care-giver may act in this capacity after such designation. The Department shall not issue a new registry identification card to the patient on the sole basis of a new or change of primary care-giver.

- B. A patient who no longer has a debilitating medical condition as defined in regulation six shall return his registry identification card to the department within twenty-four hours of receiving such information by his or her physician.

Regulation 5: Communications with law enforcement officials about patients in the registry

- A. Authorized employees of state or local law enforcement agencies shall be granted access to the information contained within the department's registry only for the purpose of verifying that an individual who has presented a registry identification card to a state or local law enforcement official is lawfully in possession of such card. The department shall report to authorized state or local law enforcement officials whether a patient's registry identification card has been suspended because the patient no longer has a debilitating medical condition.
- B. Authorized employees of state or local law enforcement agencies shall immediately notify the department when any person in possession of a registry identification card has been determined by a court of law to have willfully violated the provisions of this section 14 of the Colorado constitution or its implementing legislation, or has pled guilty to such offense.

Regulation 6: Debilitating medical conditions and the process for adding new debilitating medical conditions

- A. Debilitating medical conditions are defined as cancer, glaucoma, and infection with or positive status for human immunodeficiency virus. Patients undergoing treatment for such conditions are defined as having a debilitating medical condition.
- B. Debilitating medical condition also includes a chronic or debilitating disease or medical condition other than HIV infection, cancer or glaucoma; or treatment for such conditions, which produces for a specific patient one or more of the following, and for which, in the professional opinion of the patient's physician, such condition or conditions may reasonably be alleviated by the medical use of marijuana: cachexia; severe pain; severe nausea; seizures, including those that are characteristic of epilepsy; or persistent muscle spasms, including those that are characteristic of multiple sclerosis.
- C. Patients who have had a diagnosis of a debilitating medical condition in the past but do not have active disease and are not undergoing treatment for such condition are not suffering from a debilitating medical condition for which the medical use of marijuana is authorized.
- D. The department shall accept physician or patient petitions to add debilitating medical conditions to the list provided in paragraphs A and B of this regulation, and shall follow the following procedures in reviewing such petitions.
 - 1. Receipt of petition; review of medical literature. Upon receipt of a petition, the executive director, or his or her designee, shall review the information submitted in support of the petition and shall also conduct a search of the medical literature for peer-reviewed published literature of randomized controlled trials in humans concerning the use of marijuana for the condition that is the subject of the petition using PUBMED, the official search program for the National Library of Medicine and the National Institutes of Health, and the Cochrane Central Register of Controlled Trials.
 - 2. Department denial of petitions. The department shall deny a petition to add a debilitating medical condition within (180) days of receipt of such petition without any hearing of the board in all of the following circumstances:

- a. If there are no peer-reviewed published studies of randomized controlled studies showing efficacy in humans for use of medical marijuana for the condition that is the subject of the petition;
 - b. If there are peer-reviewed published studies of randomized controlled trials showing efficacy in humans for the condition that is the subject of the petition, and if there are studies that show harm, other than harm associated with smoking such as obstructive lung disease or lung cancer, and there are alternative, conventional treatments available for the condition;
 - c. If the petition seeks the addition of an underlying condition for which the associated symptoms that are already listed as debilitating medical conditions for which the use of medical marijuana is allowed, such as severe pain, are the reason for which medical marijuana is requested, rather than for improvement of the underlying condition; or
 - d. If a majority of the ad hoc medical advisory panel recommends denial of the petition in accord with paragraph (3) of this section D.
3. Ad hoc medical advisory panel.
- a. The department shall establish an ad hoc medical advisory panel to review petitions if the conditions for denial set forth in paragraphs (2)(a),(b) and (c) of this section D are not met.
 - b. Composition of the ad hoc medical advisory panel shall be as follows:
 - i. One physician in the appropriate field for the condition requested to be added who is recommended by the petitioner who meets appropriate qualifications with no objective evidence of bias;
 - ii. One physician in the appropriate field for the condition requested to be added who is recommended by the department who meets appropriate qualifications with no objective evidence of bias;
 - iii. One physician who recommends medical marijuana in his or her practice, who may be recommended by the petitioner;
 - iv. One physician in addiction medicine; and
 - v. The executive director or his or her designee, or, if the executive director is not a physician, the state chief medical officer.
 - c. The ad hoc medical advisory panel shall review the petition information presented to the department and any further medical research related to the condition requested, and make recommendations to the executive director, or his or her designee, regarding the petition.
 - d. If the department is unable to recruit participants for the ad hoc medical advisory panel, the department shall seek informal consultation from individuals meeting the criteria listed in this paragraph (2)(a).
4. Department requests for rulemaking hearings on petitions to add debilitating medical conditions. Within (120) days of receipt of a petition to add a debilitating medical condition, the department shall petition the board for a rulemaking hearing to consider

adding the condition to the list of debilitating medical conditions if the ad hoc medical advisory panel recommends approval of the petition to add the condition.

5. Final agency action. The following actions are final agency actions, subject to judicial review pursuant to C.R.S. § 24-4-106:
 - a. Department denials of petitions to add debilitating medical conditions.
 - b. Board of health denials of rules proposed by the department to add a condition to the list of debilitating medical conditions for the medical marijuana program.

Regulation 7: Determination of fees to pay for administrative costs of the medical use of marijuana program

- A. Application fee. The department shall collect thirty five dollars from each applicant at the time of application to pay for the direct and indirect costs to administer the medical use of marijuana program, unless the applicant meets the criteria set forth in section (b) of this Regulation (7) establishing indigence. Such fee shall not be refundable to the applicant if the application is denied or revoked or if the patient no longer has a debilitating medical condition. The amount of the fee shall be evaluated annually by the department, and the department shall propose modifications to the board, as appropriate. If the patient provides updated information at any time during the effective period of the registry identification card, the department shall not charge a fee to modify the registry information concerning the patient.
- B. Indigence fee waiver. Any individual submitting an application for the registry may request an indigence fee waiver if he or she submits at the time of application a copy of the applicant's state tax return certified by the department of revenue that confirms that the applicant's income does not exceed one hundred eighty-five percent of the federal poverty line, adjusted for family size.
- C. Notification of indigent status. Individuals who meet the indigence standard after they have been approved for the medical marijuana registry may complete a form, to be determined by the department, notifying the department of their status and supplying a copy of the applicant's state tax return certified by the department of revenue that confirms that the applicant's income does not exceed one hundred eighty-five percent of the federal poverty line, adjusted for family size. Upon receipt and confirmation of the information, the department shall issue a new medical marijuana registry card for the remaining term of the current card noting said indigent status for tax exemption purposes.

Regulation 8: Physician requirements; reasonable cause for referrals of physicians to the Colorado Medical Board; reasonable cause for department adverse action concerning physicians; appeal rights

- A. **Physician Requirements.** A physician who certifies a debilitating medical condition for an applicant to the medical marijuana program shall comply with all of the following requirements:
 1. **Colorado license to practice medicine.** The physician shall have a valid, unrestricted Colorado license to practice medicine, which license is in good standing.
 - a. for the purposes of certifying a debilitating medical condition of an applicant and recommending the use of medical marijuana for the medical marijuana program, "in good standing" means:
 - i. The physician holds a doctor of medicine or doctor of osteopathic medicine degree from an accredited medical school.

- ii. The physician holds a valid license to practice medicine in Colorado that does not contain a restriction or condition that prohibits the recommendation of medical marijuana or for a license issued prior to July 1, 2011, a valid, unrestricted and unconditioned; and
 - iii. The physician has a valid and unrestricted United States Department of Justice federal drug enforcement administration controlled substances registration.
- 2. **Bona fide physician patient relationship.** A physician who meets the requirements in subsection A.1 of this Regulation 8 and who has a bona fide physician-patient relationship with a particular patient may certify to the state health agency that the patient has a debilitating medical condition and that the patient may benefit from the use of medical marijuana. If the physician certifies that the patient would benefit from the use of medical marijuana based on a chronic or debilitating disease or medical condition, the physician shall specify the chronic or debilitating disease or medical condition and, if known, the cause or source of the chronic or debilitating disease or medical condition.
 - a. "Bona fide physician-patient relationship", for purposes of the medical marijuana program, means:
 - i. A physician and a patient have a treatment or counseling relationship, in the course of which the physician has completed a full assessment of the patient's medical history and current medical condition, including an appropriate personal physical examination;
 - ii. The physician has consulted with the patient with respect to the patient's debilitating medical condition before the patient applies for a registry identification card; and
 - iii. The physician is available to or offers to provide follow-up care and treatment to the patient, including but not limited to patient examinations, to determine the efficacy of the use of medical marijuana as a treatment of the patient's debilitating medical condition.
 - b. A physician making medical marijuana recommendations shall comply with generally accepted standards of medical practice, the provisions of the medical practice act, § 12-36-101 *et seq.* , C.R.S, and all Colorado Medical Board rules.
 - c. The "appropriate personal physical examination" required by paragraph A.2.a.i of this Regulation 8 may not be performed by remote means, including telemedicine.
- 3. **Medical records.** The physician shall maintain a record-keeping system for all patients for whom the physician has recommended the medical use of marijuana. Pursuant to an investigation initiated by the Colorado medical board, the physician shall produce such medical records to the Colorado Medical Board after redacting any patient or primary caregiver identifying information.
- 4. **Financial prohibitions.** A physician shall not:
 - a. Accept, solicit, or offer any form of pecuniary remuneration from or to a primary caregiver, distributor, or any other provider of medical marijuana;

- b. Offer a discount or any other thing of value to a patient who uses or agrees to use a particular primary caregiver, distributor, or other provider of medical marijuana to procure medical marijuana;
 - c. Examine a patient for purposes of diagnosing a debilitating medical condition at a location where medical marijuana is sold or distributed; or
 - d. Hold an economic interest in an enterprise that provides or distributes medical marijuana if the physician certifies the debilitating medical condition of a patient for participation in the medical marijuana program.
- B. Reasonable cause for referral of a physician to the Colorado Medical Board.** For reasonable cause, the department may refer a physician who has certified a debilitating medical condition of an applicant to the medical marijuana registry to the Colorado Medical Board for potential violations of sub-paragraphs 1, 2, and 3 of paragraph A of this rule.
- C. Reasonable cause for department sanctions concerning physicians.** For reasonable cause, the department may sanction a physician who certifies a debilitating medical condition for an applicant to the medical marijuana registry for violations of paragraph A.4 of this rule. Reasonable cause shall include, but not be limited to:
 - 1. The physician is housed onsite and/or conducts patient evaluations for purposes of the medical marijuana program at a location where medical marijuana is sold or distributed, such as a medical marijuana center, optional grow site, medically infused products manufacturer, by a primary care-giver, or other distributor of medical marijuana.
 - 2. A physician who holds an economic interest in an entity that provides or distributes medical marijuana, such as a medical marijuana center, an infused products manufacturer, an optional grow site, a primary care-giver, or other distributor of medical marijuana.
 - 3. The physician accepts, offers or solicits any form of pecuniary remuneration from or to a primary care-giver, medical marijuana center, optional grow site, medically infused product manufacturer, or any other distributor of medical marijuana.
 - 4. The physician offers a discount or any other thing of value, including but not limited to a coupon for reduced-price medical marijuana or a reduced fee for physician services, to a patient who agrees to use a particular medical marijuana center, primary care-giver, or other distributor of medical marijuana.
- D. Sanctions.** For reasonable cause, the department may propose any of the following sanctions against a physician:
 - 1. Revocation of the physician's ability to certify a debilitating medical condition and recommend medical marijuana for an applicant to the medical marijuana registry; or
 - 2. Summary suspension of the physician's ability to certify a debilitating medical condition or recommend medical marijuana for an applicant to the medical marijuana registry when the department reasonably and objectively believes that a physician has deliberately and willfully violated section 14 of article xviii of the state constitution or § 25-1.5-106, C.R.S. and the public health, safety and welfare imperatively requires emergency action.
- E. Appeals.** If the department proposes to sanction a physician pursuant to paragraph c of this rule, the department shall provide the physician with notice of the grounds for the sanction and shall inform the physician of the physician's right to request a hearing.

1. A request for hearing shall be submitted to the department in writing within thirty (30) calendar days from the date of the postmark on the notice.
2. If a hearing is requested, the physician shall file an answer within thirty (30) calendar days from the date of the postmark on the notice.
3. If a request for a hearing is made, the hearing shall be conducted in accordance with the state administrative procedures act, § 24-4-101 *et seq.*, C.R.S.
4. If the physician does not request a hearing in writing within thirty (30) calendar days from the date of the notice, the physician is deemed to have waived the opportunity for a hearing.

Regulation 9: Primary care-giver-patient relationship and primary care-giver rules

- A. A patient who designates a primary care-giver for him or herself cannot also be a primary care-giver to another patient.
- B. A person shall be listed as a primary care-giver for no more than five patients in the medical marijuana registry at any given time unless a waiver as set forth in Regulation Ten has been granted for exceptional circumstances.
- C. An existing primary care-giver may indicate to the department at the time of registration on a form to be developed by the department if the primary care-giver is available to serve more patients. An individual who is not a registered primary care-giver, but who would like to become one may submit contact information to the registry. The primary care-giver or prospective primary care-giver shall waive confidentiality to allow release of contact information to physicians or registered patients only. The department may provide the information but shall not endorse or vouch for any primary care-giver or prospective primary care-giver.
- D. A primary care-giver if asked by law enforcement shall provide a list of registry identification numbers for each patient. If a waiver has been granted for the primary care-giver to serve more than five patients, this will be noted on the department record of primary care-givers and will be available for verification to law enforcement upon inquiry to the department.
- E. A primary care-giver shall have his/her primary registration card available on his/her person at all times when in possession of marijuana and produce it at the request of law enforcement. The only exception to this shall be when it has been more than thirty-five days since the date the patient filed his or her medical marijuana application and the department has not yet issued or denied a registry identification card. A copy of the patient's application along with proof of the date of submission shall be in the primary care-giver's possession at all times that the primary care-giver is in possession of marijuana. The primary care-giver may redact all confidential patient information from the application other than the patient's name and date of birth.
- F. A patient may only have one primary care-giver at a time. If a patient does not require care-giver services other than the provision of medical marijuana, then the patient shall not designate a primary care-giver.
- G. A designated primary care-giver shall not delegate the responsibility of provision of medical marijuana for a patient to another person.
- H. A primary care-giver shall not join together with another primary care-giver for the purpose of growing marijuana. Any marijuana grows by a care-giver shall be physically separate from grows by other primary care-givers and licensed growers or medical marijuana centers, and a primary care-giver shall not grow marijuana for another primary care-giver. If two or more care-givers reside in the same household and each grows marijuana for their registered patients, the marijuana grows

must be maintained in such a way that the plants and/or ounces grown and or maintained by each primary care-giver are separately identified from any other primary care-givers plants and/or ounces.

- I. A primary care-giver shall not establish a business to permit patients to congregate and smoke or otherwise consume medical marijuana.
- J. A primary care-giver shall not:
 - 1. Engage in the medical use of marijuana in a way that endangers the health and well-being of a person;
 - 2. Engage in the medical use of marijuana in plain view of or in a place open to the general public;
 - 3. Undertake any task while under the influence of medical marijuana, when doing so would constitute negligence or professional malpractice;
 - 4. Possess medical marijuana or otherwise engage in the use of medical marijuana in or on the grounds of a school or in a school bus;
 - 5. Engage in the use of medical marijuana while:
 - a. In a correctional facility or a community corrections facility;
 - b. Subject to a sentence to incarceration; or
 - c. In a vehicle, aircraft, or motorboat;
 - 6. Operate, navigate, or be in actual physical control of any vehicle, aircraft, or motorboat while under the influence of medical marijuana; or
 - 7. Provide medical marijuana if the patient does not have a debilitating medical condition as diagnosed by the person's physician in the course of a bona fide physician-patient relationship and for which the physician has recommended the use of medical marijuana.
- K. A primary care-giver may charge a patient no more than the cost of cultivating or purchasing the medical marijuana, and may also charge for care-giver services. Such care-giver charges shall be appropriate for the care-giver services rendered and reflect market rates for similar care-giver services and not costs associated with procuring the marijuana.
- L. A primary care-giver shall have significant responsibility for managing the well-being of a patient with a debilitating condition. The relationship between a primary care-giver and patient is to be a significant relationship that is more than provision of medical marijuana or medical marijuana paraphernalia. Services beyond the provision of medical marijuana that may be provided by the primary care-giver include, but shall not be limited to, transportation or housekeeping or meal preparation or shopping or making arrangements for access to medical care or other services unrelated to medical marijuana. If patients do not require care-giver service other than the provision of medical marijuana, then the patients shall not designate a primary care-giver.

Regulation 10: Waiver for primary care-givers to serve more than five patients

- A. In exceptional circumstances, a waiver may be granted by the department for the purpose of allowing a primary care-giver to serve more than five patients. A separate waiver application will be required by each patient seeking to use a primary care-giver who is already at the five patient

limit. If the department does not act upon the waiver application within 35 days, the waiver shall be deemed approved until acted upon by the department.

- B. Waiver applications shall be submitted to the department on the form and in the manner required by the department.
- C. The patient and primary care-giver shall provide the department such information and documentation as the department may require validating the conditions under which the waiver is being sought.
- D. In acting on the waiver application, the department shall consider at a minimum all of the following:
 - 1. The information submitted by the patient applicant;
 - 2. The information submitted by the primary care-giver;
 - 3. The proximity of medical marijuana centers to the patient;
 - 4. Whether granting the waiver would either benefit or adversely affect the health, safety or welfare of the patient; and
 - 5. What services beyond providing medical marijuana the patient applicant needs from the proposed primary care-giver.
- E. The department may specify terms and conditions under which any waiver is granted, and which terms and conditions must be met in order for the waiver to remain in effect.
- F. The term for the waiver shall be one year unless the care-giver reduces the number of patients he or she serves during that year to five or fewer, at which time the waiver shall expire. The care-giver shall notify the department in writing when he or she no longer provides care-giver services to a patient.
- G. At any time, upon reasonable cause, the department may review any existing waiver to ensure that the terms and conditions of the waiver are being observed and or that the continued existence of the waiver is appropriate.
- H. The department may revoke a waiver if it determines that any one of the following is met:
 - 1. The waiver jeopardizes the health, safety and welfare of patients;
 - 2. The patient applicant or care-giver has provided false or misleading information in the application;
 - 3. The patient applicant or care-giver has failed to comply with the terms or conditions of the waiver;
 - 4. The conditions under which a waiver was granted no longer exist or have materially changed;
or
 - 5. A change in state law or regulation prohibits or is inconsistent with the continuation of the waiver.
- I. The department will provide notice of the revocation of the waiver to the registered patient and the care-giver at the time the waiver is revoked.

- J. Appeals. If the department proposes to deny, condition, revoke or suspend a waiver for a primary care-giver to serve more than five patients, the department shall provide the patient with notice of the grounds for the action and shall inform the patient of the patient's right to request a hearing.
1. A request for hearing shall be submitted to the department in writing within thirty (30) calendar days from the date of the postmark on the notice.
 2. If a hearing is requested, the patient shall file an answer within thirty (30) calendar days from the date of the postmark on the notice.
 3. If a request for a hearing is made, the hearing shall be conducted in accordance with the state Administrative Procedures Act, § 24-4-101 *et seq.* , C.R.S.
 4. If the patient does not request a hearing in writing within thirty (30) calendar days from the date of the notice, the patient is deemed to have waived the opportunity for a hearing.

Regulation 11: Waiver for primary care-givers to deliver medical marijuana products from a medical marijuana center.

- A. If the physician recommending the marijuana checks on the recommending form that the patient is homebound, a waiver will be granted allowing a designated primary care-giver to transport marijuana from a medical marijuana center to the patient.
- B. The term for the waiver shall be the same as the effective dates of the patient's registry identification card.
- C. At any time, upon reasonable cause, the department may review any existing waiver to ensure that the terms and conditions of the waiver are being observed and or that the continued existence of the waiver is appropriate.
- D. The department may revoke a waiver if it determines that any of the following are met:
1. The waiver jeopardizes the health, safety and welfare of patients;
 2. The patient applicant has provided false or misleading information in the application;
 3. The patient applicant has failed to comply with the terms or conditions of the waiver;
 4. The conditions under which a waiver was granted no longer exist or have materially changed;
or
 5. A change in state law or regulation prohibits or is inconsistent with the continuation of the waiver.
- E. Primary care-givers for minors shall have a waiver for transportation automatically granted as part of a successful application process if the patient application indicates that the minor's primary care-giver will be purchasing medical marijuana from a medical marijuana center. The term of the waiver will coincide with the term of the registry identification card.
- F. The department will provide notice of the revocation of the waiver to the patient and the primary care-giver at the time the waiver is revoked.
- G. Appeals. If the department proposes to deny, condition, revoke or suspend a waiver for a primary care-giver to deliver medical marijuana products to a homebound patient, the department shall

provide the patient with notice of the grounds for the action and shall inform the patient of the patient's right to request a hearing.

1. A request for hearing shall be submitted to the department in writing within thirty (30) calendar days from the date of the postmark on the notice.
2. If a hearing is requested, the patient shall file an answer within thirty (30) calendar days from the date of the postmark on the notice.
3. If a request for a hearing is made, the hearing shall be conducted in accordance with the state Administrative Procedures Act, § 24-4-101 *et seq.*, C.R.S.
4. If the patient does not request a hearing in writing within thirty (30) calendar days from the date of the notice, the patient is deemed to have waived the opportunity for a hearing.

Regulation 12: Patient Responsibilities.

- A. Patient shall make a copy of his/her application along with proof of the date of submission available to his/her designated primary care-giver when it has been more than thirty-five days since the date the patient filed his or her medical marijuana application and the department has neither issued a registry identification card nor denied the application. A copy of the patient's application shall be in the primary care-giver's possession at all times that the primary care-giver is in possession of marijuana. The patient may obscure or redact the mailing address and social security number on the copy of the application given to the primary care-giver.
- B. When a patient changes his or her primary care-giver or medical marijuana center, the patient shall submit notice of the change on the form and in the manner as directed by the department.
- C. A patient shall not:
 1. Engage in the medical use of marijuana in a way that endangers the health and well-being of a person;
 2. Engage in the medical use of marijuana in plain view of or in a place open to the general public;
 3. Undertake any task while under the influence of medical marijuana, when doing so would constitute negligence or professional malpractice;
 4. Possess medical marijuana or otherwise engage in the use of medical marijuana in or on the grounds of a school or in a school bus;
 5. Engage in the use of medical marijuana while:
 - A. In a correctional facility or a community corrections facility;
 - B. Subject to a sentence to incarceration;
 - C. In a vehicle, aircraft, or motorboat; or
 - D. As otherwise ordered by the court.
 6. Operate, navigate, or be in actual physical control of any vehicle, aircraft, or motorboat while under the influence of medical marijuana; or

7. Use medical marijuana if the patient does not have a debilitating medical condition as diagnosed by the person's physician in the course of a bona fide physician-patient relationship and for which the physician has recommended the use of medical marijuana.
- D. A patient who no longer has a debilitating medical condition shall return his or her registry identification card to the department within twenty-four hours of receiving such diagnosis by his or her physician.
 - E. A patient shall notify the department if convicted of a criminal offense under article 18 of title 18, C.R.S., sentenced or ordered by a court to drug or substance abuse treatment, or sentenced to the division of youth corrections. The patient shall be subject to immediate renewal of his/her registry identification card. Such patient may only reapply with a new physician recommendation from a physician with whom the patient has a bona fide relationship.
 1. The patient shall remit the registry card to the department within 24 hours of the conviction/sentence/court order.
 2. The patient may complete and submit a new application for a registry card including a new recommendation from a physician with a bona fide relationship.
 - F. A patient shall not establish a business to permit other patients to congregate and smoke or otherwise consume medical marijuana.

Regulation 13: Subpoenas for Registry Information

- A. The department shall require that a fee be paid to the department for any subpoena served. The fee shall be paid at the time of service of any subpoena upon the department plus a fee for meals and mileage at the rate prescribed for state officers and employees in Section 24-9-104, C.R.S. for each mile actually and necessarily traveled in going to and returning from the place named in the subpoena. If the person named in the subpoena is required to attend the place named in the subpoena for more than one day, there shall be paid, in advance, a sum to be established by the department for each day of attendance to cover the expenses of the person named in the subpoena.
- B. The subpoena fee is \$200 for the first (4) hours of appearance or on-call or travel time to court, excluding mileage, meals and lodging which shall be paid at state employee per diem rates. Beyond the first (4) hours, the subpoena fee shall be the actual hourly rate of the witness employee.
- C. The subpoena fee shall not be applicable to any federal, state or local governmental agency, or to a patient who has been determined to be indigent under the department.

Editor's Notes

History

Regulation 7 eff. 07/30/2007.

Entire Rule eff. 08/30/2009.

Regulation 2.A(iii) repealed as emer. rule eff. 11/03/2009; expired 02/03/2010.

Regulation 7 eff. 11/30/2010.

Regulation 6 eff. 03/02/2011.

Regulations 3.A, 8 eff. 04/30/2011.

Regulations 1, 2, 9, 10, 11, 12, 13 eff. 07/30/2011.

Regulations 7, 8A eff. 12/30/2011.

Annotations

A Denver district court (Case No: 2007 CV 6089, LaGoy v. Ritter, et al) has enjoined the enforcement of the emergency rule repealing Regulation 2.A.iii eff. 11/03/2009. Per agency request, prior Regulation 2.A.iii, eff. 08/30/2010, has been restored to its place in 5 CCR 1006-2, in order to effectuate the intent of the Court and the parties that the prior regulation be reinstated.

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DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 NATHAN HAMILTON and LEONARD
13 SCHWINGDORF,

14 Defendants.

CASE NO: C-11-276187-1,2
DEPT. NO: XIV

15)
16)
17 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, DECLARING NRS**
18 **453A UNCONSTITUTIONAL AND GRANTING DEFENDANTS' MOTION TO**
19 **DISMISS ALL CHARGES WITH PREJUDICE**

20 This matter having come on for hearing, and the Court being fully apprised in the
21 premises, makes the following Findings of Fact, Conclusions of Law, and Order Declaring NRS
22 453A Unconstitutional and Granting Defendant's Motion to Dismiss All Charges with Prejudice.

23 The Court begins by plainly stating it is not a proponent of medical marijuana. However,
24 the Court is sworn to uphold the Constitution of the State of Nevada, accordingly:

25 The issue of the constitutionality of NRS 453.300 and NRS 453.310 has come before the
26 Court and is hereby decided giving deference to the will of the people of the State of Nevada as
27 expressed by lawful vote and not as a result of any prediction on the part of the Court in the
28 matter.

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Findings of Fact, Conclusions of Law and C
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1 Chapter 453A is very specific in delineating the requirements for registration, the
2 issuance of identification cards, exposure, or lack thereof, to State prosecution, disclaimer of
3 insulation from prosecution on Federal charges and miscellaneous provisions clarifying potential
4 areas of misunderstanding. The law falls short however in providing a realistic manner in which
5 a qualified purchaser and a qualified distributor of marijuana may function, thus frustrating the
6 clear intent of the Nevada Constitutional Amendment, Article IV, Section 38 (the constitution
7 mandates that the Legislature set forth and authorize an appropriate method for supply of the
8 plant to patients legally eligible to use it, in an apparent effort to comply, the Legislature directed
9 the State Department of Agriculture to establish a program to produce and deliver marijuana for
10 medicinal purposes. This has not been done.)

11 The Defendants argue that NRS 453.A 300 1.(d) and (F) are unconstitutionally vague and
12 overbroad as applied to them in that one must necessarily guess as to what behavior is prohibited
13 and to choose between a constitutionally conferred right and an apparent statutory prohibition
14 against a reasonable method of exercising that right. Thus, the defendants have engaged in what
15 clearly could be described as a fanciful practice of "giving" marijuana away and relying on a
16 "donation" to recoup the cost thereof.

17
18 Simply stated the law, NRS 453A 300, does not further but rather frustrates the
19 Constitutional mandate to reasonably provide a method for lawfully obtaining medical
20 marijuana.

21 Specifically, NRS 453 A 300 1.(d) & (d-1) states that possession of marijuana, or
22 possession in an effort to "assist" in its medical use (1) "in any public place or in any place open
23 to the public" strips the offender of any exemption from prosecution. This necessarily prevents
24 any store front medical marijuana provider or reasonable business method of making such
25 marijuana available. The reasonable conclusion must be that any such transfer need occur in a
26 private residence or secretly in some back alley.

27 Provision 1(f) of NRS 453A 300, indicates that no exemption from prosecution will lie if
28 the medicinal marijuana is delivered for "consideration" which, of course, prohibits sales of the
substance. One must conclude that only through the charity of others (or through a fallacy of a

1 specific donation as in the present case) can one obtain the tolcrated substance. It is absurd to
 2 suppose that from an unspecified source "free" marijuana will be provided to those who are
 3 lawfully empowered to receive it.

4 Next, the Defendants argue that NRS 453 A 310, is unconstitutionally vague and
 5 overbroad as applied to them in that it provides an affirmative defense to criminal charges
 6 allowing for possession of medical marijuana only in the limited amounts set forth in NRS 453 A
 7 200 (3) b., i.e.,

- 8 1. One ounce of usable marijuana.
- 9 2. Three mature marijuana plants.
- 10 3. Four immature marijuana plants.

11 This would effectively mandate that a purveyor/distributor could possess only an amount
 12 sufficient to accommodate one recipient/customer at a time. He would then arguably have to go
 13 to his supplier for another dose. (A supplier who is apparently under the same constraint). This
 14 arrangement is of course ridiculous and in effect would make impossible any commercial
 15 distribution of medical marijuana. This is not to say that restrictions on amount and purpose of
 16 stocks of the medically indicated substance should be non-existent. Must as a Pharmacist, in the
 17 course of business, stocks barbiturates, opiates or other dangerous drugs, such is not for the
 18 unfettered use of the druggist, but for the exclusive purpose of sale to customers who are
 19 lawfully prescribed such.

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1 It is apparent to the Court that the statutory scheme set out for the lawful distribution of
 2 medical marijuana is either poorly contemplated or purposely constructed to frustrate the
 3 implementation of constitutionally mandated access to the substance. In either case, the law is
 4 hereby held to be unconstitutional in its application to potential offenders of its provisions.
 5 Accordingly, the charges against defendant's Nathan Hamilton and Leonard Schwingdorf (C-11-
 6 276187 and C-11-276187-2 respectively) are dismissed with prejudice.

7
 8 DATED AND DONE THIS 29th day of FEBRUARY, 2012.

9 
 10 DISTRICT COURT JUDGE 

11
 12 Respectfully submitted,

13 
 14 _____
 15 ROBERT M. DRASKOVICH, ESQ.
 16 Nevada Bar No. 6275
 17 JOHN MILLION TURCO, ESQ.
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 19 Attorneys for Defendants
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