

GreenspoonMarder

www.gmlaw.com

Cannabis Law Practice

750 B Street, Suite 2510
San Diego, California 92101
Phone: 619.544.6400

202 Providence Mine Rd., Suite 107
Nevada City, CA, 95959
Phone: 530.470.8509

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BY EMAIL

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814-4339
Attention: OAL Reference Attorney
Email: staff@oal.ca.gov

With a copy to:

Department of Public Health
PO Box 997377
MS 0500
Sacramento, CA 95813

Attention: Linda M. Cortez
Email: Linda.Cortez@cdph.ca.gov
Email: regulations@cdph.ca.gov

Re: **Comments to Regulations for Cannabis Manufacturing Licensing
(OAL File No. 2017-1127-04E)**

Dear Sir or Madam:

We are submitting for formal consideration these public comments to the above-referenced emergency regulations. In accordance with 1 CCR Section 55(b), these comments are submitted in writing, are provided before the deadline, identify the topic of the emergency regulations to which they relate, and are being provided simultaneously to the agency's contact person designated to receive them. Further, since these comments are unique to our law firm and have been specifically prepared to address material issues having economic impact to our clients, we respectfully request that these comments not be treated with other public comments from other sources as a single comment submission under 1 CCR Section 55(h), but rather that these comments be considered independently of such other public comments.

First and foremost, we commend the staff at the Department of Public Health for developing this set of regulations under extremely short time frames. In general the regulations seem to us to be fair, well balanced, clear, concise and will assist us greatly in advising and representing our Cannabis clients. We have endeavored to limit our public comments to those issues we feel are urgent and have the greatest economic impact on our Cannabis clients.

Comment 1:

Section 40102(a)(4)(A) defines “Owner” to include “[a] partner of a cannabis business that is organized as a partnership.”

This makes sense for a general partnership but does not make sense for a limited partnership. We believe this was an unintentional oversight. Under limited partnership laws, only the general partner has management and control functions or powers.

Therefore, Section 40102(a)(4)(A) should be revised as follows (new text underlined):

“(A) (i) A partner of a cannabis business that is organized as a general partnership; and (ii) A general partner of a cannabis business that is organized as a limited partnership.”

Comment 2:

Section 40102(a)(4)(B) defines “Owner” to include “[a] member of a limited liability company of a commercial cannabis business that is organized as a limited liability company.”

This makes sense for a member-managed LLC but does not make sense for a manager-managed LLC. We believe this was an unintentional oversight. Under LLC laws, the non-managing members do not usually have management or control functions or powers. If in a particular case, the LLC operating agreement provides a particular member with management and/or control functions or powers, the general rule in Section 40102(a)(4) would clearly designate such person as an “Owner” based on such management and/or control functions. As a result, there is no purpose served by imposing an overly broad definition on non-managing LLC members.

Therefore, Section 40102(a)(4)(B) should be revised as follows (new text underlined):

“(B) (i) A member of a limited liability company of a cannabis business that is organized as a member-managed limited liability company; and (ii) A manager of a limited liability company of a cannabis business that is organized as a manager-managed limited liability company.”

Comment 3:

Section 40156(a) provides for priority licensing if an applicant operated in compliance with the Compassionate Use Act of 1996 and its implementing laws before September 1, 2016. There are many applicants who were operating in the form of nonprofit mutual benefit corporations or cooperatives as of September 1, 2016 but who now wish to convert their form of entity to a for profit corporation or LLC. Under the MBC merger statute in CA Corp. Code Section 8010, an

MBC can merge with a domestic corporation or other business entity. Under CA Corp. Code Section 8020(a), upon merger, the surviving party shall “succeed, without other transfer, to all rights and property” of the disappearing party. Similar rules apply to a merger involving a cooperative under CA Corp. Code Sections 12530 and 12550(a), respectively.

We believe that since the priority filing is mandated by CA Bus. & Prof. Code Section 26054.2(a), it should be treated as a statutory right and a surviving entity in a merger should succeed to such right as a matter of law. Therefore, an applicant that is a surviving entity in a merger where the disappearing entity was operating in compliance as of September 1, 2016 should also have the priority mandated by CA Bus. & Prof. Code Section 26054.2(a), as implemented by Section 40156.

Therefore, Section 40156 should be slightly revised as follows (new text underlined):

(a) Priority in issuance of licenses shall be given to qualified applicants that can demonstrate that the commercial cannabis business was in operation under the Compassionate Use Act as of September 1, 2016. An applicant which is a surviving entity in a merger, where it can be demonstrated that the disappearing entity operated in such compliance as of September 1, 2016, shall also be eligible for such priority licensing.

Comment 4:

Section 40178 provides for notification of changes in ownership. However, there is no process for a licensee to notify the department of a mere change in the form of entity. We note that BCC Section 5023 and CDFA Section 8204(b) take different approaches and we have commented on those sections in our public comments to those departments. We believe that a licensee ought to be permitted a mere change in the type of entity, that does not involve any change of ownership, without any new applications or fees.

A new Section 40179 should be added to clarify matters in the event of a mere change of form of entity, as follows:

§40179. Mere Change of Type of Entity.

In the event of a mere change of type of entity, where there is no change of ownership, licensee shall not be required to submit any new application or additional fees and the approval of the department shall not be required. In such event, licensee shall provide written notice to the department of such change of type of entity within thirty (30) days after the effective date of such change.

Comment 5:

We have several comments related to the manufacture of terpene cannabis products. Terpenes are barely mentioned in the new regulations, except at Sections 40305(c) and 40405(c). Terpene businesses would usually fall into the category of Type 6 or Type N, depending on whether the terpenes are considered cannabinoids for purposes of the definition of “Extraction” in Section 40100.

Most terpene manufacturers use steam distillation, which is a nonvolatile mechanical process. The distillation equipment can be installed permanently in a licensed premises but can also be installed on a vehicle so that the terpene manufacturer is able to distill terpenes from fresh cannabis plant material at or near the cultivation site. The regulations are silent concerning mobile terpene distillation equipment and operations. In addition the regulations have been developed to address public health and safety issues related to cannabis products that are intoxicating or which involve potentially dangerous manufacturing processes.

We respectfully suggest that the department develop regulations that are better suited for terpene manufacturers and also that permit mobile terpene operations at licensed cultivation sites.

Comment 6:

Statement of Rehabilitation

§ 40130(c), “Annual License Application Requirements” requires that individual owners with criminal convictions dismissed pursuant “Section 1203.4 of Penal Code or equivalent non-California law shall be disclosed “as a criminal conviction.” Then, for each “criminal conviction,” the owner must further submit a “Statement of Rehabilitation” for each offense, which presumably applies to those who have had their cases dismissed pursuant to “Section 1203.4 of Penal Code or equivalent non-California law.”

For those who have already earned an expungement or Certificate of Rehabilitation from a *Superior Court judge*, it is duplicative and overly burdensome to require a Statement of Rehabilitation. First, if there has been a judicial determination under Penal Code § 1203.4, it seems arbitrary for the agency to review it again under § 40130, particularly as it does not track the language of B.P. § 26057 in any meaningful way.

Moreover, if someone who has received expungement from the Superior Court, and then also petitioned successfully for a Certificate of Rehabilitation (which is available only to those who have served time in prison and are difficult to obtain), requiring the owner to go through the entire process of gathering supporting letters from “employers, instructors, or professional counselors” is an undue burden, and likely embarrassing.

As it is undeniable that people of color and the poor have suffered the greatest criminal penalties for cannabis prohibition, the requirement to submit a Statement of Rehabilitation for those who worked hard to get their criminal histories expunged or obtain a Certificate of Rehabilitation will disadvantage these same people, due to the massive amount of extra work required and perhaps chagrin in gathering these documents for some.

We suggest the Statement of Rehabilitation be deleted as a requirement for those with a judicial determination of expungement or Certificate of Rehabilitation. At minimum, a Statement of Rehabilitation should be required only for those whose criminal histories match those set forth in B.P. § 26057.

Current language:

(c) An owner disclosing a criminal conviction or other penalty or sanction pursuant to subdivision (a), paragraphs 8(A) and (B), shall submit any evidence of rehabilitation for consideration by the Department with the application. A statement of rehabilitation shall be written by the owner and may contain all evidence that the owner would like the Department to consider that demonstrates the owner's fitness for licensure. Supporting evidence may be attached to the statement of rehabilitation and may include, but is not limited to, evidence specified in Section 40165, and dated letters of reference from employers, instructors, or counselors that contain valid contact information for the individual providing the reference."

Suggested changes:

(c) An owner disclosing a criminal conviction or other penalty or sanction pursuant to subdivision (a), paragraphs 8(A) and (B), shall submit any evidence of rehabilitation for consideration by the Department with the application. A statement of rehabilitation shall be written by the owner and may contain all evidence that the owner would like the Department to consider that demonstrates the owner's fitness for licensure. Supporting evidence may be attached to the statement of rehabilitation and may include, but is not limited to, evidence specified in Section 40165, and dated letters of reference from employers, instructors, or counselors that contain valid contact information for the individual providing the reference.

Notwithstanding the foregoing, a statement of rehabilitation is not required for criminal convictions that have been dismissed pursuant Section 1203.4 of Penal Code or equivalent non-California law.

Thank you for the opportunity to submit these public comments for consideration.

Very truly yours,

GREENSPOON MARDER LLP

By: Heather Burke, Partner
Lance Rogers, Partner
David Frankel, Senior Counsel