



Ultra Health[®]

Via Email

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Re: Comments on Department of Health Proposed Amendments to 7.34.4.28 NMAC

Dear Medical Cannabis Program,

Please accept this letter as public comment by New Mexico Top Organics-Ultra Health, Inc. regarding the Department of Health's proposed amendments to 7.34.4.28 NMAC.

The Department of Health ("DOH") has proposed amendments to provisions regarding reciprocity. Commenter New Mexico Top Organics-Ultra Health, Inc. ("Ultra Health") wishes to memorialize the history of the proposed amendment in the event that this matter comes before a court for judicial review of the agency's actions. Based on the history of the reciprocity issue and the events leading up to the proposal of this amendment, the proposed changes to 7.34.4.28 NMAC are unlawful.

History of Proposed Amendment

On September 11, 2020, the DOH Medical Cannabis Program issued a letter to all licensed medical cannabis producers. The letter was sent by Martinik Gonzales, the Medical Cannabis Program License and Compliance Program Manager, and was titled "MCP Guidance on Complying with Reciprocal Requirements." The letter is attached here as Exhibit I. As discussed more fully below, the Department's September 11 Mandate unlawfully attempted to amend Rule 7.34.4.28 NMAC in ways that conflict with statute and that were otherwise contrary to law.

The letter made several mandates affecting the Medical Cannabis Program and the thousands of reciprocal medical cannabis patients the Department had permitted to enroll in the program between June and September 2020: 1) DOH would not allow New Mexico residents to register as "reciprocal participants," but instead DOH mandated that New Mexico residents apply to be "qualified patients through the NM Medical Cannabis Program;" 2) DOH mandated that for "reciprocal participants" claiming authorization to participate in California's medical cannabis program, the individual must possess and present at a dispensary a "medical marijuana

identification card” issued by a California county; 3) DOH mandated that a reciprocal participant’s medical card, driver’s license, and/or state issued identification card must match the information on their proof of authorization, including the name, date of birth, address, and state of residence.

More specifically as to individuals claiming authorization to participate in California’s medical cannabis program, DOH’s letter stated, “California medical marijuana participants are not issued letters of eligibility by the state of California. Individuals submitting ‘letters of eligibility in the California medical program’ will need to also show the California medical marijuana identification card issued to them by the authorizing California county entity.”

Ultra Health’s First Communication Regarding DOH’s Unlawful Actions

Ultra Health believed DOH’s September 11 Mandate contained several legal inaccuracies and that it did not comply with the Compassionate Use Act, NMSA 1978, Chapter 26, Article 2B (2007, amended through 2020). Ultra Health therefore sent to DOH a letter outlining its concerns with the legality of DOH’s Mandate. Ultra Health’s letter, which was sent to DOH on September 14, 2020, is attached here as Exhibit II (internal exhibits have been omitted).

Ultra Health’s September 14, 2020 communication to DOH explained how California law affects New Mexico reciprocity. California’s Health and Safety Code, Division 10, Chapter 6 (2003) is the statute that addresses the “Medical Marijuana Program.” Section 11362.7(f) defines “qualified patient” as “a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.”

Section 11362.712 then states, “Commencing on January 1, 2018, a qualified patient must possess a physician’s recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code.” This indicates a “qualified patient” must possess a physician’s recommendation. This “physician’s recommendation” is what authorizes an individual’s participation in California’s medical cannabis program.

However, Section 11362.71(a)(1) states, “[t]he department shall establish and maintain a **voluntary program for the issuance of identification cards to qualified patients** who satisfy the requirements of this article and voluntarily apply to the identification card program” (emphasis added). This section could not be clearer: issuance of identification cards is voluntary, not mandatory.

The description of the necessary “physician’s recommendation” is in a separate part of California statute, the Business and Professions Code, Division 2, Chapter 5, Article 25, “Recommending Medical Cannabis.”

California regulations also determine the components necessary to complete a sale within the California medical cannabis program. Section 5404(b) states, “A licensed retailer shall only sell medicinal cannabis goods to individuals who are at least 18 years of age and possesses a

valid physician's recommendation after confirming the customer's age, identity, and physician's recommendation as required by subsection (c) of this section." This regulation makes clear that California retailers can sell medical cannabis to individuals who possess a physician's recommendation. The retailer does not need to see the identification card or enrollment card.

Ultra Health's Lawsuit and the Emergency Rule

DOH did not respond to Ultra Health's letter and continued to enforce its September 11 Mandate. Ultra Health then filed a petition for writ of mandamus in the First Judicial District Court, numbered D-101-CV-202002059. The petition is attached here as Exhibit III (internal exhibits omitted). Ultra Health filed its petition on September 22, 2020, and the Court scheduled a hearing for October 9, 2020.

Late in the afternoon of October 8, 2020, DOH purported to issue an "emergency" rule. The "emergency" rule repeated many of the mandates of DOH's September 11 Mandate. The emergency rule is attached here as Exhibit IV.

The First Judicial District Court did address the emergency rule in the hearing held on October 9, 2020. The First Judicial District Court in fact addressed the emergency rule in its writ of mandamus, which the Court issued on October 13, 2020. The Court's writ is attached here as Exhibit V.

Judge Matthew Wilson granted Ultra Health's petition for writ of mandamus and issued a writ that gave several specific commands to DOH. The Court commanded DOH to 1) "[a]llow licensed cannabis producers to authorize and sell medical cannabis to reciprocal patients whose government-issued identification and proof of medical cannabis program authorizations are used by different jurisdictions or the same jurisdiction;" 2) "[a]llow licensed cannabis producers to authorize and sell medical cannabis to reciprocal patients who present a valid proof of authorization, including those reciprocal patients that present a California physicians authorization as their proof of authorization;" 3) "permit all licensed cannabis producers to authorize and sell medical cannabis to reciprocal patients that meet the definition of 'reciprocal participant' under the Medical Cannabis Act and the DOH Rule in existence prior to October 8, 2020;" 4) "refrain from any further enforcement of the emergency rule of October 8, 2020, or the September 11, 2020 mandate;" 5) "[a]dminister the medical cannabis reciprocity program in full compliance with NMSA 1978, § 26-2B-7(J)."

Judge Wilson found that DOH's attempted issuance of the "emergency" rule lacked adequate justification. *See* Exhibit V at page 6. Therefore, "DOH is in violation of the State Rules Act and the emergency rule is unenforceable." *Id.*

To wit, Judge Wilson held that:

"Neither the Legislature, by statute, nor the DOH [Department], by rule, required that a reciprocal patient's government issued identification and medical cannabis proof of authorization be issued where the participant lives,

or that the reciprocal participant must produce a medical cannabis card as the only acceptable proof of authorization in order to obtain reciprocal admission into the New Mexico medical cannabis program. [Exhibit V at 4].”

The Proposed Rule Amendments Violate the Compassionate Use Act and a Directly Applicable Judicial Order

DOH’s proposed amendments to 7.34.4.28 NMAC violate multiple aspects of Judge Wilson’s October 13, 2020 writ of mandamus and violate multiple aspects of the Compassionate Use Act.

Judge Wilson’s order commanded DOH to “[a]llow licensed cannabis producers to authorize and sell medical cannabis to reciprocal patients whose government-issued identification and proof of medical cannabis program authorizations are used by different jurisdictions or the same jurisdiction.” Despite this clear command, DOH’s proposed 7.34.4.28(C)(2) NMAC mandates that a licensed producer “verify[] that the information, including but not limited to place of residence, is consistent.”

Judge Wilson’s order commanded DOH to “[a]llow licensed cannabis producers to authorize and sell medical cannabis to reciprocal patients who present a valid proof of authorization, including those reciprocal patients that present a California physicians authorization as their proof of authorization.” Despite this clear command, DOH’s proposed 7.34.4.28(D) NMAC redefines “proof of authorization” as “a card or other physical document issued by a governmental entity authorized by law to enroll the applicant in the medical cannabis program,” it states that “permission from a medical practitioner shall not in itself be deemed proof of authorization,” and specifically states, “a written letter from a physician authorizing the individual to participate in the California medical cannabis program shall not be deemed proof of authorization.”

Judge Wilson’s order commanded DOH to “refrain from any further enforcement of the emergency rule of October 8, 2020, or the September 11, 2020 mandate,” but the DOH’s proposed amendment to 7.34.4.28 NMAC is identical to the emergency rule. Judge Wilson’s command to refrain from further enforcement of the October 8, 2020 emergency rule was not simply based on DOH’s violation of rulemaking procedure. It was also based on Judge Wilson’s finding that the emergency rule is contrary to statute. Judge Wilson wrote, “[n]either the Legislature, by statute, nor the DOH, by rule, required that a reciprocal participant’s government-issued identification and medical cannabis proof of authorization” match, and neither required that reciprocal participants “produce a medical cannabis card as the only acceptable proof of authorization.” *See* Exhibit V at page 4.

Judge Wilson thus found that DOH’s emergency rule did not accurately reflect the requirements set out in the Compassionate Use Act. This was one of the reasons Judge Wilson enjoined DOH’s enforcement of that emergency rule. Additionally, Judge Wilson found that DOH had violated the State Rules Act. *See* Exhibit V at page 6.

Despite Judge Wilson’s admonitions and findings, DOH has now proposed a rule identical to the emergency rule that Judge Wilson struck down on substantive grounds. This is a blatant violation of Judge Wilson’s order.

Judge Wilson’s order commanded DOH to “permit all licensed cannabis producers to authorize and sell medical cannabis to reciprocal patients that meet the definition of ‘reciprocal participant’ under the Medical Cannabis Act and the DOH Rule in existence prior to October 8, 2020” and to “[a]dminister the medical cannabis reciprocity program in full compliance with NMSA 1978, § 26-2B-7(J).” Despite this clear command, DOH’s proposed rule does not comply with § 26-2B-7(J).

The New Mexico Legislature amended the Compassionate Use Act in 2019 and added a definition for “reciprocal participant:” reciprocal participant “means an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.” § 26-2B-4(W). The Legislature kept this definition in the statute when it further amended the Compassionate Use Act in 2020.

The definition of “reciprocal participant” begins with “individual,” rather than “non-New Mexico resident.” Further, the definition references “proof of authorization” rather than “identification card.” The breadth of the term “proof of authorization” indicates the definition applies to different forms of authorization. Given the variation between states in how they authorize medical cannabis participation, the term “proof of authorization” can encompass a variety of regulatory methods. Further, the “proof of authorization” need not be “from” another state. That is, the proof of authorization need not be issued by the other state, territory, or tribe. Rather, the proof of authorization must authorize “participation in the medical cannabis program of another state.”

Section 26-2B-7(J) sets out the standards for a reciprocal participant’s purchase of cannabis within New Mexico: the reciprocal participant “shall at all times possess proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo and shall present proof of that authorization when purchasing cannabis from a licensee,” but the reciprocal participant “shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules.”

The statute is very clear on how the Legislature wished reciprocity to function: the “individual” must present “proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.” The Legislature—neither in 2019 nor 2020—did not mandate any other requirements or standards.

DOH then wrote regulations in 2019 to address reciprocity. The regulation adopted by DOH—the one DOH now wishes to replace—very closely tracked the language of the statute.

The version of 7.34.4.28 NMAC currently in effect begins, “Beginning July 1, 2020, an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo may lawfully purchase and possess cannabis.”

The current version¹ of Rule 7.34.4.28(C) NMAC then sets out the process of registering a reciprocal participant: 1) a producer “shall require the submittal of a reciprocal participant’s contact information for registration purposes, to include the individual’s full name, date of birth, mailing address, and the enrollment number specified in the individual’s **medical cannabis program enrollment card (if applicable)**” (emphasis added); 2) a producer shall confirm the accuracy of a reciprocal participant’s contact information prior to each transaction; 3) a producer shall first verify the reciprocal participant’s identity by viewing the individual’s proof of authorization from the other state, territory or tribe, and also viewing the reciprocal participant’s government-issued photo identification card.

Ultra Health placed the words “medical cannabis program enrollment card (if applicable)” in bolded text to draw DOH’s attention to the optional nature of the enrollment card. DOH’s own regulations recognize that presentation of a medical cannabis program enrollment card is only an “if applicable” requirement. That is, DOH’s own regulations recognize that not all states mandate or issue medical cannabis program enrollment cards. The regulations also do not require that an individual’s state-of-authorization match the individual’s state-of-residence.

In short, both statute and regulation define reciprocal participants very broadly: an “individual” who possesses a “proof of authorization.” However, both statute and regulation recognize that the “proof of authorization” does not have to be a state-issued enrollment card. A state-issued enrollment card can certainly qualify as “proof of authorization,” but the list of acceptable “proofs of authorization” is necessarily longer than state-issued enrollment cards. Furthermore, the reciprocal participant is not only a non-New Mexico-resident, but is an “individual” with proof of authorization.

DOH’s proposed amendment to 7.34.4.28 NMAC dramatically departs from both the statute and the current regulation. First, 7.34.4.28(A)(3) NMAC departs by re-defining “reciprocal participant” as a “person who is not a resident of New Mexico” rather than an “individual” who holds proof of authorization.

Second, 7.34.4.28(D) re-defines “proof of authorization” as “card or other physical document issued by a governmental entity,” even though the Compassionate Use Act deliberately leaves “proof of authorization” undefined, to broadly capture many different forms of authorization.

Third, 7.34.4.28(A)(3) NMAC adds a new requirement not contemplated by statute: that the “reciprocal participant’s place of residence is consistent with their place of enrollment.”

¹ The “emergency” rule issued by DOH on October 8 is not in effect because it was ruled unenforceable by Judge Wilson.

To sum up the previous points, both the Compassionate Use Act and the DOH's previous regulations allow an "individual" to purchase medical cannabis in New Mexico if the "individual" presents "proof of authorization to participate in the medical cannabis program of" another state and if the individual's identity is verified by presentation of a photographic identification.

Therefore, under statute and regulation, an "individual" who comes to a New Mexico medical cannabis dispensary and presents authorization sufficient to participate in another state's medical cannabis program can lawfully purchase cannabis.

DOH May Not Go Beyond the Bounds of the Compassionate Use Act

DOH's actions in redefining terms from the Compassionate Use Act and rejecting the Legislature's express policy choices violate well-settled legal principles.

"Agencies are created by statute, and limited to the power and authority expressly granted or necessarily implied by those statutes." *Qwest Corp. v. N.M. Pub. Reg. Comm'n*, 2006-NMSC-042, ¶ 20, 140 N.M. 440. An agency violates separation of powers principles when it "goes beyond the existing New Mexico statutes or case law it is charged with administering and claims the authority to modify this existing law or to create new law on its own." *State ex rel. Sandel v. N.M. Pub. Util. Comm'n*, 1999-NMSC-019, ¶ 12, 127 N.M. 272. "An administrative agency has no power to create a rule or regulation that is not in harmony with its statutory authority." *Rivas v. Bd. of Cosmetologists*, 1984-NMSC-076, ¶ 3, 101 N.M. 592.

As explained above, DOH has gone beyond existing New Mexico statutes and case law and has attempted to modify existing law and create new law on its own. DOH has proposed a regulation that is not in harmony with its statutory authority. DOH has done this after a lawsuit that addressed these issues. DOH has thus deliberately violated New Mexico law with its proposed amendments to 7.34.4.28 NMAC.

Not only has DOH flouted the law by attempting to modify existing law, but it has also directly violated a judicial order and has placed itself in contempt. Civil contempt arises where a party has violated a court order, and thus, "[c]ontempt proceedings are a principal means of enforcing mandatory orders such as injunctions or writs of mandamus." *Kucel v. New Mexico Medical Review Com'n*, 2000-NMCA-026, ¶ 12, 128 N.M. 691, 997 P.2d 823. "Civil contempts are those proceedings instituted to preserve and enforce the rights of private parties to suits and to compel obedience to the orders, writs, mandates and decrees of the court...." *Id.*, quoting *In re Klecan*, 93 N.M. 637, 638, 603 P.2d 1094, 1095 (1979).

Contempt requires showing that a litigant has violated a court order, and additionally, "The elements necessary for a finding of civil contempt are: (1) knowledge of the court's order, and (2) an ability to comply." *In re Hooker*, 1980-NMSC-109, ¶ 4, 94 N.M. 798, 617 P.2d 1313. Certainly, DOH has knowledge of Judge Wilson's order and has the ability to comply. If the Hearing Officer approves of the amendments to 7.34.4.28 NMAC, it will be sanctioning DOH's contempt of a judicial order.

While not at issue in either the Department’s September 11 Mandate or in its October 8 “Emergency Rule,” the DOH’s proposed revision to Rule 7.34.4.28 (C) (4) NMAC goes beyond the DOH’s statutory authority and is otherwise arbitrary, capricious, and retaliatory. The Legislature did not, in any way, limit a licensed cannabis producer’s ability to enroll one of its own board members or employees as a reciprocal medical cannabis patient. The DOH’s attempt to write words into the statute to accomplish that aim is both unlawful and will likely be struck down by a Court upon review.

In short, DOH should not adopt its proposed amendments to 7.34.4.28 NMAC, because those amendments violate the law in multiple ways.

To that note, a hearing has been scheduled for December 10, 2020 requiring DOH to show cause why sanctions should not be imposed for DOH’s violations of the court’s October 13, 2020 Mandamus Order. Judge Wilson’s order to show cause states that “[t]he Court finds that Petitioner has set forth a prima facie, good faith basis that the Department has violated this Court’s *Mandamus Order* and that a hearing and response from the Department is warranted.” The order is attached here as Exhibit VI. A hearing for Temporary Injunctive Relief (TIR) is also scheduled for December 10, 2020. The order is attached here as Exhibit VII.

Conclusion

Commenter Ultra Health has attempted to prevent unlawful action by DOH, and Ultra Health has also attempted to correct unlawful action by DOH. Despite these proper efforts to address unlawful action, DOH has continued its course of unlawful action. The DOH should cease these unlawful actions and should rescind its proposed amendments to 7.34.4.28 NMAC.

/s/ Kylie Safa

Kylie Safa, Chairperson

September 11, 2020

RE: MCP Guidance on Complying with Reciprocal Requirements

Dear LNPPs,

Per 7.34.4.28 NMAC, reciprocity in the NM Medical Cannabis Program is for participants who hold proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo. **New Mexico residents may not be registered as reciprocal participants and are required to apply to be qualified patients through the NM Medical Cannabis Program.**

Further, LNPP's may not register their employees or board members for reciprocity. LNPP employees or board members who are eligible to become reciprocal participants in the New Mexico Medical Cannabis Program need to register through the New Mexico Medical Cannabis Program License and Compliance Section directly, and not through the LNPP.

As an example, to clarify, individuals from California are issued county authorized medical marijuana identification cards (see: <https://www.cdph.ca.gov/Programs/CHSI/Pages/MMICP.aspx>) when they enroll in the California program. These cards are required as proof of authorization in order to enroll and purchase through the New Mexico reciprocal program. California medical marijuana participants are not issued letters of eligibility by the state of California. Individuals submitting "letters of eligibility in the California medical program" will need to also show the California medical marijuana identification card issued to them by the authorizing California county entity.

A reciprocal participant's medical card, driver's license, and/or state issued identification card must match the information on their proof of authorization, including the name, date of birth, address, and state of residence. Monitoring for compliance with this mandate shall begin immediately.

As a reminder, per the current COVID-19 public health order, all visitors to New Mexico must quarantine for fourteen days or for the entirety of their stay (if shorter). Additionally, it is federally illegal for marijuana and marijuana-derived products to cross state lines, and any reciprocal participant needs to be educated on this point.

Thank you,

Martinik Gonzales

Martinik Gonzales

License and Compliance Program Manager

New Mexico Department of Health



EGOLF + FERLIC
MARTINEZ + HARWOOD
ATTORNEYS AT LAW

September 14, 2020

VIA EMAIL ONLY

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Re: Medical Cannabis Program Guidance on Reciprocal Requirements

Dear Ms. Gonzales, Mr. Jimenez, and Mr. Woodward,

This firm represents licensed non-profit medical cannabis producer New Mexico Top Organics-Ultra Health, Inc. (“Ultra Health”). The purpose of this letter is to request that the Department of Health Medical Cannabis Program reconsider its recently-issued “MCP Guidance on Complying with Reciprocal Requirements.”

Ultra Health requests the Department reconsider its position because the guidance conflicts with both the Compassionate Use Act statute *and* current regulations. Ultra Health sincerely wishes to avoid litigation regarding this matter, and it is Ultra Health’s goal with this correspondence to cooperate with the Department of Health (“DOH”) to ensure the Medical Cannabis Program operates in compliance with applicable law and to ensure that all individuals legally entitled to purchase medical cannabis in New Mexico are able to do so.

September 11, 2020 Guidance

On the afternoon of September 11, 2020, Ultra Health received a letter from Martinik Gonzales, the Medical Cannabis Program License and Compliance Program Manager, attached



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here as Exhibit 1. The letter was titled, “MCP Guidance on Complying with Reciprocal Requirements.”

The letter made several pronouncements affecting the Medical Cannabis Program: 1) DOH will not allow New Mexico residents to register as “reciprocal participants,” but instead DOH mandates that New Mexico residents apply to be “qualified patients through the NM Medical Cannabis Program;” 2) DOH mandates that for “reciprocal participants” claiming authorization to participate in California’s medical cannabis program, the individual must possess and present at a dispensary a “medical marijuana identification card” issued by a California county; 3) DOH mandates that a reciprocal participant’s medical card, driver’s license, and/or state issued identification card must match the information on their proof of authorization, including the name, date of birth, address, and state of residence.

More specifically as to individuals claiming authorization to participate in California’s medical cannabis program, DOH’s letter stated, “California medical marijuana participants are not issued letters of eligibility by the state of California. Individuals submitting ‘letters of eligibility in the California medical program’ will need to also show the California medical marijuana identification card issued to them by the authorizing California county entity.”

Ultra Health is familiar with the circumstances that have prompted DOH to issue this “guidance letter.” Beginning July 1, 2020, the New Mexico Medical Cannabis Program opened access to “reciprocal participants,” which is a term originating in the Compassionate Use Act, NMSA 1978, Section 26-2B-4 (2019). Since July 1, 2020, Ultra Health has seen a surge of reciprocal participants patronize its dispensaries.

Ultra Health has become aware that many reciprocal participants are residents of Texas who present authorization to participate in California’s medical cannabis program. Ultra Health believes that residents of Texas obtain telemedicine or in-person examinations from California physicians and then obtain the California physician’s recommendation to participate in California’s medical cannabis program. As DOH likely knows, the COVID-19 pandemic has prompted an explosion of telemedicine services and has also brought down many barriers to cross-state telemedicine services. This has increased the likelihood that Texas residents can obtain California physician recommendations. Ultra Health believes that the Texas residents then consume cannabis within New Mexico, although Ultra Health of course cannot be responsible for the actions of purchasers after they leave the dispensary.

Although DOH’s September 11, 2020 letter reminds producers that “per the current COVID-19 public health order, all visitors to New Mexico must quarantine for fourteen days or for the entirety of their stay,” this does not take into account the public health orders’ exceptions for medical care; that is, a visitor to New Mexico may leave a “residence or place of lodging” for “medical care.” Medical cannabis is medical care. Visitors to New Mexico can leave a place of quarantine to obtain medical cannabis, since medical cannabis is medical care. Therefore, producers have not violated quarantine orders by serving reciprocal participants.



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Use of California authorizations is not limited to Texas residents. Ultra Health has also become aware some New Mexico residents use California authorizations, and the reasons are varied: the individuals cannot wait for DOH to process New Mexico Medical Cannabis Program patient applications, the individuals can pay less for a California physician examination than a New Mexico physician examination, the individual has a qualifying condition not on New Mexico's list, or the individual cannot easily pull together all the items (and the fee) needed for a New Mexico Medical Cannabis Program patient application.

During July and August, Ultra Health serviced many reciprocal participants without difficulty. As required by the BioTrack software system, Ultra Health entered into BioTrack 1) information regarding the individual's reciprocal authorization; and 2) the individual's name, address, and birthdate. Up until September 11, 2020, the BioTrack system registered any reciprocal participant for whom this information was entered.

However, on September 11, 2020, the BioTrack software system began refusing to register a reciprocal participant if the individual's state-of-authorization did not match the individual's state-of-residence. Additionally, the BioTrack system would not allow Ultra Health to complete sales to previously-registered reciprocal participants where the individual's state-of-authorization did not match the individual's state-of-residence. Ultra Health, of course, did not complete these sales.

During the middle of the day on September 11, Ultra Health staff contacted the Medical Cannabis Program Compliance Officer Jude Vigil regarding the registration problems. Mr. Vigil advised Ultra Health to contact BioTrack directly about this "BioTrack error," as Mr. Vigil put it. Mr. Vigil also represented that DOH had itself gone into the BioTrack system and "cancelled" all of the reciprocal participants who had out-of-state authorizations but New Mexico-resident identifications. Then, in the afternoon on September 11, 2020, Ultra Health received the letter attached as Exhibit 1.

Ultra Health has already received many patient complaints and has had to inform many distressed reciprocal participants that Ultra Health cannot complete a sale to them. Ultra Health's dispensary locations in Clayton and Las Cruces have been particularly inundated by reciprocal participants distressed at their inability to purchase cannabis.

Ultra Health has now had the opportunity to fully analyze DOH's September 11, 2020 Guidance Letter. The Guidance Letter misunderstands and misrepresents California's laws and is also not in accordance with New Mexico statute and New Mexico regulations.

Statutory and Regulatory Requirements for Reciprocal Participation

In order to understand how DOH's September 11, 2020 Guidance Letter fails to follow the law, DOH must first review the statutory and regulatory requirements for reciprocal



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participation.

The New Mexico Legislature amended the Compassionate Use Act in 2019 and added a definition for “reciprocal participant:” reciprocal participant “means an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.” The Legislature kept this definition in the statute when it further amended the Compassionate Use Act in 2020.

DOH should note that the definition of “reciprocal participant” begins with “individual,” rather than “non-New Mexico resident.” Further, DOH will note that the definition references “proof of authorization” rather than “identification card.” The breadth of the term “proof of authorization” indicates the definition applies to different forms of authorization. Given the variation between states in how they authorize medical cannabis participation, the term “proof of authorization” can encompass a variety of regulatory methods. Further, the “proof of authorization” need not be “from” another state. That is, the proof of authorization need not be issued by the other state, territory, or tribe. Rather, the proof of authorization must authorize “participation in the medical cannabis program of another state.”

Section 26-2B-7(J) sets out the standards for a reciprocal participant’s purchase of cannabis within New Mexico: the reciprocal participant “shall at all times possess proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo and shall present proof of that authorization when purchasing cannabis from a licensee,” but the reciprocal participant “shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules.”

The statute is very clear on how the Legislature wished reciprocity to function: the “individual” must present “proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.” The Legislature—neither in 2019 nor 2020—did not mandate any other requirements or standards.

DOH then wrote regulations in 2019 to address reciprocity. The regulation adopted by DOH is 7.34.4.28 NMAC, and it very closely tracks the language of the statute. 7.34.4.28 NMAC begins, “Beginning July 1, 2020, an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo may lawfully purchase and possess cannabis.”



7.34.4.28(C) NMAC then sets out the process of registering a reciprocal participant: 1) a producer “shall require the submittal of a reciprocal participant’s contact information for registration purposes, to include the individual’s full name, date of birth, mailing address, and the enrollment number specified in the individual’s **medical cannabis program enrollment card (if applicable)**” (emphasis added); 2) a producer shall confirm the accuracy of a reciprocal participant’s contact information prior to each transaction; 3) a producer shall first verify the reciprocal participant’s identity by viewing the individual’s proof of authorization from the other state, territory or tribe, and also viewing the reciprocal participant’s government-issued photo identification card.

Ultra Health placed the words “medical cannabis program enrollment card (if applicable)” in bolded text to draw DOH’s attention to the optional nature of the enrollment card. DOH’s own regulations recognize that presentation of a medical cannabis program enrollment card is only an “if applicable” requirement. That is, DOH’s own regulations recognize that not all states mandate or issue medical cannabis program enrollment cards. The regulations also do not require that an individual’s state-of-authorization match the individual’s state-of-residence.

In short, both statute and regulation define reciprocal participants very broadly: an “individual” who possesses a “proof of authorization.” However, both statute and regulation recognize that the “proof of authorization” does not have to be a state-issued enrollment card. A state-issued enrollment card can certainly qualify as “proof of authorization,” but the list of acceptable “proofs of authorization” is necessarily longer than state-issued enrollment cards. Furthermore, the reciprocal participant is not only a non-New Mexico-resident, but is an “individual” with proof of authorization.

DOH’s September 11, 2020 Guidance Letter dramatically departs from both the statute and the regulations. First, it departs by re-defining “reciprocal participant” as a “Non-New Mexico-resident who holds proof of authorization to participate in the medical cannabis program of another state of the United States...,” rather than an “individual” who holds proof of authorization.

Second, the Guidance Letter re-defines “proof of authorization” as “government-issued medical cannabis program enrollment card,” even though DOH’s own regulations made “enrollment card” only an “if applicable” standard.

Third, the Guidance Letter adds a new requirement not contemplated by statute or regulation: that the proof of authorization match the individual’s state of residence.

Fourth, the Guidance Letter effectively overrides the provision in the Compassionate Use Act that allows reciprocity with tribes and Pueblos. The Guidance Letter mandates that “New Mexico residents may not be registered as reciprocal participants and are required to apply to be qualified patients through the NM Medical Cannabis Program.” However, the statute allows reciprocity between New Mexico and tribes/Pueblos. It is certainly possible that a resident of



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New Mexico is a member of a tribe or Pueblo and uses authorization from that tribe or Pueblo. Tribes and Pueblos are certainly within New Mexico's borders but have their own sovereignty. DOH cannot mandate that New Mexico residents only use the official state Medical Cannabis Program, when the statute clearly allows New Mexico residents to also use their tribal or Pueblo authority. Indeed, that explains why the statute and regulation use the term "individual," rather than "non-New Mexico-resident:" because the Legislature clearly contemplated a New Mexico resident using tribal or Pueblo authority.

California Does Not Require Enrollment Cards in Order to Purchase Medical Cannabis

As explained above, DOH's September 11, 2020 letter changes the statutory and regulatory standards for reciprocal participants. This might not have significant impacts on the ground, but for a particular feature of California law.

California law does **not** require that individuals obtain a government-issued enrollment card in order to participate in California's medical cannabis program. To the extent DOH's letter suggests otherwise, the letter is incorrect.

California's laws are, admittedly, byzantine, and DOH would have to read several different sections of authority simultaneously to gain a full view of the medical cannabis program. However, when one examines the authority simultaneously, it is obvious that only a physician's recommendation, and not a government-issued enrollment card, is necessary to participate in California's medical cannabis program.

California's Health and Safety Code, Division 10, Chapter 6 (2003) is the statute that addresses the "Medical Marijuana Program." It is attached here as Exhibit 2. Section 11362.7(f) defines "qualified patient" as "a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article."

Section 11362.712 then states, "Commencing on January 1, 2018, a qualified patient must possess a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code." This indicates a "qualified patient" must possess a physician's recommendation. This "physician's recommendation" is what authorizes an individual's participation in California's medical cannabis program.

However, Section 11362.71(a)(1) states, "[t]he department shall establish and maintain a **voluntary program for the issuance of identification cards to qualified patients** who satisfy the requirements of this article and voluntarily apply to the identification card program" (emphasis added). This section could not be clearer: issuance of identification cards is voluntary, not mandatory.



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The description of the necessary “physician’s recommendation” is in a separate part of California statute, the Business and Professions Code, Division 2, Chapter 5, Article 25, “Recommending Medical Cannabis.” That statute is attached here as Exhibit 3. Although the form of the “physician’s recommendation” is not prescribed by statute, California has somewhat standardized the forms. For example, a form written by the California Health and Human Services Agency is attached here as Exhibit 4.

Second, one must look to the California regulations to determine the components necessary to complete a sale within the California medical cannabis program. The regulations are attached here as Exhibit 5, and Section 5404(b) states, “A licensed retailer shall only sell medicinal cannabis goods to individuals who are at least 18 years of age and possesses a valid physician’s recommendation after confirming the customer’s age, identity, and physician’s recommendation as required by subsection (c) of this section.” This regulation makes clear that retailers can sell medical cannabis to individuals who possess a physician’s recommendation. The retailer does not need to see the identification card or enrollment card.

Outside of statute and regulation, several California-issued statements indicate that identification/enrollment cards are entirely optional and are not requirements to participate in California’s medical cannabis program. See Exhibit 6, a print-out of <https://www.cdph.ca.gov/Programs/CHSI/Pages/MMICP.aspx>, which states, “The California Department of Public Health’s (CDPH) Medical Marijuana Identification Card Program (MMICP) was established to create a state-authorized medical marijuana identification card (MMIC), along with a registry database for verification of qualified patients and their primary caregivers. Participation by patients and primary caregivers in this MMICP is voluntary.” See also Exhibit 7, a screenshot of <https://cannabis.ca.gov/medical-marijuana-identification-card-program/>, which states, “In order to purchase medicinal cannabis products from a licensed retailer, patients will need a current, qualifying physician’s recommendation **or** valid county-issued medical marijuana identification card. Obtaining a medical marijuana identification card is voluntary” (emphasis added).

This begs the question of why, when only the physician’s recommendation is needed to participate in California’s medical cannabis program, an individual would voluntarily obtain an identification card. The identification card can provide extra assurance when an individual is questioned by law enforcement, landlords, or employers.

In short, the “proof of authorization to participate in the medical cannabis program of” California is **only** a “physician’s recommendation,” and a government-issued cannabis identification card is not necessary to participate in the medical cannabis program of California.

DOH should also be aware that California residents may begin appearing in New Mexico with only their physician recommendation. As DOH is surely aware, many Californians have had to evacuate their homes due to wildfires; many Californians have already lost their homes. As the California diaspora grows, many fire refugees may come to New Mexico, and they may



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have only their physician recommendation. This issue therefore does not only affect Texans using California authorizations; as California continues to burn, the issue will soon affect Californians using California authorizations.

DOH Has Gone Beyond the Bounds of Statute and Regulation

To sum up the previous points, both the Compassionate Use Act and the DOH's own regulations allow an "individual" to purchase medical cannabis in New Mexico if the "individual" presents "proof of authorization to participate in the medical cannabis program of" another state and if the individual's identity is verified by presentation of a photographic identification. Proof of authorization to participate in the medical cannabis program of California consists only of a California physician's recommendation.

Therefore, under statute and regulation, an "individual" who comes to a New Mexico medical cannabis dispensary and presents a California physician's recommendation and a photo identification can lawfully purchase cannabis. Likewise, licensed New Mexico producers can sell cannabis to "individuals" who present a California physician's recommendation and a photo identification.

The Guidance Letter issued by DOH on September 11, 2020 once again adds requirements not found in statute or regulation and once again places additional barriers on patients than appear in statute or regulation.

Ultra Health says "once again," because this is now the fourth time, at least, that DOH has taken extra-statutory and extra-regulatory action to restrict medical cannabis access. First, in 2014 DOH tried to require more information from registry-identification-card-applicants than was set out in statute. That situation culminated in case D-101-CV-2014-00140, where the District Court issued a writ of mandamus ordering DOH to accept the discrete items listed in statute.

Second, in 2018, DOH attempted to prohibit Ultra Health opening additional dispensary locations by denying license amendments. That situation culminated in D-1329-CV-2018-01854, where the District Court issued a writ of mandamus requiring DOH to issue an amended license to Ultra Health for dispensaries that met the discrete requirements listed in statute.

Third, in 2019, the Legislature amended the definition of "qualified patient" to include non-New Mexico-residents. DOH then began denying the registry-identification-card-applications of non-New Mexico-residents. That situation culminated in D-101-CV-2019-01967, where the District Court issued a writ of mandamus requiring DOH to issue registry identification cards to individuals, even non-New Mexico-residents, who met the discrete requirements listed in statute.



The present situation is very similar to the three previous situations: the Legislature writes the statute very specifically, including exactly what it wants and excluding exactly what it does not want. The Legislature writes the statute in such a way as to increase cannabis access. Then, DOH initially follows the Legislature's guidance and writes compliant regulations. Then, the natural evolution of the cannabis program confronts DOH with a situation it did not anticipate, and it reacts in such a way as to violate the statute.

However, in the past mandamus cases, the plaintiffs have cited a legal principle that applies here as well: a “statute must be read and given effect as it is written by the Legislature, not as the court may think it should be or would have been written if the Legislature had envisaged all the problems and complications which might arise...Courts must take the act as they find it and construe it according to the plain meaning of the language employed.” *Perea v. Baca*, 1980-NMSC-079, ¶ 22, 94 N.M. 624.

In previous situations, DOH took action not authorized by statute because it was confronted by a situation it did not expect. Rather than reading and giving effect to the Compassionate Use Act as written by the Legislature, DOH took the action *it* thought was necessary and/or wise. In all the previous situations, the courts enforced the Compassionate Use Act as written.

In the present situation, DOH is once again confronted by circumstances it likely did not anticipate, even though the California law has remained consistent for several years. DOH has reacted in a manner it may believe is wise, but it has reacted in a manner that leaves it out of compliance with both the statute and the regulation. Ultra Health itself cannot speak to the wisdom of California's law and cannot speak to the wisdom of Texans availing themselves of the California law. All Ultra Health can do is read the statutes and give effect to them as written.

In many previous cases, DOH has claimed that it must restrict cannabis access—whether by patient enrollment, purchase privileges, or dispensary locations—because it fears federal intervention. In many previous cases, Ultra Health and other plaintiffs have pointed out that 1) this fear is not rational and not based on any legitimate evidence; and 2) is irrelevant, because DOH's role is to implement the statute as written. DOH may fear federal intervention if it allows Texans to purchase from New Mexico dispensaries with a California physician recommendation. But once again, that fear is 1) not rational, because DOH still cannot produce any evidence of federal intervention, even during the months when non-New Mexico-residents could obtain New Mexico registry identification cards; and 2) not relevant, because both statute and regulation say “proof of authorization.”

From discussion with medical cannabis providers in other states and from following news reports, Ultra Health knows that use of the California physician recommendation is increasing in other states, not only in New Mexico. While many states now have medical cannabis, some still do not, and so residents of non-cannabis states use the California privilege to gain reciprocity in



neighboring states. Ultra Health has not heard of any federal intervention into any states that allow California reciprocity. Furthermore, with the myriad crises facing the federal government at the moment—both health crises and law enforcement crises—it is extremely unlikely that federal law enforcement would focus on a few sick and desperate people using whatever legal means they can to lawfully purchase medical cannabis from trustworthy sources.

The same basic legal principles that applied in the previous mandamus cases apply here. “[a]gencies are created by statute, and limited to the power and authority expressly granted or necessarily implied by those statutes.” *Qwest Corp. v. N.M. Pub. Reg. Comm’n*, 2006-NMSC-042, ¶ 20, 140 N.M. 440. An agency violates separation of powers principles when it “goes beyond the existing New Mexico statutes or case law it is charged with administering and claims the authority to modify this existing law or to create new law on its own.” *State ex rel. Sandel v. N.M. Pub. Util. Comm’n*, 1999-NMSC-019, ¶ 12, 127 N.M. 272. “An administrative agency has no power to create a rule or regulation that is not in harmony with its statutory authority.” *Rivas v. Bd. of Cosmetologists*, 1984-NMSC-076, ¶ 3, 101 N.M. 592.

In the three previous mandamus situations, the problem was basic: DOH acted beyond the bounds of statute. Here, DOH has once again acted beyond the bounds of statute, but it has violated the law in another way: it has made a rule change without proper rulemaking.

The State Rules Act, NMSA 1978, Chapter 14, Article 4, describes the rulemaking process. Particularly, Sections 14-4-3 through 14-4-5.5 (2017) requires that “[e]ach agency promulgating any rule shall” publish the proposed rule, provide notice of the rulemaking, allow public comment, provide an explanatory statement, and publish the final rule.

The State Rules Act defines “rule” as “any rule, regulation, or standard, including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and amendments thereto or repeals and renewals thereof, issued or promulgated by any agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency, including affecting persons served by the agency.” § 14-4-2(F). However, an “order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed such a rule, nor shall it constitute specific adoption thereof by the agency.” *Id.*

DOH’s September 11, 2020 “Guidance” is a rule. It “implicitly implements or interprets a state legal mandate.” It affects “persons not members or employees of the issuing agency, including affecting persons served by the agency.” And it is *not* a “disposition of a case or agency decision upon a particular matter as applied to a specific set of facts.” No matter the nomenclature DOH uses, the “Guidance” meets the functional definition of a “rule.”



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When DOH disguises a rule as “guidance,” it violates both separation-of-powers and transparency principles. The very fact that DOH attempted to change its regulations without a proper rulemaking *alone* renders the September 11, 2020 letter void and without effect.

The precedent is very clear: if DOH holds to the September 11, 2020 Guidance Letter, it will force litigation, and it will not prevail in that litigation. DOH faces potential plaintiffs composed of both reciprocal participants and producers, because DOH’s Guidance Letter both restricts patient access and restricts producers’ statutory right to sell cannabis to eligible individuals.

Conclusion

DOH may believe that individuals are abusing the reciprocity privilege or abusing California’s more generous medical cannabis laws. However, if DOH met with patients face-to-face every day, as Ultra Health does, DOH would realize that individuals use the California option out of desperation and because they have no other options. In the past year, Ultra Health has seen the patient population endure crisis after crisis; each crisis brings more sickness but simultaneously less access to the medical services that should address the sickness. Ultra Health has seen patient acuity increase, and at the same time that acuity is increasing, obtaining access to traditional healthcare has become more difficult. In these circumstances, sick and ill individuals have become desperate to find relief wherever, and however, they can.

The patient demographics seen by Ultra Health have begun to change recently. Medical cannabis users started as relatively well-off economically, educated in alternative medicine, and Caucasian. Members of minority groups have increased in the patient population because of effective outreach, but also because of *lack* of access to traditional medical services. When traditional sources of medical care become inaccessible, patients increasingly seek out medical cannabis. If DOH holds fast to its September 11, 2020 guidance, it will restrict access to a population that is seeking medical cannabis precisely *because* it is already underserved.

Indeed, some of the New Mexicans who opt to use a California physician recommendation do so, in part, because they cannot ensure they will receive a New Mexico registry identification card in time. Patients who became used to hand-delivering applications or re-applications to DOH have found DOH offices closed, and alarming news reports about the reliability of the Postal Service have also led some to not trust mailing their applications to DOH. DOH has literally closed its doors to the faces of patients, and given this breakdown in trust, patients understandably turn to the California process.

Ultra Health believes that litigation challenging DOH’s September 11, 2020 Guidance Letter would be successful. Ultra Health has a wealth of precedent against DOH specifically, and the rulemaking aspect of this case would also attract attention from open-government organizations, who may be interested in the case only to emphasize that agencies must not



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disguise rules as “guidance.”

However, such litigation would also waste resources and would further erode confidence in the management of the Medical Cannabis Program. Ultra Health’s mission remains, as always, serving as many seriously ill individuals as legally possible. Litigation distracts from this mission. Furthermore, DOH’s mission is to ensure the “beneficial use” of medical cannabis, and litigation distracts from that mission. See § 26-2B-2.

Just as DOH attempted to change the rules with a single letter, it can undo the changes with a single letter. It can inform producers that the existing regulations will remain in effect and that the physician recommendation from California suffices as “proof of authorization.” It can also undo whatever changes it made to BioTrack.

Please note that Ultra Health will notify patients of *why* Ultra Health cannot complete sales, and Ultra Health will advise patients to contact DOH directly regarding this issue.

If Ultra Health does not hear from DOH by 5 p.m. on September 18, 2020, Ultra Health will assume that DOH wishes to resolve this matter via litigation.

Sincerely,

/s/ Kristina Caffrey
Kristina Caffrey

**STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE**

NEW MEXICO TOP ORGANICS-ULTRA HEALTH, INC.

Petitioner,

Case No.: D-101-CV-2020-02059

Case assigned to Wilson, Matthew Justin

v.

**NEW MEXICO DEPARTMENT OF HEALTH,
and DOMINICK ZURLO, in his official capacity as
DIRECTOR of the NEW MEXICO MEDICAL
CANNABIS PROGRAM, and SECRETARY KATHYLEEN KUNKEL,
in her official capacity as Secretary of the
Department of Health**

Respondents.

VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDAMUS

COMES NOW, New Mexico Top Organics-Ultra Health, Inc., Petitioner, by and through their undersigned counsel of record, CANDELARIA LAW LLC (Jacob R. Candelaria, appearing), and hereby respectfully ask the Court for an Alternative Writ of Mandamus directing Respondents, New Mexico Department of Health and Dominick Zurlo, in his official capacity as Director of the New Mexico Medical Cannabis Program, and Secretary Kathyleen Kunkel, in her official capacity as Secretary of the Department of Health (referred to collectively herein as “DOH”), to immediately stop taking actions that are beyond and contrary to their statutory authority to administer provisions of NMSA 1978, § Section 26-2B-7 (J) (authorizing residents of New Mexico, e.g. enrolled tribal and pueblo members, and residents of another “state, the

District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo” to enroll as a reciprocal participant/patient in the New Mexico Medical Cannabis Program) and which otherwise undermine Respondent DOH’s responsibility to “allow for the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their treatments.” NMSA 1978, § Section 26-2B-2 (Medical Cannabis Act; Purpose).

Petitioner specifically asks the Court for a Writ of Mandamus to immediately prohibit Respondent DOH from:

- A. Any further enforcement of its September 11, 2020 “Mandate;”
- B. Requiring that a reciprocal medical cannabis patient’s government-issued identification card and medical cannabis proof of authorization be issued by the same jurisdiction;
- C. Requiring that a reciprocal medical cannabis patient authorized to participate in the California medical cannabis program may only establish their program eligibility by producing a California medical cannabis “card” in order to obtain reciprocal enrollment in the New Mexico Medical Cannabis Program.

Petitioner further ask the Court to Order that Respondent DOH otherwise administer the medical cannabis reciprocity program in full compliance with existing law and rule, and immediately reauthorize any reciprocal participant removed from the medical cannabis program from September 11, 2020 to September_____, 2020 when the reason for the reciprocal participant’s removal was a mismatch between the reciprocal participant’s state-of-residency and state-of-authorization, or, in the case of a California-authorized reciprocal participants, the

reciprocal participant did not produce a California issued medical cannabis program “card” as proof of authorization to participate in the California medical cannabis program.

I. JURISDICTION AND VENUE

1. NMSA 1978, § Section 44-2-3 [Mandamus; Exclusive original jurisdiction district and supreme courts] vests this Court with jurisdiction over this *Petition*.
2. Venue is appropriate in this Court because the actions which give rise to this action occurred in the City of Santa Fe, Santa Fe County, New Mexico.
3. Petitioner New Mexico Top Organics-Ultra Health, Inc. (hereinafter, “Petitioner Ultra Health”) is a New Mexico domestic nonprofit corporation, that is licensed by Respondent DOH to engage in the production, manufacture, storage, sale, and transportation of medical cannabis pursuant to the New Mexico Lynn and Erin Compassionate Use Act, NMSA 1978, § Section 26-2b-1, *et seq.* (hereinafter referred to as the “Medical Cannabis Act”).
4. The Legislature’s 2019 amendments to the Medical Cannabis Act, and Respondent DOH’s June 23, 2020 Rule enacting those amendments, assign Petitioner Ultra Health and other Licensed Cannabis Producers (“LCPs”) the exclusive responsibility to verify and enroll reciprocal patients into the New Mexico Medical Cannabis program. Cf. NMSA 1978, § Section 26-2B-6.1(B) (Respondent DOH has the responsibility to verify and enroll non-reciprocal, qualified patients into the Medical Cannabis Program).
5. As such, Petitioner Ultra Health is beneficially interested in stopping Respondent DOH’s actions which contradict the Medical Cannabis Act’s reciprocity provisions precisely

because of the unique role that LCPs play in authorizing and enrolling reciprocal patients in the New Mexico Medical Cannabis Program.

6. Respondent DOH is an executive-branch state agency which the New Mexico Legislature has charged with administering the New Mexico Medical Cannabis Program.
7. Respondent DOH has created within itself the New Mexico Medical Cannabis Program Office to perform this role.
8. Respondent Dominick Zurlo is named as a party to this action exclusively in his official capacity as Director of the New Mexico Medical Cannabis Program.
9. Respondent Secretary Kathyleen Kunkel is named as a party to this action exclusively in her capacity as Secretary of the New Mexico Department of Health.
10. Respondent DOH's offices are located in Santa Fe, New Mexico.

II. THE FACTS

The Legislature Authorized and Established a Scheme for Medical Cannabis Patient Reciprocity in 2019

11. The Medical Cannabis Act legalized the use and production of medical cannabis in New Mexico in 2007. NMSA 1978, § Section 26-2B-1, *et seq.*
12. "The purpose of the Lynn and Erin Compassionate Use Act is to allow the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments." NMSA 1978, § Section 26-2B-2.
13. Respondent DOH's Medical Cannabis Program licenses cannabis-related businesses, including producers and manufacturers. NMSA 1978, § Section 26-2B-3.

14. Respondent DOH's Medical Cannabis Program processes applications from non-reciprocal, qualified patients to enroll in the New Mexico Medical Cannabis Program. NMSA 1978, § Section 26-2B-7.
15. Prior to 2019, the Medical Cannabis Act authorized one limited category of patients, referred to as "qualified patients," to purchase or consume medical cannabis. NMSA 1978, § Section 26-2B-3(V) ("qualified patient" means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card pursuant to the Lynn and Erin Compassionate Use Act on the basis of having been diagnosed, in person or via telemedicine, by a practitioner as having a debilitating medical condition; provided that a practitioner may only issue a written certification on the basis of an evaluation conducted via telemedicine if the practitioner has previously examined the patient in person.")).
16. The Legislature amended the Medical Cannabis Act in 2019 to authorize the purchase, storage, use, personal grow, and transport of medical cannabis in New Mexico by a new category of authorized medical cannabis users--reciprocal participants:

Beginning July 1, 2020, an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo may lawfully purchase and possess cannabis, provided that the quantity of cannabis does not exceed the reciprocal limit identified in this section. NMSA 1978, NMSA 1978, § Section 26-2B-7 (J).

17. A copy of the Legislature's 2019 amendment to the Medical Cannabis Act, establishing the reciprocal medical cannabis program, is attached as Exhibit A.
18. As opposed to non-reciprocal, qualified patients, the Legislature further provided that a reciprocal patient "shall register with a licensee [Licensed Cannabis Producer or "LCP"] for the purpose of tracking sales of medical cannabis to the reciprocal patient" in Respondent DOH's Bio-Track THC medical cannabis product management system. NMSA 1978, NMSA 1978, § Section 26-2B-7 (J)(4).
19. Under the Legislature's definition, a reciprocal patient need meet only three requirements to obtain reciprocal admission into the New Mexico medical cannabis program: 1) the reciprocal patient holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo; 2) the reciprocal patient registers with a Respondent DOH-licensed LCP; 3) the reciprocal patient does not at any given time possess an amount of medical cannabis that exceeds Respondent DOH's established maximums. NMSA 1978, NMSA 1978, § Section 26-2B-7 (J).
20. The Medical Cannabis Act does not require that reciprocal patients *must* present a medical cannabis "card" as the sole proof of authorization that a LCP may accept for purposes authorizing a patient's reciprocal enrollment in the New Mexico Medical Cannabis Program.
21. The Legislature is familiar with the use of a medical cannabis "card" as *one* method for authorizing a patient's participation in a state-sanctioned medical cannabis program. To

wit, the Legislature has mandated that Respondent DOH “shall issue” medical cannabis program cards to authorize non-reciprocal, qualified patients to participate in the program. NMSA 1978, § Section 26-2B-7 (B). It is Respondent DOH’s medical cannabis card that authorizes qualified patients to purchase medical cannabis.

22. Had the Legislature wished to restrict reciprocal admission into the New Mexico Medical Cannabis Program to only those reciprocal patients who can present a medical cannabis “card,” it certainly knew how to do so but ultimately chose not to. Bybee v. City of Albuquerque, 1995-NMCA-061, 11, 120 N.M. 17, 896 P.2d 1164 (“we presume the Legislature knows the law and acts rationally.”).
23. With respect to reciprocal patients, the Legislature did not require the production of a medical cannabis “card” as the *only* acceptable proof of authorization, and instead adopted a much broader standard to accommodate the fact that, as discussed more fully below, unlike New Mexico, not all jurisdictions use a “card” to authorize patient participation in their medical cannabis program.
24. Nor did the Legislature require that a reciprocal patient’s proof of authorization be government-issued. Cf. NMSA 1978, § Section 26-2B-6.1 (B) (a non-reciprocal, qualified patient must have a government-issued medical cannabis card to enroll in the New Mexico Medical Cannabis Program). By doing this, the Legislature recognized that at least one jurisdiction, California, uses a non-government issued form of proof of authorization (i.e. a physician's letter) to authorize patient-participation in their medical cannabis program.

**Respondent DOH's June 23, 2020 Rule Implementing the Legislature's
Reciprocal Patient Program and Scheme**

25. Respondent DOH published, pursuant to NMSA 1978, § Section 14-4-5 (State Rule Act; Time limit on adoption of proposed rule; filing and compliance required for validity), its final Rule implementing the reciprocal patient program in the New Mexico Registrar on June 23, 2020. Respondent DOH's June 23 Rule went into effect upon publication.
26. A copy of the June 23 Rule is attached as Exhibit B.
27. In its June 23 Rule, Respondent DOH further required and directed that, prior to selling medical cannabis to a reciprocal patient, a LCP, such as Petitioner Ultra Health, must verify the reciprocal patient's identity.
28. Respondent DOH's June 23 Rule directed that an LCP may confirm a reciprocal patient's identity by viewing the reciprocal patient's proof of authorization from another state, territory or tribe and by viewing the reciprocal patient's "government-issued identification card." Rule 7.34.4.28 (C) NMAC.
29. Neither the Legislature, by statute, nor Respondent DOH, by rule, required that a reciprocal patient's government-issued identification and medical cannabis proof of authorization be issued by the same jurisdiction, or that reciprocal applicants *must* produce a medical cannabis "card" as the only acceptable "proof of authorization" in order to obtain reciprocal admission into the New Mexico Medical Cannabis Program.
30. Between June 23, 2020 and September 11, 2020, Respondent DOH admitted reciprocal patients in compliance with both the statute and department rule:
 - a. During this time, Respondent DOH sanctioned and allowed LCPs to sell medical cannabis to reciprocal patients whose government issued form of identification

was not from the same state or jurisdiction that issued the reciprocal patient’s “proof of authorization” to participate in a foreign jurisdiction’s medical cannabis program.

- b. With regards to reciprocal patients who are authorized to participate in the California state medical cannabis program, Respondent DOH further sanctioned and allowed LCPs to accept a “physician recommendation” as proper proof of authorization for reciprocal admission into the New Mexico medical cannabis program. This practice was consistent with both the Medical Cannabis Act, DOH Rule, and California law which uses a physician's recommendation, and not a government issued “card,” to authorize participation in that state’s medical cannabis program. Cal. H. and Saf. Code § 11362.712 (A physician's recommendation authorizes a patient’s participation in the California medical cannabis program); Cal. H. and Saf. Code § 11362.71(a)(1) (Issuance of a medical program card is voluntary under California law); CCR. Section 5404(b) (“A licensed retailer shall only sell medicinal cannabis goods to individuals who are at least 18 years of age and possesses a valid physician’s recommendation after confirming the customer’s age, identity, and physician’s recommendation.”). Copies of the pertinent California medical cannabis laws and regulations are attached as Exhibit D.
31. By virtue of the reciprocity section of the Medical Cannabis Act and its own June 23, 2020 Rule, Respondent DOH has a non-discretionary, ministerial duty to implement the reciprocal patient program in the manner directed by the Legislature.

32. This action for mandamus arises from Respondent DOH's failure to permit LCPs to enroll reciprocal patients who possess a government issued identification and medical cannabis proof of authorization from different jurisdictions, or who present a California physician's authorization as proof of authorization for reciprocal admission, in the New Mexico Medical Cannabis Program. New Energy Econ., Inc. v. Martinez, 2011-NMSC-006, ¶ 10, 149 N.M. 207, 247 P.3d 286 ("Mandamus lies to compel the performance of a ministerial act or duty that is clear and indisputable.").
33. Between June 23, 2020 and September 11, 2020, as required by the BioTrack software system, Petitioner Ultra Health entered into BioTrack 1) information regarding the patient's reciprocal authorization; and 2) the patient's name, address, and birthdate.
34. Up until September 11, 2020, the BioTrack system registered any reciprocal participant for whom this information was entered.
35. Upon information and belief, many reciprocal participants who have been patronizing New Mexico medical cannabis dispensaries are residents of Texas who present authorization to participate in California's medical cannabis program.
36. Because Texas has extremely limited access to medical cannabis, Texas residents may avail themselves of California authorizations.
37. Upon information and belief, residents of Texas obtain telemedicine or in-person examinations from California physicians and then obtain the California physician's recommendation to participate in California's medical cannabis program.

38. The COVID-19 pandemic has prompted an explosion of telemedicine services and has also brought down many barriers to cross-state telemedicine services. This has increased the likelihood that Texas residents can obtain California physician recommendations.
39. Upon information and belief, the Texas residents then consume cannabis within New Mexico.
40. Use of California authorizations is not limited to Texas residents. Upon information and belief, some of the reciprocal patients which Petitioner Ultra Health serves are New Mexico residents who obtain and present a California physician's authorization.
41. The reasons why a New Mexico resident would seek reciprocal admission into the New Mexico Medical Cannabis Program are varied: individuals cannot wait for Respondent DOH to process New Mexico Medical Cannabis Program patient applications; the individuals can pay less for a California physician examination than a New Mexico physician examination; the individual has a qualifying condition not on New Mexico's list; or the individual cannot easily pull together all the items (and the fee) needed for a New Mexico Medical Cannabis Program patient application.
42. Under the Legislature's reciprocal scheme, reciprocal patients constitute a unique class of medical cannabis program participants distinct from a "qualified patient", who *must* be a New Mexico resident. NMSA 1978, § Section 26-2B-7 (J) (Providing that reciprocal patients do not have to comply with the procedures mandatory upon qualified patients)
43. The plain language of the Medical Cannabis Act indicates that the Legislature did not wish to preclude New Mexico residents from becoming reciprocal patients.

44. The Medical Cannabis Act defines a reciprocal participant/patient as an “individual” and not as a “non-New Mexico resident.” *See* NMSA 1978, NMSA 1978, § Section 26-2B-7 (J).
45. The Legislature, furthermore, clearly envisioned such a situation when it provided that New Mexico residents who are also members of a “New Mexico Indian nation, tribe or pueblo” may become reciprocal participants under the color of tribal sovereign law.
46. Respondent DOH’s September 11 Mandate precludes any New Mexico resident, including enrolled members in a New Mexico tribe or pueblo, from becoming a reciprocal patient in the New Mexico Medical Cannabis program.
47. Respondent DOH’s actions are both contrary to law and a clear affront to the important principles of tribal sovereignty which the Legislature carefully wove into the reciprocal medical cannabis program.

Respondent DOH’s September 11, 2020 Mandate Regarding Certain Classes of Medical Cannabis Reciprocal Patients

48. At 5:08 pm on September 11, 2020, Respondent DOH sent an email to Petitioner Ultra Health setting forth a new “mandate” with respect to the reciprocal medical cannabis patient program (hereinafter referred to as the “September 11 Mandate.”). A copy of Respondent DOH’s email containing the aforementioned mandate is attached as Exhibit C.
49. Respondent DOH’s September 11 Mandate purports to amend both the Medical Cannabis Act and Respondent DOH’s June 23 Rule with respect to reciprocal medical cannabis patients in two unlawful and substantive ways:

- a. Effective September 11, 2020, Respondent DOH would now require that a reciprocal patient's government issued identification and proof of medical cannabis program authorization must be issued by the *same* jurisdiction; and,
 - b. Reciprocal patients presenting a medical cannabis "card" is the only form of acceptable proof of authorization that Respondent DOH will accept for California medical cannabis patients seeking reciprocal admission into the New Mexico medical cannabis program.
50. Respondent DOH had already unilaterally removed all reciprocal patients not meeting the requirements of its September 11 Mandate prior to sending its email notice to Petitioner Ultra Health at 5:08 pm.
51. During the middle of the day on September 11, Petitioner Ultra Health staff contacted the Medical Cannabis Program Compliance Officer, Jude Vigil, to advise him that several reciprocal patients seeking to purchase medicine were missing from the BioTrack THC system.
52. Under New Mexico law, a LCP may only sell medical cannabis to a patient who appears in Respondent DOH's BioTrack THC system.
53. Mr. Vigil advised Petitioner Ultra Health to contact BioTrack directly about what Respondent DOH represented was a "BioTrack error."
54. Mr. Vigil also represented that Respondent DOH had itself gone into the BioTrack THC system and "cancelled" all of the then enrolled reciprocal patients who were New Mexico residents and whose medical cannabis proof of authorization came from another jurisdiction.

55. Petitioner Ultra Health has subsequently learned that Respondent DOH had, in fact, provided notice of its September 11 Mandate to other LCPs by email by 8:05 am that same day.
56. As noted above, however, Respondent DOH did not provide notice of its September 11 Mandate to Petitioner Ultra Health for near an additional nine hours.

**Respondent DOH's September 11 Mandate is a Rule and Respondent's Failure to
comply with the New Mexico Rules Act Renders it Unenforceable
as a Matter of Law**

57. Respondent DOH is subject to the State Rules Act. NMSA 1978, § Section 14-4-2 (State Rules Act; Definitions) (providing that the State Rules Act applies to all state agencies, of which Respondent DOH is one).
58. Respondent DOH's September 11 Mandate is a Rule within the meaning of the New Mexico Rules Act because it has directly affected the rights of certain classes of reciprocal patients to purchase medical cannabis in New Mexico. 1993 Op. N.M. Att'y Gen. No. 93-01 (if a directive contains statements of policy purporting to affect persons not members or employees of the issuing agency, it must be filed in accordance with the State Rules Act).
59. Unlike its July 23 Rule, Respondent DOH did not follow the procedures set forth in the State Rules Act with respect to publication of its September 11 Mandate.
60. To wit, Respondent DOH did not: 1) provide timely notice prior to beginning enforcement of the September 11 Mandate qua Rule, notice and enforcement began on

the same day; 2) invite or consider public comment; 3) hold a public hearing; or, 4) publish the September 11 Mandate qua Rule in the New Mexico Registrar.

61. The September 11 Mandate qua Rule is, therefore, unenforceable as a matter of law because Respondent DOH failed to comply with the procedures set forth in the State Rules Act when promulgating it. Rivas v. Board of Cosmetologists, 1984-NMSC-076, 101 N.M. 592, 686 P.2d 934 (where the board of cosmetology failed to (1) comply with the repeal procedure of 12-8-4A NMSA 1978, in failing to give notice to interested parties and to hold a hearing prior to taking action, and (2) failed to file the record of its regulatory proceedings with the state records administrator as required by this section, the action of the board in repealing a licensing reciprocity regulation was contrary to law and the repeal was invalid); State v. Joyce, 1980-NMCA-086, 94 N.M. 618, 614 P.2d 30 (actual notice of rule does not dispel necessity of compliance with State Rules Act).

Respondent DOH's September 11 Mandate Directly Conflicts with the Medical Cannabis Act with Respect to Reciprocal Patient Enrollment and is, therefore, not Enforceable as a Matter of Law

62. Alternatively, Respondent DOH's September 11 Mandate directly contradicts the Medical Cannabis Act's provisions governing reciprocal patient authorization and is, therefore, unenforceable as a matter of law. NMSA 1978, § Section 14-4-5.7(A) (State Rule Act; Conflicts between rule and statute; variance between proposed and final action) (No rule is valid or enforceable if it conflicts with statute. A conflict between a rule and a statute is resolved in favor of the statute).
63. Contrary to Respondent DOH's September 11 Mandate, the Legislature did not require that a reciprocal patient's government-issued identification and proof of authorization to

participate in another jurisdiction's medical cannabis program be issued by the *same* jurisdiction.

64. Had the Legislature wished to mandate that reciprocal patients must have a government issued identification and proof of authorization from the *same* jurisdiction in order to obtain reciprocal admission into the New Mexico Medical Cannabis Program, it could have easily written that language into the Medical Cannabis Act. The Legislature chose not to.
65. Nor did the Legislature restrict the definition of the “proof of authorization” that a reciprocal medical cannabis patient must present to a medical cannabis “card.” The Legislature did this precisely because jurisdictions such as California do not issue medical cannabis “cards” to every qualified medical cannabis patient. Cal. H. and Saf. Code § 11362.712 (A physician's recommendation authorizes a patient's participation in the California medical cannabis program); Cal. H. and Saf. Code § 11362.71(a)(1) (Issuance of a medical program card is voluntary under California law).
66. Copies of the relevant California medical cannabis code provisions are attached as Exhibit D.
67. Respondent DOH's September 11 Mandate, therefore, seeks to write words into the Medical Cannabis Act that are simply not there in order to create additional qualifications that patients must meet in order to gain reciprocal admission into the New Mexico Medical Cannabis Program. Martinez v. Sedillo, 2005-NMCA-029, ¶ 7, 137 N.M. 103, 107 P.3d 543 (When interpreting a statute to ascertain legislative intent, the Court “will not rewrite a statute.”).

68. The September 11 Mandate is also presumptively unenforceable because it seeks to alter, and in fact conflicts with, the Legislature's definition of "reciprocal participant." NMSA 1978, § Section 14-4-5.7(B) (State Rule Act; Conflicts between rule and statute; variance between proposed and final action) ("A word or phrase that is defined in an applicable statute should not be defined in rule. A conflict between a definition that appears in a rule and in an applicable statute is resolved in favor of the statute."); Perea v. Baca, 1980-NMSC-079, ¶ 22, 94 N.M. 624 (A "statute must be read and given effect as it is written by the Legislature, not as the court may think it should be or would have been written if the Legislature had envisaged all the problems and complications which might arise...Courts must take the act as they find it and construe it according to the plain meaning of the language employed."); Qwest Corp. v. N.M. Pub. Reg. Comm'n, 2006-NMSC-042, ¶ 20, 140 N.M. 440 ("Agencies are created by statute, and limited to the power and authority expressly granted or necessarily implied by those statutes."); State ex rel. Sandel v. N.M. Pub. Util. Comm'n, 1999-NMSC-019, ¶ 12, 127 N.M. 272. (An agency violates separation of powers principles when it "goes beyond the existing New Mexico statutes or case law it is charged with administering and claims the authority to modify this existing law or to create new law on its own."); Rivas v. Bd. of Cosmetologists, 1984-NMSC-076, ¶ 3, 101 N.M. 592 ("An administrative agency has no power to create a rule or regulation that is not in harmony with its statutory authority.").

Respondent DOH's September 11 Mandate also Contradicts the Department's June 23, 2020 Rule and Constitutes an Unlawful Attempt to either Amend an Existing Rule or to Issue an Emergency Rule

69. Respondent DOH's June 23 Rule, as adopted by Respondent DOH can be found at Rule 7.34.4.28 NMAC. It very closely tracks the language of the Medical Cannabis Act.
70. Consistent with the mandate of the State Rules Act, Rule 7.34.4.28 NMAC adopts the statutory definition of "reciprocal patient" found at NMSA 1978, § Section 26-2B-7 (J).
71. The June 23 Rule also lays out the process that LCPs must follow when registering reciprocal patients into the BioTrack THC system.
72. Respondent DOH's June 23 Rule makes clear that a LCP *may* accept a reciprocal patient's medical cannabis card as valid proof of authorization. Rule 7.34.4.28 (C) NMAC.
73. Respondent DOH's June 23 Rule recognizes that, pursuant to NMSA 1978, § Section 26-2B-7 (J), presentation of a medical cannabis program enrollment card is only an "if applicable" requirement. That is, Respondent DOH's June 23 Rule recognizes that not all jurisdictions mandate or issue medical cannabis program enrollment cards to authorize participation in their medical cannabis program.
74. Contrary to Respondent DOH's September 11 Mandate, the June 23 Rule does not require that reciprocal patients present a government issued identification and proof of authorization from the *same* jurisdiction, or that a medical cannabis "card" is the only acceptable proof of authorization that an LCP may accept from reciprocal medical cannabis patients authorized under California law.

75. Any provisions in Respondent DOH's September 11 Mandate that conflict with the June 23 Rule are unenforceable as a matter of law.
76. Insofar as Respondent DOH's September 11 Mandate seeks to amend or supplant the June 23 Rule, it is not enforceable as a matter of law because Respondent DOH did not follow the proper procedure for issuing a new or emergency rule as set forth in the State Rules Act with respect to its September 11 Mandate.
77. Furthermore, the State Rules Act does not authorize a state agency to alter existing Rules by "mandate," such as the one issued by Respondent DOH on September 11, 2020.
78. Respondent DOH simply did not, and does not, have the legal authority to issue its September 11 Mandate.

III. CAUSE OF ACTION-MANDAMUS

79. Petitioner hereby incorporate all preceding paragraphs as if plead fully herein.
80. "Mandamus lies to compel the performance of a ministerial act or duty that is clear and indisputable." *New Energy Econ., Inc. v. Martinez*, 2011-NMSC-006, ¶ 10, 149 N.M. 207, 247 P.3d 286.
81. "A ministerial act is an act which an officer performs under a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, without regard to the exercise of his own judgment upon the propriety of the act being done." *Id.* ¶ 10.
82. Mandamus will issue if there is no "plain, speedy and adequate remedy in the ordinary course of law." NMSA 1978, § 44-2-5 (1953).

83. Respondents owe a ministerial duty to allow the registration of reciprocal participants who present their “proof of authorization” to participate in the medical cannabis program of another state, territory, tribe, or pueblo, name, date of birth, mailing address, and government-issued photo identification card that verifies the participant’s identity; even if the identification and proof of authorization are issued by *different* jurisdictions.
84. Respondents owe a ministerial duty to allow reciprocal patients to purchase medical cannabis in New Mexico when the participant has presented “proof of authorization” to participate in the medical cannabis program of another state, territory, tribe, or pueblo, name, date of birth, mailing address, and government-issued photo identification card that verifies the participant’s identity.
85. Specifically, Respondent DOH has a ministerial duty to permit the sale of medical cannabis by LCPs to a reciprocal patient when the reciprocal patient presents a physician's authorization form authorizing them to participate in the California medical cannabis program.
86. These duties are clear and indisputable.
87. The registration and allowance of sales to reciprocal participants are acts which Respondent DOH performs under a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, and without regard to the exercise of their own judgment upon the propriety of the particular individual obtaining such a card.
88. Respondents cannot enact rules without compliance with the State Rules Act.
89. Respondents cannot act contrary to statutory authority, cannot go beyond the existing New Mexico statutes or case law it is charged with administering and claim the authority

to modify this existing law or to create new law on its own, and cannot create a rule or regulation that is not in harmony with its statutory authority. *Qwest Corp. v. N.M. Pub. Reg. Comm'n*, 2006-NMSC-042, ¶ 20, 140 N.M. 440, *State ex rel. Sandel v. N.M. Pub. Util. Comm'n*, 1999-NMSC-019, ¶ 12, 127 N.M. 272, *Rivas v. Bd. of Cosmetologists*, 1984-NMSC-076, ¶ 3, 101 N.M. 592.

90. Respondent DOH has enacted a Rule (the September 11 Mandate) without compliance with the State Rules Act, has acted contrary to statutory authority, has gone beyond statute to modify existing law, and has created a policy not in harmony with statutory authority or Respondent DOH's June 23 Rule.
91. Mandamus is an appropriate remedy to stop Respondent DOH's unlawful official action in this case. *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 19, 120 N.M. 562, 904 P.2d 11, ("mandamus is an appropriate means to prohibit unlawful or unconstitutional official action"); *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 18, 125 N.M. 343, 961 P.2d 768 ("Since Petitioner are alleging that the Respondents engaged in unlawful or unconstitutional official acts, Petitioner may request mandamus as the necessary relief.").
92. In *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, the Governor attempted to overhaul the state's public assistance program without legislative participation. The New Mexico Supreme Court issued a writ of mandamus ordering the Governor and certain agency officials to "desist from the implementation of their public assistance changes; and 2) to administer the public assistance program in full compliance with existing law until it is constitutionally altered or amended by legislation signed into law by the Governor." *Id.*, ¶ 3.

93. In State ex rel. Sugg v. Toulouse Oliver, 2020-NMSC-002, the New Mexico Secretary of State postponed the times of election in accordance with a statute. The Supreme Court issued “writs of mandamus in each case directing Respondent, as Secretary of State (the Secretary), to refrain from implementing the affected provisions” on constitutional grounds. *Id.*, ¶ 1.
94. Petitioner has no other mechanism to challenge DOH’s policies apart from seeking this Writ of Mandamus: a reciprocal patient cannot appeal the denial of their request for reciprocal enrollment, and there is no adequate remedy at law for patients that are being wrongfully denied access to medical cannabis by Respondent DOH without basic due process of law.
95. Petitioner does not have a plain, speedy, and adequate remedy in the ordinary course of law.
96. Mandamus is proper in this case. Perea v. Baca, 1980-NMSC-079, ¶ 22, 94 N.M. 624 (A “statute must be read and given effect as it is written by the Legislature, not as the court may think it should be or would have been written if the Legislature had envisaged all the problems and complications which might arise... Courts must take the act as they find it and construe it according to the plain meaning of the language employed.”).
97. A proposed form of alternative writ of mandamus is included with this Application.

IV. REQUESTED RELIEF

98. Petitioner specifically asks the Court to issue an Alternative Writ of Mandamus, a copy of which is attached to this *Petition*, ordering that Respondent DOH immediately:

- a. Allow Licensed Cannabis Producers to authorize and sell medical cannabis to reciprocal patients whose government-issued identification and proof of medical cannabis program authorizations are issued by different jurisdictions or the same jurisdiction;
- b. Allow Licensed Cannabis Producers to authorize and sell medical cannabis to reciprocal patients who present a valid proof of authorization, including those reciprocal patients that present a California physicians authorization as their proof of authorization;
- c. Reauthorize and re-enroll into BioTrack THC any reciprocal patient removed from the program between September 11, 2020 to September _____, 2020, when the reason for the reciprocal participant's removal was a mismatch between the reciprocal participant's state-of-residency and state-of-authorization, or, in the case of California-authorized reciprocal participants, the reciprocal participant did not produce a California issued medical cannabis program "card" as proof of authorization to participate in the California medical cannabis program.
- d. Otherwise permit Petitioner Ultra Health and all Licensed Cannabis Producers to authorize and sell medical cannabis to reciprocal patients that meet the definition of "reciprocal participant" under the Medical Cannabis Act and Respondent's June 23 Rule.
- e. Immediately refrain from any further enforcement of the September 11 Mandate.
- f. Administer the medical cannabis reciprocity program in full compliance with NMSA 1978, § Section 26-2B-7 (J).

Petitioner further requests an award of its costs and fees incurred in bringing this action, and lastly requests any other forms or relief the Court deems just and proper.

DATED: September 22, 2020

Respectfully submitted,

CANDELARIA LAW LLC

/s/ Jacob R. Candelaria

Jacob R. Candelaria
Attorney for Petitioner Ultra Health
P.O. Box 27437
Albuquerque, New Mexico 87125
Phone: 505-295-5118
jacob@jacobcandelaria.com

VERIFICATION

I have read the foregoing Petition for Writ of Mandamus and swear that the foregoing is true and correct to the best of my knowledge.



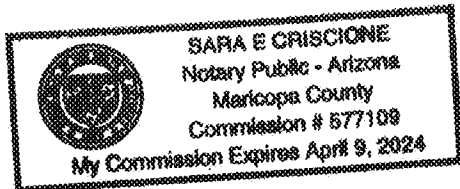
Kylie Safa, ~~Chief Person~~ of New Mexico Top Organics-Ultra Health, Inc.

Subscribed and sworn before me this 22nd day of September 2020.



Notary Public

My Commission expires: April 9, 2024



**STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA E**

NEW MEXICO TOP ORGANICS-ULTRA HEALTH, INC.

Petitioner,

Case No.:

v.

**NEW MEXICO DEPARTMENT OF HEALTH,
and DOMINICK ZURLO, in his official capacity as
DIRECTOR of the NEW MEXICO MEDICAL
CANNABIS PROGRAM, and SECRETARY KATHYLEEN KUNKEL,
in her official capacity as Secretary of the
Department of Health**

Respondents.

ALTERNATIVE WRIT OF MANDAMUS

To: Mr. Dominick Zurlo, in his official capacity as Director of the New Mexico Medical Cannabis Program; and
Hon. Kathyleen Kunkel, in her official capacity as Secretary of the New Mexico Department of Health

GREETINGS, it appears to the Court as follows:

1. Petitioner is a Respondent DOH-Licensed Cannabis Produce, charged by state law with authorizing and enrolling reciprocal patients into the New Mexico Medical Cannabis Program.

ATTACHMENT A

2. Petitioner has petitioned this Court for an alternative writ of mandamus. The Petition is attached hereto. All allegations found in the Petition that are not repeated herein are incorporated by reference.

The Legislature Authorized and Established a Scheme for Medical Cannabis Patient Reciprocity in 2019

3. The Lynn and Erin Compassionate Use Act (“Medical Cannabis Act”) legalized the use and production of medical cannabis in New Mexico in 2007. NMSA 1978, § Section 26-2B-1, *et seq.*
4. “The purpose of the Lynn and Erin Compassionate Use Act is to allow the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments.” NMSA 1978, § Section 26-2B-2.
5. Respondent DOH’s Medical Cannabis Program licenses cannabis-related businesses, including producers and manufacturers. NMSA 1978, § Section 26-2B-3.
6. Respondent DOH’s Medical Cannabis Program processes applications from non-reciprocal, qualified patients to enroll in the New Mexico Medical Cannabis Program. NMSA 1978, § Section 26-2B-7.
7. Prior to 2019, the Medical Cannabis Act authorized one limited category of patients, referred to as “qualified patients,” to purchase or consume medical cannabis. NMSA 1978, § Section 26-2B-3(V) (“qualified patient” means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card pursuant to the Lynn and Erin Compassionate Use Act on the basis of having been diagnosed, in person or via telemedicine, by a practitioner as having a debilitating medical condition; provided that a

practitioner may only issue a written certification on the basis of an evaluation conducted via telemedicine if the practitioner has previously examined the patient in person.”).

8. The Legislature amended the Medical Cannabis Act in 2019 to authorize the purchase, storage, use, personal grow, and transport of medical cannabis in New Mexico by a new category of authorized medical cannabis users--reciprocal participants:

Beginning July 1, 2020, an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo may lawfully purchase and possess cannabis, provided that the quantity of cannabis does not exceed the reciprocal limit identified in this section. NMSA 1978, NMSA 1978, § Section 26-2B-7 (J).

9. A copy of the Legislature’s 2019 amendment to the Medical Cannabis Act, establishing the reciprocal medical cannabis program, is attached as Exhibit A.
10. As opposed to non-reciprocal, qualified patients, the Legislature further provided that a reciprocal patient “shall register with a licensee [Licensed Cannabis Producer or “LCP”] for the purpose of tracking sales of medical cannabis to the reciprocal patient” in Respondent DOH’s Bio-Track THC medical cannabis product management system. NMSA 1978, NMSA 1978, § Section 26-2B-7 (J)(4).
11. Under the Legislature's definition, a reciprocal patient need meet only three requirements to obtain reciprocal admission into the New Mexico medical cannabis program: 1) the reciprocal patient holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or

commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo; 2) the reciprocal patient registers with a Respondent DOH-licensed LCP; 3) the reciprocal patient does not at any given time possess an amount of medical cannabis that exceeds Respondent DOH's established maximums. NMSA 1978, NMSA 1978, § Section 26-2B-7 (J).

12. The Medical Cannabis Act does not require that reciprocal patients *must* present a medical cannabis “card” as the sole proof of authorization that a LCP may accept for purposes authorizing a patient’s reciprocal enrollment in the New Mexico Medical Cannabis Program.
13. The Legislature is familiar with the use of a medical cannabis “card” as *one* method for authorizing a patient’s participation in a state-sanctioned medical cannabis program. To wit, the Legislature has mandated that Respondent DOH “shall issue” medical cannabis program cards to authorize non-reciprocal, qualified patients to participate in the program. NMSA 1978, § Section 26-2B-7 (B). It is Respondent DOH’s medical cannabis card that authorizes qualified patients to purchase medical cannabis.
14. Had the Legislature wished to restrict reciprocal admission into the New Mexico Medical Cannabis Program to only those reciprocal patients who can present a medical cannabis “card,” it certainly knew how to do so but ultimately chose not to. Bybee v. City of Albuquerque, 1995-NMCA-061, 11, 120 N.M. 17, 896 P.2d 1164 (“we presume the Legislature knows the law and acts rationally.”).
15. With respect to reciprocal patients, the Legislature did not require the production of a medical cannabis “card” as the *only* acceptable proof of authorization, and instead

adopted a much broader standard to accommodate the fact that, as discussed more fully below, unlike New Mexico, not all jurisdictions use a “card” to authorize patient participation in their medical cannabis program.

16. Nor did the Legislature require that a reciprocal patient’s proof of authorization be government-issued. Cf. NMSA 1978, § Section 26-2B-6.1 (B) (a non-reciprocal, qualified patient must have a government-issued medical cannabis card to enroll in the New Mexico Medical Cannabis Program). By doing this, the Legislature recognized that at least one jurisdiction, California, uses a non-government issued form of proof of authorization (i.e. a physician's letter) to authorize patient-participation in their medical cannabis program.

**Respondent DOH’s June 23, 2020 Rule Implementing the Legislature’s
Reciprocal Patient Program and Scheme**

17. Respondent DOH published, pursuant to NMSA 1978, § Section 14-4-5 (State Rule Act; Time limit on adoption of proposed rule; filing and compliance required for validity), its final Rule implementing the reciprocal patient program in the New Mexico Registrar on June 23, 2020. Respondent DOH’s June 23 Rule went into effect upon publication.
18. A copy of the June 23 Rule is attached as Exhibit B.
19. In its June 23 Rule, Respondent DOH further required and directed that, prior to selling medical cannabis to a reciprocal patient, a LCP, such as Petitioner Ultra Health, must verify the reciprocal patient’s identity.
20. Respondent DOH’s June 23 Rule directed that an LCP may confirm a reciprocal patient’s identity by viewing the reciprocal patient’s proof of authorization from another

state, territory or tribe and by viewing the reciprocal patient’s “government-issued identification card.” Rule 7.34.4.28 (C) NMAC.

21. Neither the Legislature, by statute, nor Respondent DOH, by rule, required that a reciprocal patient’s government-issued identification and medical cannabis proof of authorization be issued by the same jurisdiction, or that reciprocal applicants *must* produce a medical cannabis “card” as the only acceptable “proof of authorization” in order to obtain reciprocal admission into the New Mexico Medical Cannabis Program.
22. Between June 23, 2020 and September 11, 2020, Respondent DOH admitted reciprocal patients in compliance with both the statute and department rule:
 - a. During this time, Respondent DOH sanctioned and allowed LCPs to sell medical cannabis to reciprocal patients whose government issued form of identification *was not* from the same state or jurisdiction that issued the reciprocal patient’s “proof of authorization” to participate in a foreign jurisdiction’s medical cannabis program.
 - b. With regards to reciprocal patients who are authorized to participate in the California state medical cannabis program, Respondent DOH further sanctioned and allowed LCPs to accept a “physician recommendation” as proper proof of authorization for reciprocal admission into the New Mexico medical cannabis program. This practice was consistent with both the Medical Cannabis Act, DOH Rule, and California law which uses a physician's recommendation, and not a government issued “card,” to authorize participation in that state’s medical cannabis program. Cal. H. and Saf. Code § 11362.712 (A physician's

recommendation authorizes a patient's participation in the California medical cannabis program); Cal. H. and Saf. Code § 11362.71(a)(1) (Issuance of a medical program card is voluntary under California law); CCR. Section 5404(b) ("A licensed retailer shall only sell medicinal cannabis goods to individuals who are at least 18 years of age and possesses a valid physician's recommendation after confirming the customer's age, identity, and physician's recommendation."). Copies of the pertinent California medical cannabis laws and regulations are attached as Exhibit D.

23. By virtue of the reciprocity section of the Medical Cannabis Act and its own June 23, 2020 Rule, Respondent DOH has a non-discretionary, ministerial duty to implement the reciprocal patient program in the manner directed by the Legislature.
24. This action for mandamus arises from Respondent DOH's failure to permit LCPs to enroll reciprocal patients who possess a government issued identification and medical cannabis proof of authorization from different jurisdictions, or who present a California physician's authorization as proof of authorization for reciprocal admission, in the New Mexico Medical Cannabis Program. New Energy Econ., Inc. v. Martinez, 2011-NMSC-006, ¶ 10, 149 N.M. 207, 247 P.3d 286 ("Mandamus lies to compel the performance of a ministerial act or duty that is clear and indisputable.").
25. Between June 23, 2020 and September 11, 2020, as required by the BioTrack software system, Petitioner Ultra Health entered into BioTrack 1) information regarding the patient's reciprocal authorization; and 2) the patient's name, address, and birthdate.

26. Up until September 11, 2020, the BioTrack system registered any reciprocal participant for whom this information was entered.
27. Upon information and belief, many reciprocal participants who have been patronizing New Mexico medical cannabis dispensaries are residents of Texas who present authorization to participate in California's medical cannabis program.
28. Because Texas has extremely limited access to medical cannabis, Texas residents may avail themselves of California authorizations.
29. Upon information and belief, residents of Texas obtain telemedicine or in-person examinations from California physicians and then obtain the California physician's recommendation to participate in California's medical cannabis program.
30. The COVID-19 pandemic has prompted an explosion of telemedicine services and has also brought down many barriers to cross-state telemedicine services. This has increased the likelihood that Texas residents can obtain California physician recommendations.
31. Upon information and belief, the Texas residents then consume cannabis within New Mexico.
32. Use of California authorizations is not limited to Texas residents. Upon information and belief, some of the reciprocal patients which Petitioner Ultra Health serves are New Mexico residents who obtain and present a California physician's authorization.
33. The reasons why a New Mexico resident would seek reciprocal admission into the New Mexico Medical Cannabis Program are varied: individuals cannot wait for Respondent DOH to process New Mexico Medical Cannabis Program patient applications; the individuals can pay less for a California physician examination than a New Mexico

physician examination; the individual has a qualifying condition not on New Mexico's list; or the individual cannot easily pull together all the items (and the fee) needed for a New Mexico Medical Cannabis Program patient application.

34. Under the Legislature's reciprocal scheme, reciprocal patients constitute a unique class of medical cannabis program participants distinct from a "qualified patient", who *must* be a New Mexico resident. NMSA 1978, § Section 26-2B-7 (J) (Providing that reciprocal patients do not have to comply with the procedures mandatory upon qualified patients)
35. The plain language of the Medical Cannabis Act indicates that the Legislature did not wish to preclude New Mexico residents from becoming reciprocal patients.
36. The Medical Cannabis Act defines a reciprocal participant/patient as an "individual" and not as a "non-New Mexico resident." *See* NMSA 1978, NMSA 1978, § Section 26-2B-7 (J).
37. The Legislature, furthermore, clearly envisioned such a situation when it provided that New Mexico residents who are also members of a "New Mexico Indian nation, tribe or pueblo" may become reciprocal participants under the color of tribal sovereign law.
38. Respondent DOH's September 11 Mandate precludes any New Mexico resident, including enrolled members in a New Mexico tribe or pueblo, from becoming a reciprocal patient in the New Mexico Medical Cannabis program.
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**Respondent DOH's September 11, 2020 Mandate Regarding Certain Classes of
Medical Cannabis Reciprocal Patients**

40. At 5:08 pm on September 11, 2020, Respondent DOH sent an email to Petitioner Ultra Health setting forth a new “mandate” with respect to the reciprocal medical cannabis patient program (hereinafter referred to as the “September 11 Mandate.”). A copy of Respondent DOH’s email containing the aforementioned mandate is attached as Exhibit C.
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44. Under New Mexico law, a LCP may only sell medical cannabis to a patient who appears in Respondent DOH's BioTrack THC system.

45. Mr. Vigil advised Petitioner Ultra Health to contact BioTrack directly about what Respondent DOH represented was a "BioTrack error."

46. Mr. Vigil also represented that Respondent DOH had itself gone into the BioTrack THC system and "cancelled" all of the then enrolled reciprocal patients who were New Mexico residents and whose medical cannabis proof of authorization came from another jurisdiction.

47. Petitioner Ultra Health has subsequently learned that Respondent DOH had, in fact, provided notice of its September 11 Mandate to other LCPs by email by 8:05 am that same day.

48. As noted above, however, Respondent DOH did not provide notice of its September 11 Mandate to Petitioner Ultra Health for near an additional nine hours.

**Respondent DOH's September 11 Mandate is a Rule and Respondent's Failure to
comply with the New Mexico Rules Act Renders it Unenforceable
as a Matter of Law**

49. Respondent DOH is subject to the State Rules Act. NMSA 1978, § Section 14-4-2 (State Rules Act; Definitions) (providing that the State Rules Act applies to all state agencies, of which Respondent DOH is one).

50. Respondent DOH's September 11 Mandate is a Rule within the meaning of the New Mexico Rules Act because it has directly affected the rights of certain classes of reciprocal patients to purchase medical cannabis in New Mexico. 1993 Op. N.M. Att'y Gen. No. 93-01 (if a directive contains statements of policy purporting to affect persons not members or employees of the issuing agency, it must be filed in accordance with the State Rules Act).
51. Unlike its July 23 Rule, Respondent DOH did not follow the procedures set forth in the State Rules Act with respect to publication of its September 11 Mandate.
52. To wit, Respondent DOH did not: 1) provide timely notice prior to beginning enforcement of the September 11 Mandate qua Rule, notice and enforcement began on the same day; 2) invite or consider public comment; 3) hold a public hearing; or, 4) publish the September 11 Mandate qua Rule in the New Mexico Registrar.
53. The September 11 Mandate qua Rule is, therefore, unenforceable as a matter of law because Respondent DOH failed to comply with the procedures set forth in the State Rules Act when promulgating it. Rivas v. Board of Cosmetologists, 1984-NMSC-076, 101 N.M. 592, 686 P.2d 934 (where the board of cosmetology failed to (1) comply with the repeal procedure of 12-8-4A NMSA 1978, in failing to give notice to interested parties and to hold a hearing prior to taking action, and (2) failed to file the record of its regulatory proceedings with the state records administrator as required by this section, the action of the board in repealing a licensing reciprocity regulation was contrary to law and the repeal was invalid); State v. Joyce, 1980-NMCA-086, 94 N.M. 618, 614 P.2d 30 (actual notice of rule does not dispel necessity of compliance with State Rules Act).

Respondent DOH's September 11 Mandate Directly Conflicts with the Medical Cannabis Act with Respect to Reciprocal Patient Enrollment and is, therefore, not Enforceable as a Matter of Law

54. Alternatively, Respondent DOH's September 11 Mandate directly contradicts the Medical Cannabis Act's provisions governing reciprocal patient authorization and is, therefore, unenforceable as a matter of law. NMSA 1978, § Section 14-4-5.7(A) (State Rule Act; Conflicts between rule and statute; variance between proposed and final action) (No rule is valid or enforceable if it conflicts with statute. A conflict between a rule and a statute is resolved in favor of the statute).
55. Contrary to Respondent DOH's September 11 Mandate, the Legislature did not require that a reciprocal patient's government-issued identification and proof of authorization to participate in another jurisdiction's medical cannabis program be issued by the *same* jurisdiction.
56. Had the Legislature wished to mandate that reciprocal patients must have a government issued identification and proof of authorization from the *same* jurisdiction in order to obtain reciprocal admission into the New Mexico Medical Cannabis Program, it could have easily written that language into the Medical Cannabis Act. The Legislature chose not to.
57. Nor did the Legislature restrict the definition of the "proof of authorization" that a reciprocal medical cannabis patient must present to a medical cannabis "card." The Legislature did this precisely because jurisdictions such as California do not issue medical cannabis "cards" to every qualified medical cannabis patient. Cal. H. and Saf. Code § 11362.712 (A physician's recommendation authorizes a patient's participation in

the California medical cannabis program); Cal. H. and Saf. Code § 11362.71(a)(1) (Issuance of a medical program card is voluntary under California law).

58. Copies of the relevant California medical cannabis code provisions are attached as Exhibit D.

59. Respondent DOH's September 11 Mandate, therefore, seeks to write words into the Medical Cannabis Act that are simply not there in order to create additional qualifications that patients must meet in order to gain reciprocal admission into the New Mexico Medical Cannabis Program. Martinez v. Sedillo, 2005-NMCA-029, ¶ 7, 137 N.M. 103, 107 P.3d 543 (When interpreting a statute to ascertain legislative intent, the Court "will not rewrite a statute.").

60. The September 11 Mandate is also presumptively unenforceable because it seeks to alter, and in fact conflicts with, the Legislature's definition of "reciprocal participant." NMSA 1978, § Section 14-4-5.7(B) (State Rule Act; Conflicts between rule and statute; variance between proposed and final action) ("A word or phrase that is defined in an applicable statute should not be defined in rule. A conflict between a definition that appears in a rule and in an applicable statute is resolved in favor of the statute."); Perea v. Baca, 1980-NMSC-079, ¶ 22, 94 N.M. 624 (A "statute must be read and given effect as it is written by the Legislature, not as the court may think it should be or would have been written if the Legislature had envisaged all the problems and complications which might arise...Courts must take the act as they find it and construe it according to the plain meaning of the language employed."); Qwest Corp. v. N.M. Pub. Reg. Comm'n, 2006-NMSC-042, ¶ 20, 140 N.M. 440 ("Agencies are created by statute, and limited to

the power and authority expressly granted or necessarily implied by those statutes.”); State ex rel. Sandel v. N.M. Pub. Util. Comm’n, 1999-NMSC-019, ¶ 12, 127 N.M. 272. (An agency violates separation of powers principles when it “goes beyond the existing New Mexico statutes or case law it is charged with administering and claims the authority to modify this existing law or to create new law on its own.”); Rivas v. Bd. of Cosmetologists, 1984-NMSC-076, ¶ 3, 101 N.M. 592 (“An administrative agency has no power to create a rule or regulation that is not in harmony with its statutory authority.”).

Respondent DOH’s September 11 Mandate also Contradicts the Department’s June 23, 2020 Rule and Constitutes an Unlawful Attempt to either Amend an Existing Rule or to Issue an Emergency Rule

61. Respondent DOH’s June 23 Rule, as adopted by Respondent DOH can be found at Rule 7.34.4.28 NMAC. It very closely tracks the language of the Medical Cannabis Act.
62. Consistent with the mandate of the State Rules Act, Rule 7.34.4.28 NMAC adopts the statutory definition of “reciprocal patient” found at NMSA 1978, § Section 26-2B-7 (J).
63. The June 23 Rule also lays out the process that LCPs must follow when registering reciprocal patients into the BioTrack THC system.
64. Respondent DOH’s June 23 Rule makes clear that a LCP *may* accept a reciprocal patient’s medical cannabis card as valid proof of authorization. Rule 7.34.4.28 (C) NMAC.
65. Respondent DOH’s June 23 Rule recognizes that, pursuant to NMSA 1978, § Section 26-2B-7 (J), presentation of a medical cannabis program enrollment card is only an “if applicable” requirement. That is, Respondent DOH’s June 23 Rule recognizes that not

all jurisdictions mandate or issue medical cannabis program enrollment cards to authorize participation in their medical cannabis program.

66. Contrary to Respondent DOH's September 11 Mandate, the June 23 Rule does not require that reciprocal patients present a government issued identification and proof of authorization from the *same* jurisdiction, or that a medical cannabis "card" is the only acceptable proof of authorization that an LCP may accept from reciprocal medical cannabis patients authorized under California law.
67. Any provisions in Respondent DOH's September 11 Mandate that conflict with the June 23 Rule are unenforceable as a matter of law.
68. Insofar as Respondent DOH's September 11 Mandate seeks to amend or supplant the June 23 Rule, it is not enforceable as a matter of law because Respondent DOH did not follow the proper procedure for issuing a new or emergency rule as set forth in the State Rules Act with respect to its September 11 Mandate.
69. Furthermore, the State Rules Act does not authorize a state agency to alter existing Rules by "mandate," such as the one issued by Respondent DOH on September 11, 2020.
70. Respondent DOH simply did not, and does not, have the legal authority to issue its September 11 Mandate.

III. CAUSE OF ACTION-MANDAMUS

71. The Court hereby incorporate all preceding paragraphs as if plead fully herein.
72. “Mandamus lies to compel the performance of a ministerial act or duty that is clear and indisputable.” *New Energy Econ., Inc. v. Martinez*, 2011–NMSC–006, ¶ 10, 149 N.M. 207, 247 P.3d 286.
73. “A ministerial act is an act which an officer performs under a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, without regard to the exercise of his own judgment upon the propriety of the act being done.” *Id.* ¶ 10.
74. Mandamus will issue if there is no “plain, speedy and adequate remedy in the ordinary course of law.” NMSA 1978, § 44-2-5 (1953).
75. Respondents owe a ministerial duty to allow the registration of reciprocal participants who present their “proof of authorization” to participate in the medical cannabis program of another state, territory, tribe, or pueblo, name, date of birth, mailing address, and government-issued photo identification card that verifies the participant’s identity; even if the identification and proof of authorization are issued by *different* jurisdictions.
76. Respondents owe a ministerial duty to allow reciprocal patients to purchase medical cannabis in New Mexico when the participant has presented “proof of authorization” to participate in the medical cannabis program of another state, territory, tribe, or pueblo, name, date of birth, mailing address, and government-issued photo identification card that verifies the participant’s identity.
77. Specifically, Respondent DOH has a ministerial duty to permit the sale of medical cannabis by LCPs to a reciprocal patient when the reciprocal patient presents a

physician's authorization form authorizing them to participate in the California medical cannabis program.

78. These duties are clear and indisputable.
79. The registration and allowance of sales to reciprocal participants are acts which Respondent DOH performs under a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, and without regard to the exercise of their own judgment upon the propriety of the particular individual obtaining such a card.
80. Respondents cannot enact rules without compliance with the State Rules Act.
81. Respondents cannot act contrary to statutory authority, cannot go beyond the existing New Mexico statutes or case law it is charged with administering and claim the authority to modify this existing law or to create new law on its own, and cannot create a rule or regulation that is not in harmony with its statutory authority. *Qwest Corp. v. N.M. Pub. Reg. Comm'n*, 2006-NMSC-042, ¶ 20, 140 N.M. 440, *State ex rel. Sandel v. N.M. Pub. Util. Comm'n*, 1999-NMSC-019, ¶ 12, 127 N.M. 272, *Rivas v. Bd. of Cosmetologists*, 1984-NMSC-076, ¶ 3, 101 N.M. 592.
82. Respondent DOH has enacted a Rule (the September 11 Mandate) without compliance with the State Rules Act, has acted contrary to statutory authority, has gone beyond statute to modify existing law, and has created a policy not in harmony with statutory authority or Respondent DOH's June 23 Rule.
83. Mandamus is an appropriate remedy to stop Respondent DOH's unlawful official action in this case. *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 19, 120 N.M. 562, 904 P.2d 11, ("mandamus is an appropriate means to prohibit unlawful or unconstitutional

official action”); State ex rel. Taylor v. Johnson, 1998-NMSC-015, ¶ 18, 125 N.M. 343, 961 P.2d 768 (“Since Petitioner are alleging that the Respondents engaged in unlawful or unconstitutional official acts, Petitioner may request mandamus as the necessary relief.”).

84. In State ex rel. Taylor v. Johnson, 1998-NMSC-015, the Governor attempted to overhaul the state’s public assistance program without legislative participation. The New Mexico Supreme Court issued a writ of mandamus ordering the Governor and certain agency officials to “desist from the implementation of their public assistance changes; and 2) to administer the public assistance program in full compliance with existing law until it is constitutionally altered or amended by legislation signed into law by the Governor.” *Id.*, ¶ 3.

85. In State ex rel. Sugg v. Toulouse Oliver, 2020-NMSC-002, the New Mexico Secretary of State postponed the times of election in accordance with a statute. The Supreme Court issued “writs of mandamus in each case directing Respondent, as Secretary of State (the Secretary), to refrain from implementing the affected provisions” on constitutional grounds. *Id.*, ¶ 1.

86. Petitioner has no other mechanism to challenge DOH’s policies apart from seeking this Writ of Mandamus: a reciprocal patient cannot appeal the denial of their request for reciprocal enrollment, and there is no adequate remedy at law for patients that are being wrongfully denied access to medical cannabis by Respondent DOH without basic due process of law.

87. Petitioner does not have a plain, speedy, and adequate remedy in the ordinary course of law.

88. Mandamus is proper in this case. Perea v. Baca, 1980-NMSC-079, ¶ 22, 94 N.M. 624 (A “statute must be read and given effect as it is written by the Legislature, not as the court may think it should be or would have been written if the Legislature had envisaged all the problems and complications which might arise... Courts must take the act as they find it and construe it according to the plain meaning of the language employed.”).

RESPONDENTS ARE THEREFORE COMMANDED TO:

89. Allow Licensed Cannabis Producers to authorize and sell medical cannabis to reciprocal patients whose government-issued identification and proof of medical cannabis program authorizations are issued by different jurisdictions or the same jurisdiction;
90. Allow Licensed Cannabis Producers to authorize and sell medical cannabis to reciprocal patients who present a valid proof of authorization, including those reciprocal patients that present a California physicians authorization as their proof of authorization;
91. Reauthorize and re-enroll into BioTrack THC any reciprocal patient removed from the program between September 11, 2020 to September _____, 2020, when the reason for the reciprocal participant’s removal was a mismatch between the reciprocal participant’s state-of-residency and state-of-authorization, or, in the case of California-authorized reciprocal participants, the reciprocal participant did not produce a California issued medical cannabis program “card” as proof of authorization to participate in the California medical cannabis program.

92. Otherwise permit Petitioner Ultra Health and all Licensed Cannabis Producers to authorize and sell medical cannabis to reciprocal patients that meet the definition of “reciprocal participant” under the Medical Cannabis Act and Respondent’s June 23 Rule.
93. Immediately refrain from any further enforcement of the September 11 Mandate.
94. Administer the medical cannabis reciprocity program in full compliance with NMSA 1978, § Section 26-2B-7 (J).
95. Serve and file a responsive pleading by _____ pursuant to Rule 1-065 NMRA (E) and (F).
96. Show cause before this court at _____ a.m./p.m. on the _____ day of _____, 2029 why you should not do so.

IT IS SO ORDERED.

Hon.

DISTRICT COURT JUDGE

26-2B-7. Registry identification cards; department rules; duties; reciprocity.

A. After consultation with the advisory board, the department shall promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to implement the purpose of the Lynn and Erin Compassionate Use Act. The rules shall:

- (1) govern the manner in which the department will consider applications for registry identification cards and for the renewal of identification cards for qualified patients and primary caregivers;
- (2) define the amount of cannabis that is necessary to constitute an adequate supply, including amounts for topical treatments;
- (3) identify criteria and set forth procedures for including additional medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis. Procedures shall include a petition process and shall allow for public comment and public hearings before the advisory board;
- (4) set forth additional medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis as recommended by the advisory board;
- (5) identify requirements for the licensure of cannabis producers and cannabis production facilities, cannabis couriers, cannabis manufacturers, cannabis testing facilities and any other cannabis establishments that the department may license and set forth procedures to obtain licenses;
- (6) develop a distribution system for the medical cannabis program that provides for:
 - (a) cannabis production facilities within New Mexico housed on secured grounds and operated by licensees; and
 - (b) distribution of cannabis to qualified patients or their primary caregivers to take place at locations that are designated by the department and that are not within three hundred feet of any school, church or daycare center that were in existence in that location before the licensee distributing medical cannabis nearby was licensed; provided that this distance requirement shall not apply to distribution at the home of the qualified patient or primary caregiver;

EXHIBIT A

(7) identify requirements for testing and labeling of cannabis and cannabis products for quality assurance. The department shall adopt and promulgate rules pursuant to this paragraph by December 20, 2019;

(8) determine additional duties and responsibilities of the advisory board; and

(9) be revised and updated as necessary.

B. The department shall issue registry identification cards to a patient and to the primary caregiver for that patient, if any, who submit the following, in accordance with the department's rules:

(1) a written certification;

(2) the name, address and date of birth of the patient;

(3) the name, address and telephone number of the patient's practitioner; and

(4) the name, address and date of birth of the patient's primary caregiver, if any.

C. The department shall verify the information contained in an application submitted pursuant to Subsection B of this section and shall approve or deny an application within thirty days of receipt. The department may deny an application only if the applicant did not provide the information required pursuant to Subsection B of this section or if the department determines that the information provided is false. A person whose application has been denied shall not reapply for six months from the date of the denial unless otherwise authorized by the department.

D. The department shall issue a registry identification card within five days of approving an application, and a card shall expire three years after the date of issuance.

E. A registry identification card shall contain:

(1) the name and date of birth of the qualified patient and primary caregiver, if any;

(2) the date of issuance and expiration date of the registry identification card; and

(3) other information that the department may require by rule.

F. A person who possesses a registry identification card shall notify the department of any change in the person's name, qualified patient's practitioner, qualified patient's

primary caregiver or change in status of the qualified patient's debilitating medical condition within ten days of the change.

G. Possession of or application for a registry identification card shall not constitute probable cause or give rise to reasonable suspicion for a governmental agency to search the person or property of the person possessing or applying for the card.

H. The department shall maintain a confidential file containing the names and addresses of the persons who have either applied for or received a registry identification card. Individual names on the list shall be confidential and not subject to disclosure, except:

(1) to authorized employees or agents of the department as necessary to perform the duties of the department pursuant to the provisions of the Lynn and Erin Compassionate Use Act;

(2) to authorized employees of state or local law enforcement agencies, but only for the purpose of verifying that a person is lawfully in possession of a registry identification card; or

(3) as provided in the federal Health Insurance Portability and Accountability Act of 1996.

I. By March 1, 2020, the secretary of health shall adopt and promulgate rules relating to medical cannabis program reciprocity. The department may identify requirements for the granting of reciprocity, including provisions limiting the period of time in which a reciprocal participant may participate in the medical cannabis program.

J. A reciprocal participant:

(1) may participate in the medical cannabis program in accordance with department rules;

(2) shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules;

(3) shall at all times possess proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo and shall present proof of that authorization when purchasing cannabis from a licensee; and

(4) shall register with a licensee for the purpose of tracking sales to the reciprocal participant in an electronic system that is accessible to the department.

History: Laws 2007, ch. 210, § 7; 2019, ch. 247, § 7.

ANNOTATIONS

Cross references. — For the Federal Health Insurance Portability and Accountability Act of 1996, see 42 U.S.C. § 300gg et seq.

The 2019 amendment, effective June 14, 2019, provided additional duties for the department of health; in the section heading, added "reciprocity"; in Subsection A, in the introductory paragraph, deleted "No later than October 1, 2007, and", in Paragraph A(5), after "licensure of", added "cannabis", and after "production facilities", added "cannabis couriers, cannabis manufacturers, cannabis testing facilities and any other cannabis establishments that the department may license", in Paragraph A(6), after "medical cannabis", added "program", in Subparagraph A(6)(b), after "daycare center", added "that were in existence in that location before the licensee distributing medical cannabis nearby was licensed; provided that this distance requirement shall not apply to distribution at the home of the qualified patient or primary caregiver", added a new Paragraph A(7) and redesignated former Paragraphs A(7) and A(8) as Paragraphs A(8) and A(9), respectively; in Subsection D, after "shall expire", deleted "one year" and added "three years"; added new subsection designation "E." and redesignated former Subsections E through G as Subsections F through H, respectively; and added Subsections I and J.

EXHIBIT A

Rule 7.34.4.7(R) NMAC **Definitions beginning with “R”:**

(1) **“Recall”** means to request the return of a product after the discovery of a safety issue or product defect.

(2) **“Reciprocal limit”** means the quantity of cannabis and cannabis products that a reciprocal participant can use and possess in a given year pursuant to department rule.

(3) **“Reciprocal participant”** means an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.

Rule 7.34.4.28 NMAC **RECIPROCITY:** Beginning July 1, 2020, an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo may lawfully purchase and possess cannabis, provided that the quantity of cannabis does not exceed the reciprocal limit identified in this section.

A. Reciprocal participation:

(1) **General requirements:** A reciprocal participant:

(a) may participate in the medical cannabis program in accordance with department rules;

(b) shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules;

(c) shall at all times possess proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo and shall present proof of that authorization when purchasing cannabis from a licensee; and

(d) shall register with a licensed non-profit producer for the purpose of tracking sales to the reciprocal participant in an electronic system specified by the department.

(2) **Minors:** In the event that a reciprocal participant is a minor, a licensed non-profit producer shall not sell or transfer cannabis to the minor, but may sell or transfer cannabis to a parent or legal guardian of the minor who holds proof of authorization to purchase cannabis on the minor's behalf that was issued by another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.

B. Reciprocal limit: A reciprocal participant may collectively possess within any three-month period a quantity of usable cannabis no greater than 230 total units. For purposes of department rules, this quantity is deemed the reciprocal limit. (For ease of reference: 230 units is equivalent to 230 grams, or approximately eight ounces, of dried usable cannabis plant material.)

C. Registration; verification; tracking: A licensed non-profit producer shall require the submittal of a reciprocal participant's contact information for registration purposes, to include the individual's full name, date of birth, mailing address, and the enrollment number specified in the individual's medical cannabis program enrollment card (if applicable); and shall record that information in an electronic tracking system specified by the department. The licensed non-profit producer shall confirm the accuracy of a reciprocal participant's contact information prior to each transaction. A licensed non-profit producer that registers a reciprocal participant or that sells or transfers cannabis or a cannabis product to a reciprocal participant shall first verify the reciprocal participant's identity by viewing the individual's proof of authorization from the other state, territory or tribe, and also viewing the reciprocal participant's government-issued photo identification card. A licensed non-profit producer that sells or otherwise transfers cannabis or a cannabis product to a reciprocal participant shall track the sale or transfer using an electronic system specified for that purpose by the department.

D. Refusal of service: A non-profit producer that reasonably suspects that either a person's proof of authorization or identification card is falsified may refuse to dispense cannabis to cannabis to that individual.

E. Informational materials: At the time of a sale or transfer of cannabis to a reciprocal participant, a non-profit producer shall provide informational materials to the reciprocal participant that include, at a minimum, a notice of the time and quantity limits for reciprocity under this section, and a notice concerning state and federal prohibitions against the transport of cannabis across state and international boundaries.

[7.34.4.28 NMAC - Rp. 7.34.4.28 NMAC, 6/23/2020]

EXHIBIT B

September 11, 2020

RE: MCP Guidance on Complying with Reciprocal Requirements

Dear LNPPs,

Per 7.34.4.28 NMAC, reciprocity in the NM Medical Cannabis Program is for participants who hold proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo. **New Mexico residents may not be registered as reciprocal participants and are required to apply to be qualified patients through the NM Medical Cannabis Program.**

Further, LNPP's may not register their employees or board members for reciprocity. LNPP employees or board members who are eligible to become reciprocal participants in the New Mexico Medical Cannabis Program need to register through the New Mexico Medical Cannabis Program License and Compliance Section directly, and not through the LNPP.

As an example, to clarify, individuals from California are issued county authorized medical marijuana identification cards (see: <https://www.cdph.ca.gov/Programs/CHSI/Pages/MMICP.aspx>) when they enroll in the California program. These cards are required as proof of authorization in order to enroll and purchase through the New Mexico reciprocal program. California medical marijuana participants are not issued letters of eligibility by the state of California. Individuals submitting "letters of eligibility in the California medical program" will need to also show the California medical marijuana identification card issued to them by the authorizing California county entity.

A reciprocal participant's medical card, driver's license, and/or state issued identification card must match the information on their proof of authorization, including the name, date of birth, address, and state of residence. Monitoring for compliance with this mandate shall begin immediately.

As a reminder, per the current COVID-19 public health order, all visitors to New Mexico must quarantine for fourteen days or for the entirety of their stay (if shorter). Additionally, it is federally illegal for marijuana and marijuana-derived products to cross state lines, and any reciprocal participant needs to be educated on this point.

Thank you,

Martinik Gonzales

Martinik Gonzales

License and Compliance Program Manager

New Mexico Department of Health

EXHIBIT C




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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] (*Division 2 enacted by Stats. 1937, Ch. 399.*)

CHAPTER 5. Medicine [2000 - 2529.6] (*Chapter 5 repealed and added by Stats. 1980, Ch. 1313, Sec. 2.*)

ARTICLE 25. Recommending Medical Cannabis [2525 - 2529.6] (*Article 25 added by Stats. 2015, Ch. 719, Sec. 5.*)

2525. (a) It is unlawful for a physician and surgeon who recommends cannabis to a patient for a medical purpose to accept, solicit, or offer any form of remuneration from or to a facility issued a state license pursuant to Division 10 (commencing with Section 26000), if the physician and surgeon or his or her immediate family have a financial interest in that facility.

(b) For the purposes of this section, "financial interest" shall have the same meaning as in Section 650.01.

(c) A violation of this section shall be a misdemeanor punishable by up to one year in county jail and a fine of up to five thousand dollars (\$5,000) or by civil penalties of up to five thousand dollars (\$5,000) and shall constitute unprofessional conduct.

(*Amended by Stats. 2018, Ch. 599, Sec. 3. (AB 3261) Effective January 1, 2019.*)

2525.1. The Medical Board of California shall consult with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, on developing and adopting medical guidelines for the appropriate administration and use of medical cannabis.

(*Added by Stats. 2015, Ch. 719, Sec. 5. (SB 643) Effective January 1, 2016.*)

2525.2. An individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California, the California Board of Podiatric Medicine, or the Osteopathic Medical Board of California shall not recommend medical cannabis to a patient, unless that person is the patient's attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code.

(*Amended by Stats. 2017, Ch. 775, Sec. 96. (SB 798) Effective January 1, 2018.*)

2525.3. Recommending medical cannabis to a patient for a medical purpose without an appropriate prior examination and a medical indication constitutes unprofessional conduct.

(*Added by Stats. 2015, Ch. 719, Sec. 5. (SB 643) Effective January 1, 2016.*)

2525.4. It is unprofessional conduct for any attending physician recommending medical cannabis to be employed by, or enter into any other agreement with, any person or entity dispensing medical cannabis.

(*Added by Stats. 2015, Ch. 719, Sec. 5. (SB 643) Effective January 1, 2016.*)

2525.5. (a) A person shall not distribute any form of advertising for physician recommendations for medical cannabis in California unless the advertisement bears the following notice to consumers:

NOTICE TO CONSUMERS: The Compassionate Use Act of 1996 ensures that seriously ill Californians have the right to obtain and use cannabis for medical purposes where medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of medical cannabis. Recommendations must come from an attending physician as defined in Section 11362.7 of the Health and Safety Code. Cannabis is a Schedule I drug according to the federal Controlled Substances Act. Activity related to cannabis use is subject to federal prosecution, regardless of the protections provided by state law.

(b) Advertising for attending physician recommendations for medical cannabis shall meet all of the requirements in Section 651. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discounts, premiums, gifts, or statements of a similar nature.

(Added by Stats. 2015, Ch. 719, Sec. 5. (SB 643) Effective January 1, 2016.)

2529. (a) Graduates of the Southern California Psychoanalytic Institute, the Los Angeles Psychoanalytic Society and Institute, the San Francisco Psychoanalytic Institute, the San Diego Psychoanalytic Center, or institutes deemed equivalent by the Medical Board of California who have completed clinical training in psychoanalysis may engage in psychoanalysis as an adjunct to teaching, training, or research and hold themselves out to the public as psychoanalysts, and students in those institutes may engage in psychoanalysis under supervision, if the students and graduates do not hold themselves out to the public by any title or description of services incorporating the words "psychological," "psychologist," "psychology," "psychometrists," "psychometrics," or "psychometry," or that they do not state or imply that they are licensed to practice psychology.

(b) Those students and graduates seeking to engage in psychoanalysis under this chapter shall register with the Medical Board of California, presenting evidence of their student or graduate status. The board may suspend or revoke the exemption of those persons for unprofessional conduct as defined in Sections 726, 2234, 2235, and 2529.1

(Amended by Stats. 2017, Ch. 775, Sec. 98. (SB 798) Effective January 1, 2018.)

2529.1. (a) The use of any controlled substance or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the registrant, or to any other person or to the public, or to the extent that this use impairs the ability of the registrant to practice safely or more than one misdemeanor or any felony conviction involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of this unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The board may order discipline of the registrant in accordance with Section 2227 or may order the denial of the registration when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing this person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(Amended by Stats. 2018, Ch. 571, Sec. 9. (SB 1480) Effective January 1, 2019.)

2529.5. (a) Each person to whom registration is granted under the provisions of this chapter shall pay into the Contingent Fund of the Medical Board of California a fee to be fixed by the Medical Board of California at a sum not in excess of one hundred dollars (\$100).

(b) The registration shall expire after two years. The registration may be renewed biennially at a fee to be fixed by the board at a sum not in excess of fifty dollars (\$50). Students seeking to renew their registration shall present to the board evidence of their continuing student status.

(c) The money in the Contingent Fund of the Medical Board of California shall be used for the administration of this chapter.

(Amended by Stats. 2018, Ch. 571, Sec. 10. (SB 1480) Effective January 1, 2019.)

2529.6. (a) Except as provided in subdivisions (b) and (c), the board shall revoke the registration of any person who has been required to register as a sex offender pursuant to Section 290 of the Penal Code for conduct that occurred on or after January 1, 2017.

(b) This section shall not apply to a person who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

(c) This section shall not apply to a person who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law.

(d) A proceeding to revoke a registration pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 2018, Ch. 571, Sec. 11. (SB 1480) Effective January 1, 2019.)

Type text

**BUREAU OF CANNABIS CONTROL
TEXT OF REGULATIONS**

**CALIFORNIA CODE OF REGULATIONS
TITLE 16
DIVISION 42. BUREAU OF CANNABIS
CONTROL**

ORDER OF ADOPTION

Adopt Sections 5000, 5001, 5002, 5003, 5004, 5005, 5006, 5007, 5007.1, 5007.2, 5008, 5009, 5010, 5010.1, 5010.2, 5010.3, 5011, 5012, 5013, 5014, 5015, 5016, 5017, 5018, 5019, 5020, 5021, 5022, 5023, 5024, 5024.1, 5025, 5026, 5027, 5028, 5030, 5031, 5032, 5033, 5034, 5035, 5036, 5037, 5038, 5039, 5040, 5040.1, 5041, 5041.1, 5042, 5043, 5044, 5045, 5046, 5047, 5048, 5049, 5050, 5051, 5052, 5052.1, 5053, 5054, 5300, 5301, 5302, 5303, 5303.1, 5304, 5305, 5305.1, 5306, 5307, 5307.1, 5307.2, 5308, 5309, 5310, 5311, 5312, 5313, 5314, 5315, 5400, 5402, 5403, 5403.1, 5404, 5405, 5406, 5407, 5408, 5409, 5410, 5411, 5412, 5413, 5414, 5415, 5415.1, 5416, 5417, 5418, 5419, 5420, 5421, 5422, 5423, 5424, 5426, 5427, 5500, 5501, 5502, 5503, 5504, 5505, 5506, 5506.1, 5507, 5600, 5601, 5602, 5603, 5604, 5700, 5701, 5702, 5703, 5704, 5705, 5706, 5707, 5708, 5709, 5710, 5711, 5712, 5713, 5714, 5715, 5717, 5718, 5719, 5720, 5721, 5722, 5723, 5724, 5725, 5726, 5727, 5728, 5729, 5730, 5731, 5732, 5733, 5734, 5735, 5736, 5737, 5738, 5739, 5800, 5801, 5802, 5803, 5804, 5805, 5806, 5807, 5808, 5809, 5810, 5811, 5812, 5813, 5814, 5815, 5900, 5901, 5902, 5903, 5904, and 5905 of Title 16 of the California Code of Regulations to read as follows:

Chapter 1. ALL BUREAU LICENSEES

Article 1. Division Definitions

§ 5000. Definitions.

For the purposes of this division, the definitions in this section shall govern the construction of this division unless otherwise indicated.

- (a) “Act” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act.
- (b) “Branded merchandise” means clothing, hats, pencils, pens, keychains, mugs, water bottles, beverage glasses, notepads, lanyards, cannabis accessories, or other types of merchandise approved by the Bureau with the name or logo of a commercial cannabis business licensed pursuant to the Act. Branded merchandise does not include items containing cannabis or any items that are considered food as defined by Health and Safety Code section 109935.
- (c) “Bureau” means the Bureau of Cannabis Control, previously named the Bureau of Marijuana Control, Bureau of Medical Cannabis Regulation, and Bureau of Medical Marijuana Regulation.
- (d) “Business day” is a day Monday through Friday from 8:00 a.m. to 5:00 p.m. Pacific Time, excluding state holidays, during which the Bureau is closed for business.

- (e) “Cannabis accessories” has the same meaning as in Health and Safety Code section 11018.2.
- (f) “Cannabis goods” means cannabis, including dried flower, and products containing cannabis.
- (g) “Cannabis waste” means waste that contains cannabis and that has been made unusable and unrecognizable in the manner prescribed in section 5054 of this division.
- (h) “Canopy” means the designated area(s) at a licensed premises that will contain mature plants at any point in time.
- (i) “Delivery employee” means an individual employed by a licensed retailer or licensed microbusiness authorized to engage in retail sales who delivers cannabis goods from the licensed retailer or licensed microbusiness premises to a customer at a physical address.
- (j) “Free cannabis goods” means any amount of cannabis goods provided to any person without cost or payment or exchange of any other thing of value.
- (k) “Immature cannabis plant” or “immature plant” means a plant that is nonflowering and is shorter and narrower than 18 inches. For purposes of this division, this definition is applicable to retail activities.
- (l) “Kief” means the resinous trichomes of cannabis that have been separated from the cannabis plant.
- (m) “Limited-access area” means an area in which cannabis goods are stored or held and is only accessible to a licensee and its employees and authorized individuals.
- (n) “Lot number” or “batch number” means a distinctive group of numbers, letters, or symbols or any combination of these that is unique to a group of cannabis goods.
- (o) “Medicinal cannabis patient” includes both a qualified patient as defined in Health and Safety Code section 11362.7 and a person in possession of a valid identification card issued under Health and Safety Code section 11362.71.
- (p) “Package” and “Packaging” means any container or wrapper that may be used for enclosing or containing any cannabis goods for final retail sale. “Package” and “packaging” does not include a shipping container or outer wrapping used solely for the transport of cannabis goods in bulk quantity to a licensee.
- (q) “Pre-roll” means any combination of the following rolled in paper: flower, shake, leaf, or kief that is obtained from accumulation in containers or sifted from loose, dry cannabis flower or leaf with a mesh screen or sieve.
- (r) “Promotional materials” means any form, letter, circular, pamphlet, publication, or other written material directed to a customer or prospective customer to induce retail sales. Promotional material does not include permitted signs, displays, decorations, cannabis accessories, or cannabis goods furnished by a licensed cultivator, licensed manufacturer, licensed distributor, licensed microbusiness, or licensed cannabis event organizer to a retail licensee for advertising purposes. Promotional materials shall have no intrinsic or secondary value.
- (s) “Publicly owned land” means any building or real property that is owned, leased, or occupied by a city, county, state, federal, or other government entity.

(t) “Residential area” is an area that is within 600 feet of any single-family or multifamily residence, other than commercial hotels, motels, and similar establishments for temporary lodging.

(u) “Retail area” means a building, room, or other area that is open to the public, upon the licensed retailer or licensed microbusiness premises authorized to engage in retail sales in which cannabis goods are sold or displayed.

(v) “Sublet” means to lease or rent all or part of a leased or rented property.

(w) “Tamper-evident” means that the cannabis goods packaging is sealed in a manner that prevents the packaging from being opened without obvious destruction of the seal.

(x) “Transport” means the physical movement of cannabis goods from one licensed premises to another licensed premises.

(y) “Vehicle alarm system” is a device or series of devices installed to discourage theft of the vehicle or its contents and is intended to summon general attention or to summon law enforcement as a result of an indication of an attempted breach of the vehicle.

(z) “Wholesale cost” has the same meaning as in regulation adopted by the California Department of Tax and Fee Administration for cannabis taxes.

Authority: Section 26013, Business and Professions Code. Reference: Section 26013, Business and Professions Code.

Article 2. Applications

§ 5001. Temporary Licenses.

(a) A temporary license is a conditional license that authorizes the licensee to engage in commercial cannabis activity as would be permitted under the privileges of a non-temporary license of the same type. A temporary licensee shall follow all applicable rules and regulations as would be required if the licensee held a non-temporary license of the same type.

(b) A temporary license does not obligate the Bureau to issue a non-temporary license nor does the temporary license create a vested right in the holder to either an extension of the temporary license or to the granting of a subsequent non-temporary license.

(c) A temporary license issued under this section shall be valid for 120 days from the effective date. No temporary license shall be effective prior to January 1, 2018.

(d) A temporary license may be extended by the Bureau for additional 90-day periods if a complete application for an annual license has been submitted to the Bureau pursuant to section 5002 of this division prior to the initial expiration date of the temporary license.

(e) The Bureau shall not issue any temporary licenses or extensions after December 31, 2018. Any temporary license issued or extended with an expiration date after December 31, 2018, will be valid until it expires, but shall not be extended beyond the expiration date.

Authority: Section 26013, Business and Professions Code. Reference: Section 26012, Business and Professions Code.

§ 5002. Annual License Application Requirements.

(a) Applications may be completed and submitted online at www.bcc.ca.gov or completed in hard copy and submitted by delivering a printed copy to the Bureau's office(s).

(b) Applicants who submit their applications online shall first register for a user account. To register for a user account, the applicant shall do all of the following:

(1) Create a user name, password, and security question and answer;

(2) Provide an email address; and

(3) Provide the owner's first and last name, primary phone number, social security number or individual taxpayer identification number, date of birth, and mailing address.

(c) An application must be completed by an owner as defined by section 5003 of this division. An application must be submitted to the Bureau for each location and each license type. An application for an annual cannabis license includes the following:

(1) The name of the applicant. For applicants who are individuals, the applicant shall provide both the first and last name of the individual. For applicants who are business entities, the applicant shall provide the legal business name of the applicant.

(2) If applicable, the business trade name ("DBA") of the applicant.

(3) The commercial cannabis license that the applicant is applying for, and whether the applicant is requesting that the license be designated as medicinal, adult-use, or both. Testing laboratory applicants do not have to designate medicinal or adult-use, as testing laboratory licenses allow the holder to test both medicinal and adult-use cannabis.

(4) Payment of an application fee pursuant to section 5014 of this division.

(5) Whether the owner is serving or has previously served in the military. Disclosure of military service is voluntary. An applicant who has served as an active duty member of the Armed Forces of the United States and was honorably discharged and who can provide evidence of such honorable discharge shall have his or her application expedited pursuant to Business and Professions Code section 115.4.

(6) A list of the license types and the license numbers issued from the Bureau and all other state cannabis licensing authorities that the applicant holds, including the date the license was issued and the licensing authority that issued the license.

(7) Whether the applicant has been denied a license or has had a license suspended or revoked by the Bureau or any other state cannabis licensing authority. The applicant shall provide the type of license applied for, the name of the licensing authority that denied the application, and the date of denial.

(8) The physical address of the premises. If the Bureau is unable to confirm that the address provided is valid, then the applicant shall provide a document that confirms the physical address of the premises. Such a document may include a utility bill, printed information from the county assessor, deed, or title.

(9) The mailing address for the applicant, if different from the premises address.

- (10) The telephone number for the premises.
- (11) The website address and email address of the applicant's business.
- (12) The business' federal employer identification number.
- (13) Contact information for the applicant's designated primary contact person including the name, title, phone number, and email address of the individual.
- (14) A description of the business organizational structure of the applicant, such as partnership or corporation.
- (15) All business-formation documents, which may include, but are not limited to, articles of incorporation, bylaws, operating agreements, partnership agreements, and fictitious business name statements. The applicant shall also provide all documents filed with the California Secretary of State, which may include, but are not limited to, articles of incorporation, certificates of stock, articles of organization, certificates of limited partnership, and statements of partnership authority. If the commercial cannabis business is held in trust, the applicant shall provide a copy of the certificate of trust establishing trustee authority.
- (16) A list of every fictitious business name the applicant is operating under including the address where the business is located.
- (17) A commercial cannabis business that is a foreign corporation or foreign limited liability company shall include in its application a certificate of qualification, certificate of registration, or certificate of status issued by the California Secretary of State.
- (18) The applicant shall supply the following financial information:
 - (A) A list of funds belonging to the applicant held in savings, checking, or other accounts maintained by a financial institution. The applicant shall provide, for each account, the financial institution's name, the financial institution's address, account type, account number, and the amount of money in the account.
 - (B) A list of loans made to the applicant. For each loan, the applicant shall provide the amount of the loan, the date of the loan, term(s) of the loan, security provided for the loan, and the name, address, and phone number of the lender.
 - (C) A list of investments made into the applicant's commercial cannabis business. For each investment, the applicant shall provide the amount of the investment, the date of the investment, term(s) of the investment, and the name, address, and phone number of the investor.
 - (D) A list of all gifts of any kind given to the applicant for its use in conducting commercial cannabis activity. For each gift, the applicant shall provide the value of the gift or description of the gift, and the name, address, and phone number of the provider of the gift.
- (19) A complete list of every individual who has a financial interest in the commercial cannabis business as defined in section 5004 of this division, who is not an owner as defined in section 5003 of this division.
- (20) A complete list of every owner of the applicant as defined in section 5003 of this division. Each individual named on this list shall submit the following information:
 - (A) The full name of the owner.

- (B) The owner's title within the applicant entity.
- (C) The owner's date of birth and place of birth.
- (D) The owner's social security number or individual taxpayer identification number.
- (E) The owner's mailing address.
- (F) The owner's telephone number. This may include a number for the owner's home, business, or mobile telephone.
- (G) The owner's email address.
- (H) The owner's current employer.
- (I) The percentage of the ownership interest held in the applicant entity by the owner.
- (J) Whether the owner has an ownership or a financial interest as defined in sections 5003 and 5004, respectively, of this division in any other commercial cannabis business licensed under the Act.
- (K) A copy of the owner's government-issued identification. Acceptable forms of identification are a document issued by a federal, state, county, or municipal government that includes the name, date of birth, height, gender, and picture of the person, such as a driver license.
- (L) A detailed description of the owner's convictions. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Convictions dismissed under Penal Code section 1203.4 or equivalent non-California law must be disclosed. Convictions dismissed under Health and Safety Code section 11361.8 or equivalent non-California law must be disclosed. Juvenile adjudications and traffic infractions under \$300 that did not involve alcohol, dangerous drugs, or controlled substances do not need to be included. For each conviction, the owner shall provide the following:
 - (i) The date of conviction.
 - (ii) Dates of incarceration, if applicable.
 - (iii) Dates of probation, if applicable.
 - (iv) Dates of parole, if applicable.
 - (v) A detailed description of the offense for which the owner was convicted.
 - (vi) A statement of rehabilitation for each conviction. The statement of rehabilitation is to be written by the owner and may contain evidence that the owner would like the Bureau 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, a certificate of rehabilitation under Penal Code section 4852.01, and dated letters of reference from employers, instructors, or professional counselors that contain valid contact information for the individual providing the reference.
- (M) If applicable, a detailed description of any administrative orders or civil judgments for violations of labor standards, any suspension of a commercial cannabis license, revocation of a

commercial cannabis license, or sanctions for unlicensed commercial cannabis activity by a licensing authority, local agency, or state agency against the applicant or a business entity in which the applicant was an owner or officer within the three years immediately preceding the date of the application.

(N) Attestation to the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true, and accurate. I understand that a misrepresentation of fact is cause for rejection of this application, denial of the license, or revocation of a license issued.

(21) Evidence that the applicant has the legal right to occupy and use the proposed location that complies with section 5007 of this division.

(22) Evidence that the proposed premises is in compliance with Business and Professions Code section 26054(b) and section 5026 of this division.

(23) For an applicant with 20 or more employees, the applicant shall attest that the applicant has entered into a labor peace agreement and will abide by the terms of the agreement. The applicant shall submit a copy of the page of the labor peace agreement that contains the signatures of the union representative and the applicant. For applicants who have not yet entered into a labor peace agreement, the applicant shall provide a notarized statement indicating that the applicant will enter into and abide by the terms of a labor peace agreement as soon as reasonably practicable after licensure.

(24) The applicant shall provide a valid seller's permit number issued by the California Department of Tax and Fee Administration, if applicable. If the applicant has not yet received a seller's permit, the applicant shall attest that the applicant is currently applying for a seller's permit.

(25) A diagram of the premises as required by section 5006 of this division.

(26) Proof of a bond as required by section 5008 of this division.

(27) For testing laboratory applications, the certificate(s) of accreditation as required by section 5702 of this division, or the information required for an interim license as required by section 5703 of this division.

(28) When an applicant provides a license, permit, or other authorization from the local jurisdiction where the licensed premises will be or is located, the Bureau will notify the applicable local jurisdiction to confirm the validity of the authorization. If the local jurisdiction does not respond within 10 calendar days, the Bureau shall consider the authorization valid.

(29) All license applications shall include a detailed description of the applicant's operating procedures. Applicants shall use and submit to the Bureau the following forms, which are incorporated by reference:

(A) Transportation Procedures, Form BCC-LIC-015 (New 10/18)

(B) Inventory Procedures, Form BCC-LIC-016 (New 7/18)

(C) Non-Laboratory Quality Control Procedures, Form BCC-LIC-017 (New 10/18)

(D) Security Procedures, Form BCC-LIC-018 (New 10/18)

(E) Delivery Procedures, Form BCC-LIC-020 (New 10/18)

(30) For applicants applying for a microbusiness license, the application shall include a detailed description of the applicant's operating procedures required by this section for each cannabis activity the applicant intends to engage in.

(31) For applicants applying for a testing laboratory license, in addition to the operating procedures required under subsection (c)(29) of this section, the standard application shall include the operating procedures required by Chapter 6 of this division.

(32) The limited waiver of sovereign immunity required by section 5009 of this division, if applicable.

(33) Evidence of exemption from, or compliance with, the California Environmental Quality Act as required by sections 5010-5010.3 of this division.

(34) The applicant's State Employer Identification Number (SEIN) issued by the California Employment Development Department.

(35) For an applicant with more than one employee, the applicant shall attest that the applicant employs, or will employ within one year of receiving a license, one supervisor and one employee who have successfully completed a Cal-OSHA 30-hour general industry outreach course offered by a training provider that is authorized by an OSHA Training Institute Education Center to provide the course.

Authority: Sections 115.4 and 26013, Business and Professions Code. Reference: Sections 115.4, 144, 26012, 26050, 26051.5 and 26055, Business and Professions Code.

§ 5003. Designation of Owner.

(a) All applicants for a commercial cannabis license shall have at a minimum one individual who meets the definition of "owner" under Business and Professions Code section 26001(a) and who will submit the information required of owners under section 5002 of this division.

(b) "Owner" means any of the following:

(1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance.

(2) The chief executive officer of a nonprofit or other entity.

(3) A member of the board of directors of a nonprofit.

(4) The trustee(s) and all persons who have control of the trust and/or the commercial cannabis business that is held in trust.

(5) An individual entitled to a share of at least 20 percent of the profits of the commercial cannabis business.

(6) An individual who will be participating in the direction, control, or management of the person applying for a license. Such an individual includes any of the following:

(A) A general partner of a commercial cannabis business that is organized as a partnership.

(B) A non-member manager or managing member of a commercial cannabis business that is organized as a limited liability company.

(C) An officer or director of a commercial cannabis business that is organized as a corporation.

(c) When an entity is an owner in a commercial cannabis business, all entities and individuals with a financial interest in the entity shall be disclosed to the Bureau and may be considered owners of the commercial cannabis business. For example, this includes all entities in a multi-layer business structure, as well as the chief executive officer, members of the board of directors, partners, trustees and all persons who have control of a trust, and managing members or non-member managers of the entity. Each entity disclosed as having a financial interest must disclose the identities of persons holding financial interests until only individuals remain.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26001 and, 26012, Business and Professions Code.

§ 5004. Financial Interest in a Commercial Cannabis Business.

(a) A financial interest means an agreement to receive a portion of the profits of a commercial cannabis business, an investment into a commercial cannabis business, a loan provided to a commercial cannabis business, or any other equity interest in a commercial cannabis business except as provided in subsection (d). For the purpose of this division, an agreement to receive a portion of the profits includes, but is not limited to, the following individuals:

(1) An employee who has entered into a profit share plan with the commercial cannabis business.

(2) A landlord who has entered into a lease agreement with the commercial cannabis business for a share of the profits.

(3) A consultant who is providing services to the commercial cannabis business for a share of the profits.

(4) A person acting as an agent, such as an accountant or attorney, for the commercial cannabis business for a share of the profits.

(5) A broker who is engaging in activities for the commercial cannabis business for a share of the profits.

(6) A salesperson who earns a commission.

(b) The license application shall include the name, birthdate, and government-issued identification type and number for all individuals who have a financial interest in a commercial cannabis business but are not owners as defined in section 5003(b) of this division. These individuals shall not be required to submit the information required of owners under section 5002(c)(20) of this division.

(c) When an entity has a financial interest in a commercial cannabis business, then all individuals who are owners of that entity shall be considered financial interest holders of the commercial cannabis business. For example, this includes all entities in a multi-layer business

structure, as well as the chief executive officer, members of the board of directors, partners, trustees and all persons who have control of a trust, and managing members or non-member managers of the entity. Each entity disclosed as having a financial interest must disclose the identities of persons holding financial interests until only individuals remain.

(d) Notwithstanding subsection (b), the following persons are not required to be listed on an application for licensure under section 5002(c)(19) of this division:

- (1) A bank or financial institution whose interest constitutes a loan;
- (2) Persons whose only financial interest in the commercial cannabis business is through an interest in a diversified mutual fund, blind trust, or similar instrument;
- (3) Persons whose only financial interest is a security interest, lien, or encumbrance on property that will be used by the commercial cannabis business; and
- (4) Persons who hold a share of stock that is less than 5 percent of the total shares in a publicly traded company.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012 and 26051.5, Business and Professions Code.

§ 5005. Personnel Prohibited from Holding Licenses.

- (a) A license authorized by the Act and issued by the Bureau may not be held by, or issued to, any person holding office in, or employed by, any agency of the State of California or any of its political subdivisions when the duties of such person have to do with the enforcement of the Act or any other penal provisions of law of this State prohibiting or regulating the sale, use, possession, transportation, distribution, testing, manufacturing, or cultivation of cannabis goods.
- (b) This section applies to, but is not limited to, any person employed in the State of California Department of Justice as a peace officer, in any district attorney's office, in any city attorney's office, in any sheriff's office, or in any local police department.
- (c) No person listed in subsection (a) or (b) of this section may have any ownership interest, directly or indirectly, in any business to be operated or conducted under a cannabis license.
- (d) This section does not apply to any person who holds a license in the capacity of executor, administrator, or guardian.

Authority: Section 26013, Business and Professions Code. Reference: Section 26012, Business and Professions Code.

§ 5006. Premises Diagram.

- (a) An applicant shall submit to the Bureau, with the application, a complete and detailed diagram of the proposed premises. The diagram shall be used by the Bureau to determine whether the premises meets the requirements under this division and the Act. The Bureau shall deny an application if the premises does not qualify for licensure pursuant to Business and Professions Code section 26057.
- (b) The diagram shall show the boundaries of the property and the proposed premises to

be licensed, showing all boundaries, dimensions, entrances and exits, interior partitions, walls, rooms, windows, and doorways, and shall include a brief statement or description of the principal activity to be conducted therein.

(c) The diagram shall show and identify commercial cannabis activities that will take place in each area of the premises, and identify limited-access areas. Commercial cannabis activities that shall be identified on the diagram include the following, if applicable to the business operations: storage, batch sampling, loading or unloading of shipments, packaging and labeling, customer sales, loading for deliveries, extraction, infusion, cultivation, and processing.

(d) The diagram shall show where all cameras are located and assign a number to each camera for identification purposes unless the premises is exempt from the video surveillance requirement pursuant to section 5315 of this division.

(e) The diagram shall be to scale.

(f) The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

(g) If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

(h) If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, the diagram shall clearly show the designated entrances and walls under the exclusive control of the applicant for the premises, as well as the designated entrances and walls for each additional premises. The diagram shall also show all proposed common or shared areas of the property. Such areas may include lobbies, bathrooms, hallways, and breakrooms.

(i) If the proposed premises will be a microbusiness that includes cultivation activities, in addition to the requirements of this section, the premises diagram shall also include all the required information for a premises diagram under section 5501(d) of this division.

(j) If a proposed premises is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012 and 26051.5, Business and Professions Code.

§ 5007. Landowner Approval.

(a) If the applicant is not the landowner of the real property upon which the premises is located, the applicant shall provide to the Bureau a document from the landowner or the landowner's agent that states that the applicant has the right to occupy the property and acknowledges that the applicant may use the property for the commercial cannabis activity for which the applicant is applying for licensure. An applicant shall also provide a copy of the rental agreement, as applicable.

(b) If the applicant is the landowner of the real property upon which the premises is located, the applicant shall provide to the Bureau a copy of the title or deed to the property.

(c) If the landowner is a trust, the landowner approval shall come from the person who

holds equitable title in the real property.

Authority: Section 26013, Business and Professions Code. Reference: Section 26051.5, Business and Professions Code.

§ 5007.1. Electronic Signature.

The Bureau will accept an electronic signature that complies with Civil Code section 1633.2(h) on any documents required to be submitted to the Bureau and that are submitted electronically, except documents that are required to be notarized.

Authority: Section 26013, Business and Professions Code. Reference: Section 26013, Business and Professions Code.

§ 5007.2. Use of Legal Business Name.

Applicants and licensees shall use their legal business name on all documents related to commercial cannabis activity.

Authority: Section 26013, Business and Professions Code. Reference: Section 26013, Business and Professions Code.

§ 5008. Bond.

An applicant shall provide proof of having obtained a surety bond of at least \$5,000 payable to the State of California to ensure payment of the cost incurred for the destruction of cannabis goods necessitated by a violation of the Act or the regulations adopted thereunder. All bonds required under this regulation must be issued by a corporate surety licensed to transact surety business in the State of California and shall be issued on the Commercial Cannabis Licensee Bond form under Title 11, California Code of Regulations, Article 56, section 118.1. A bond shall be required for each license.

Authority: Section 26013, Business and Professions Code. Reference: Section 26051.5, Business and Professions Code.

§ 5009. Limited Waiver of Sovereign Immunity.

(a) Any applicant or licensee that may fall within the scope of sovereign immunity that may be asserted by a federally recognized tribe or other sovereign entity must waive any sovereign immunity defense that the applicant or licensee may have, may be asserted on its behalf, or may otherwise be asserted in any state administrative or judicial enforcement actions against the applicant or licensee, regardless of the form of relief sought, whether monetary or otherwise, under the state laws and regulations governing commercial cannabis activity. The applicant or licensee must submit a written waiver of sovereign immunity to the Bureau with any license application or renewal, which is valid for the period of the license. The written waiver shall include that the applicant or licensee has the lawful authority to enter into the waiver required by this section, the applicant or licensee hereby waives sovereign immunity, and the applicant or licensee agrees to do all of the following:

(1) Provide documentation to the Bureau that establishes that the applicant or licensee has the lawful authority to enter into the waiver required by this section;

(2) Conduct all commercial cannabis activity in full compliance with the state laws and regulations governing commercial cannabis activity, including submission to all enforcement provisions thereof;

(3) Allow access as required by state statute or regulation by persons or entities charged with duties under the state laws and regulations governing commercial cannabis activity to any licensed premises or property at which the applicant conducts any commercial cannabis activity, including licensed premises or property where records of commercial cannabis activity are maintained by or for the applicant or licensee;

(4) Provide any and all records, reports, and other documents as may be required under the state laws and regulations governing commercial cannabis activity;

(5) Conduct commercial cannabis activity with other state commercial cannabis licensees only, unless otherwise specified by state law;

(6) Meet all of the requirements for licensure under the state laws and regulations governing the conduct of commercial cannabis activity, and provide truthful and accurate documentation and other information of the applicant's qualifications and suitability for licensure as may be requested; and

(7) Submit to the personal and subject matter jurisdiction of the California courts to address any matter related to the waiver or the commercial cannabis application, license, or activity, and that all such matters and proceedings shall be governed, construed and enforced in accordance with California substantive and procedural law, including but not limited to the Medicinal and Adult- Use Regulation and Safety Act and the Administrative Procedure Act.

(b) The Bureau shall not approve an application for a state license if approval of the license would violate the provisions of any local ordinance or regulation adopted in accordance with Business and Professions Code section 26200 that is issued by the county or, if within a city, the city, within which the licensed premises is to be located.

(c) Any applicant or licensee must immediately notify the Bureau of any changes that may materially affect the applicant or licensee's compliance with subsection (a) of this section.

(d) Any failure by an applicant or licensee to comply with the requirements of subsections (b) or (c) of this section shall be a basis for denial of an application or renewal or discipline of a licensee.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26050 and 26051.5, Business and Professions Code.

§ 5010. Compliance with the California Environmental Quality Act (CEQA).

(a) For purposes of complying with the California Environmental Quality Act (CEQA):

(1) "Project" means the commercial cannabis activity or activities for which an annual license application is submitted to the Bureau and which requires the Bureau to engage in discretionary review.

(2) “CEQA Guidelines” means the Guidelines for Implementation of the California Environmental Quality Act codified at Title 14, California Code of Regulations, section 15000 et seq.

(3) “Environmental document” has the same meaning as section 15361 of the CEQA Guidelines. Environmental documents are prepared by the applicant or the local jurisdiction that analyze the commercial cannabis activity or activities and which assess whether the project has the potential to generate significant adverse environmental impacts.

(b) An applicant may provide evidence of compliance with CEQA by submitting a copy of an environmental document previously certified or adopted by the local jurisdiction that evaluated the project.

(c) If a previously certified or adopted environmental document is not available or does not exist, and if the Bureau does not determine that the project is exempt from CEQA as provided in section 5010.2 of this division, the applicant shall provide information to enable the Bureau to determine what type of environmental document should be prepared by submitting the CEQA Project-Specific Information Form, BCC-LIC-025 (New 10/18), incorporated herein by reference. Such information shall include at least the following:

(1) The project location and surrounding land use, which shall:

(A) Describe the project location, including street address, city, county, Assessor’s Parcel Number, major cross streets, general plan designation, zoning designation, and any other physical description that clearly indicates the project site location.

(B) Describe the surrounding land uses and zoning designations within a one-half mile radius of the project and list all abutting land uses.

(C) Include a vicinity map and aerial image to show the project location.

(D) Include photographs, not larger than 8 ½ by 11 inches, of existing visual conditions as observed from publicly accessible vantage point(s).

(2) A project description, which shall:

(A) Describe the activities included in the project application and identify any other commercial cannabis activity or activities occurring at the proposed premises.

(B) Quantify the project size (total floor area of the project), and the lot size on which the project is located, in square feet.

(C) List and describe any other related public agency permits and approvals, including any entitlements, required for this project, including those required by a planning commission, local air district, or regional water board.

(D) Identify whether the applicant is licensed by, or has applied for licensure from, the California Department of Food and Agriculture or the State Department of Public Health to engage in commercial cannabis activity at the proposed premises.

(E) Estimate the number of anticipated employees onsite, occupancy during operating hours, and frequency of deliveries or shipments originating from and/or arriving to the project site, and describe the anticipated transportation activity at the project site including the effects of the

project related to public transit, bicycle, or pedestrian facilities.

(F) Identify the location, type, and quantity of hazardous materials, as defined by Health and Safety Code section 25260, that are stored, used, or disposed of at the project site and a copy of the Hazardous Material Business Plan (HMBP) prepared for the proposed premises, if any.

(G) Discuss whether the project will increase the quantity and type of solid waste, as defined by Public Resources Code section 40191, or hazardous waste, as defined by Health and Safety Code section 25117, that is generated or stored onsite.

(H) Describe the project's anticipated operational energy needs, identify the source of energy supplied for the project and the anticipated amount of energy per day, and explain whether the project will require an increase in energy demand and the need for additional energy resources.

(3) The Bureau shall consider, for purposes of evaluating compliance with CEQA, both the individual and cumulative impacts of all commercial cannabis activities occurring at the proposed premises.

Authority: Section 26013, Business and Professions Code. Reference: Section 26055, Business and Professions Code.

§ 5010.1. Review of Previously Prepared Environmental Documents Pursuant to CEQA.

(a) When the project has been evaluated in a previously certified or adopted environmental document, the Bureau will evaluate the project as a responsible agency as provided in section 15096 of the CEQA Guidelines.

(b) The Bureau may require subsequent environmental review if one or more of the events outlined in Public Resources Code section 21166 or section 15162 of the CEQA Guidelines occurs.

Authority: Section 26013, Business and Professions Code. Reference: Section 26055, Business and Professions Code; and Section 21166, Public Resources Code.

§ 5010.2 CEQA Exempt Projects.

(a) An applicant may submit documentation to the Bureau demonstrating that the project is exempt from further environmental review pursuant to CEQA, because the project falls within a class of projects determined not to have significant effect on the environment, by submitting the CEQA Exemption Petition, BCC-LIC-026 (New 10/18), incorporated herein by reference.

(b) Documentation submitted to the Bureau in support of a determination that the project is exempt from further environmental review under CEQA shall, at minimum, include the following information:

(1) Project location and surrounding land use, as required in section 5010 of this division;

(2) Project description, as required in section 5010 of this division; and

(3) A written justification to support a determination that the project is categorically exempt. The written justification shall list the category and class the exemption falls under and shall explain how the project fits the specified exemption. The justification shall also demonstrate that none of

the exceptions to categorical exemptions described in section 15300.2 of the CEQA Guidelines apply to the project.

(c) Upon review, if the Bureau determines that the project is exempt from further CEQA review, and approves an application for annual licensure, the Bureau will file a Notice of Exemption with the State Clearinghouse within 5 business days after approval of the project as required by section 15062(c) of the CEQA Guidelines.

Authority: Section 26013, Business and Professions Code. Reference: Section 26055, Business and Professions Code.

§ 5010.3 Preparation of CEQA Environmental Documents for Applicant.

If the Bureau determines that a project does not qualify for an exemption, or that the circumstances described in Public Resources Code section 21166 and section 15162 of the CEQA Guidelines require subsequent environmental review, the Bureau may charge the applicant for the costs of preparation for any supplemental environmental document as well as the Bureau's costs for procedures to comply with CEQA, unless the Bureau specifies otherwise.

Authority: Section 26013, Business and Professions Code. Reference: Section 26055, Business and Professions Code.

§ 5011. Additional Information.

The Bureau may request additional information and documents from the applicant. The Bureau will provide the applicant a deadline for submittal of additional information. The Bureau will consider the complexity of the information requested and the ease with which the information can be obtained and transmitted to the Bureau by the applicant in determining the deadline.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26031, 26050 and 26051.5, Business and Professions Code.

§ 5012. Incomplete Applications.

(a) If the Bureau determines that the application is incomplete, the Bureau may provide notice to the applicant in accordance with Business and Professions Code section 124.

(b) If the Bureau issues a notice pursuant to Business and Professions Code section 124, an applicant has one year from the date of the notice in subsection (a) of this section to correct all deficiencies. If the applicant fails to correct the deficiencies within the one-year period and has not responded to the Bureau's attempts to contact the applicant, the application shall be considered abandoned under Business and Professions Code section 142.

(c) An applicant may reapply at any time following an abandoned application.

(d) The Bureau will not refund application fees for an incomplete or abandoned application.

Authority: Section 26013, Business and Professions Code. Reference: Sections 124, 142, 26050 and 26051.5, Business and Professions Code.

§ 5013. Withdrawal of Application.

- (a) An applicant may withdraw an application at any time prior to the Bureau’s issuance of a license or denial of a license.
- (b) Requests to withdraw an application must be submitted to the Bureau in writing, dated, and signed by the applicant.
- (c) In accordance with Business and Professions Code section 118, withdrawal of an application shall not, unless the Bureau has consented in writing to such withdrawal, deprive the Bureau of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.
- (d) The Bureau will not refund application fees for a withdrawn application.
- (e) An applicant may reapply at any time following the withdrawal of an application and will be required to submit a new application and fee.

Authority: Section 26013, Business and Professions Code. Reference: Sections 118 and 26050, Business and Professions Code.

Article 3. Licensing

§ 5014. Fees.

- (a) The application fee for an annual license under section 5002 of this division, a cannabis event organizer license under section 5600 of this division, a temporary cannabis event license under section 5601 of this division for each event, and physical modification of the premises under section 5027 of this division shall be paid by an applicant or licensee as provided by this division. Applicants and licensees shall pay the appropriate fee as outlined in this section.

**Application Fee
Schedule**

License Type	Fee Per Application
All Annual Licenses	\$ 1,000
Cannabis Event Organizer License	\$ 1,000
Temporary Cannabis Event License	\$ 1,000
Physical Modification of Premises	\$ 500

- (b) The annual licensing fee for each license shall be paid by an applicant or licensee after the Bureau has approved the application. The Bureau shall not issue the license until the annual licensing fee has been paid.
- (c) To determine the appropriate license fee due, the applicant or licensee shall first estimate the gross revenue for the 12-month license period of the license. Based on the license type sought, the applicant or licensee shall identify the appropriate tier category in which their

expected gross revenue belongs, as identified in the Annual License Fee Schedule chart found in this section. The license fee associated with the licensing tier category the applicant or licensee has identified using their expected gross revenue shall be the license fee due for the application or renewal.

Annual License Fee Schedule

License Type	Gross Revenue (\$ Max. Per License)	Fee Per License
Testing Laboratory Type 8	Less than or equal to \$160,000	\$3,000
	More than \$160,000 and less or equal to \$320,000	\$6,000
	More than \$320,000 and less or equal to \$480,000	\$8,000
	More than \$480,000 and less or equal to \$800,000	\$13,000
	More than \$800,000 and less or equal to \$1.2 million	\$20,000
	More than \$1.2 million and less or equal to \$2.0 million	\$32,000
	More than \$2.0 million and less or equal to \$2.8 million	\$48,000
	More than \$2.8 million and less or equal to \$4.4 million	\$72,000
	More than \$4.4 million	\$112,000
Distributor Type 11 Type 13 (unless only engaging in transport only self-distribution)	Less than or equal to \$1.0 million	\$1,500
	More than \$1.0 million and less or equal to \$2.5 million	\$6,000
	More than \$2.5 million and less or equal to \$5.0 million	\$11,250
	More than \$5.0 million and less or equal to \$10.0 million	\$22,500
	More than \$10.0 million and less or equal to \$20.0 million	\$45,000
	More than \$20.0 million and less or equal to \$30.0 million	\$75,000

	More than \$30.0 million and less or equal to \$50.0 million	\$120,000
	More than \$50.0 million and less or equal to \$70.0 million	\$180,000
	More than \$70.0 million	\$240,000
Distributor Transport Only Self-Distribution Type 13	Less than or equal to \$1,000	\$200
	More than \$1,000 and less or equal to \$3,000	\$500
	More than \$3,000	\$1,000
Retailer Type 9 Type 10	Less than or equal to \$500,000	\$2,500
	More than \$500,000 and less or equal to \$750,000	\$5,500
	More than \$750,000 and less or equal to \$1.0 million	\$7,500
	More than \$1.0 million and less or equal to \$1.5 million	\$11,000
	More than \$1.5 million and less or equal to \$2.0 million	\$14,500
	More than \$2.0 million and less or equal to \$3.0 million	\$22,500
	More than \$3.0 million and less or equal to \$4.0 million	\$30,500
	More than \$4.0 million and less or equal to \$5.0 million	\$38,500
	More than \$5.0 million and less or equal to \$6.0 million	\$46,500
	More than \$6.0 million and less or equal to \$7.5 million	\$57,000
	More than \$7.5 million	\$96,000
Microbusiness Type 12	Less than or equal to \$1.0 million	\$5,000
	More than \$1.0 and less or equal to \$2.0 million	\$12,000
	More than \$2.0 and less or equal to \$3.00 million	\$20,000

	More than \$3.0 and less or equal to \$4.0 million	\$32,000
	More than \$4.0 and less or equal to \$6.0 million	\$45,000
	More than \$6.0 and less or equal to \$7.0 million	\$60,000
	More than \$7.0 and less or equal to \$10.0 million	\$80,000
	More than \$10.0 and less or equal to \$20.0 million	\$100,000
	More than \$20.0 and less or equal to \$30.0 million	\$120,000
	More than \$30.0 and less or equal to \$40.0 million	\$140,000
	More than \$40.0 and less or equal to \$50.0 million	\$160,000
	More than \$50.0 and less or equal to \$60.0 million	\$180,000
	More than \$60.0 and less than or equal to \$80.0 million	\$220,000
	More than \$80 million	\$300,000

(d) Notwithstanding the fees identified above, cannabis event organizers shall pay the appropriate fee as outlined in this section.

Annual License Fee Schedule for Cannabis Event Organizers

License Type	Planned Operations (Number of Operations)	Fee Per License
Cannabis Event Organizer	0-5 events annually	\$3,000
	6-10 events annually	\$5,000
	11-20 events annually	\$9,000
	Greater than 20 events annually	\$20,000

(e) All fees are nonrefundable.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26051.5 and 26180, Business and Professions Code.

§ 5015. Payment of Fees.

(a) Any fee specified in this division shall be made to the Bureau of Cannabis Control by cash, check, money order, debit card, or credit card. Check and money order payments may be made out to the Bureau of Cannabis Control or the Department of Consumer Affairs.

(b) If the fee is paid by debit or credit card:

(1) The payment shall be made through the Bureau's online licensing system; and

(2) The applicant or licensee may be required to pay any associated processing or convenience fees to the third-party vendor processing the payment on behalf of the Bureau.

(c) Failure to pay the appropriate licensing fee is grounds for discipline. If the Bureau determines that the licensee paid an amount less than the appropriate licensing fee under section 5014 of this division, the licensee will be required to pay the balance of the appropriate fee and a penalty fee of 50 percent of the appropriate licensing fee. The Bureau in its discretion may waive the penalty fee.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26051.5 and 26180, Business and Professions Code.

§ 5016. Priority Licensing.

(a) Priority licensing is available for annual licenses only, and is not applicable to any temporary or cannabis event organizer license.

(b) To be eligible for priority licensing, an applicant must be able to demonstrate that the applicant operated in compliance with the Compassionate Use Act of 1996 and its implementing laws before September 1, 2016. Eligibility for priority licensing shall be established by one of the following methods:

(1) The applicant is included on the list provided to the Bureau by the local jurisdiction in response to the Bureau's request required by Business and Professions Code section 26054.2.

(2) If the local jurisdiction does not provide a list to the Bureau or the applicant's name does not appear on the list provided to the Bureau, the applicant shall provide to the Bureau evidence of operation in compliance with the Compassionate Use Act of 1996. Such evidence shall be in the

form of a document issued or signed by the applicant's local jurisdiction that contains the following:

(A) Name of the applicant;

(B) Address of the premises to be licensed;

(C) License type(s) that the applicant is applying to the Bureau for;

(D) Name of the local jurisdiction;

(E) Name of the local jurisdiction office that is responsible for enforcing compliance with the Compassionate Use Act of 1996;

(F) Name and contact information for the person authorized by the local jurisdiction to sign on its behalf;

- (G) Signature of the person authorized to sign on behalf of the local jurisdiction; and
- (H) A statement to the effect of: “The above–named party is currently conducting commercial cannabis activity in this jurisdiction and has been operating in compliance with the Compassionate Use Act of 1996 since before September 1, 2016.”
- (c) The Bureau shall not provide priority licensing pursuant to this section after December 31, 2019.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012 and 26054.2, Business and Professions Code.

§ 5017. Substantially Related Offenses and Criteria for Rehabilitation.

- (a) For the purpose of license denial, convictions that are substantially related to the qualifications, functions, or duties of the business for which the application is made include:
 - (1) A violent felony conviction, as specified in Penal Code section 667.5(c).
 - (2) A serious felony conviction, as specified in Penal Code section 1192.7(c).
 - (3) A felony conviction involving fraud, deceit, or embezzlement.
 - (4) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.
 - (5) A felony conviction for drug trafficking with enhancements pursuant to Health and Safety Code section 11370.4 or 11379.8.
- (b) Except as provided in subsections (a)(4) and (a)(5) of this section and notwithstanding Chapter 2 (commencing with Section 480) of Division 1.5 of the Business and Professions Code, a prior conviction, where the sentence, including any term of probation, incarceration, or supervised release, is completed, for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance is not considered substantially related, and shall not be the sole ground for denial of a license. Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.
- (c) When evaluating whether an applicant who has been convicted of a criminal offense that is substantially related to the qualifications, functions, or duties of the business for which the application is made should be issued a license, the Bureau shall consider the following criteria of rehabilitation:
 - (1) The nature and severity of the act or offense;
 - (2) Whether the person has a felony conviction based on possession or use of cannabis or cannabis products that would not be a felony if the person was convicted of the offense on the date of the person’s application;
 - (3) The applicant’s criminal record as a whole;

(4) Evidence of any act committed subsequent to the act or offense under consideration that could be considered grounds for denial, suspension, or revocation of a commercial cannabis activity license;

(5) The time that has elapsed since commission of the act or offense;

(6) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant;

(7) If applicable, evidence of dismissal under Penal Code sections 1203.4, 1203.4a, 1203.41 or another state's similar law;

(8) If applicable, a certificate of rehabilitation obtained under Penal Code section 4852.01 or another state's similar law; and

(9) Other evidence of rehabilitation submitted by the applicant.

(d) If an applicant has been denied a license based on a conviction, the applicant may request a hearing pursuant to Business and Professions Code section 26058 to determine if the applicant should be issued a license.

Authority: Section 26013, Business and Professions Code. Reference: Sections 482, 26012 and 26057, Business and Professions Code.

§ 5018. Additional Grounds for Denial of a License.

In addition to the reasons for denial in Business and Professions Code section 26057, a license may be denied for the following reasons:

(a) The applicant's proposed premises does not fully comply with standards set in regulation.

(b) The applicant's proposed or licensed premises is substantially different from the diagram of the proposed premises submitted by the applicant, in that the size, layout, location of common

entryways, doorways, or passage ways means of public entry or exit, or identification of limited-access areas within the licensed premises is not the same.

(c) The applicant denied the Bureau access to the licensed premises.

(d) The applicant made a material misrepresentation on the application.

(e) The applicant did not correct the deficiencies within the application in accordance with sections 5002 and 5012 of this division.

(f) The applicant has been denied a license, permit, or other authorization to engage in commercial cannabis activity by a state or local licensing authority.

(g) The applicant's proposed premises is not in compliance with Division 13 (commencing with Section 21000) of the Public Resources Code.

(h) The applicant has failed to remit taxes as required under the Revenue and Taxation Code.

(i) The applicant may be denied a license for any violations of law related to the operations of the commercial cannabis business or for any violations of law related to licensure.

Authority: Section 26013, Business and Professions Code. Reference: Sections 480, 490, 26012, 26030 and 26050, Business and Professions Code.

§ 5019. Excessive Concentration.

(a) In determining whether to grant, deny, or renew a license for a retail premises or microbusiness premises authorized to engage in retail sales, the Bureau shall consider if an excessive concentration exists in the area where the licensee will operate. For the purposes of this section “excessive concentration” applies when either of the following conditions exist:

(1) The ratio of licensees to population within the census tract or census division in which the applicant premises is located exceeds the ratio of licensees to population in the county in which the applicant premises is located, unless denial of the application would unduly limit the development of the legal market so as to perpetuate the illegal market for cannabis goods.

(2) The ratio of retail licenses or microbusiness licenses to the population within the census tract, census division, or jurisdiction exceeds that allowable by local ordinance adopted under Business and Professions Code section 26200.

(b) “Population Within the Census Tract or Census Division” as used in this section means the population as determined by the most recent United States decennial or special census. Such population determination shall not operate to prevent an applicant from establishing that an increase of resident population has occurred within the census tract or census division.

(c) “Population in the County” as used in this section shall be determined by the most recent annual population estimate for California counties published by the Demographic Research Unit, State Department of Finance.

(d) Beginning July 1, 2018, the Bureau shall calculate the ratios described in subsection (a) of this section once every six months using the most current available data. The Bureau’s consideration of whether to grant, deny, or renew a license shall be based upon the most recent ratio calculated by the Bureau on the date of the Bureau’s decision.

(e) The existence of an excessive concentration shall not be considered in determining whether to grant, deny, or extend a temporary license under Business and Professions Code section 26050.1.

(f) The applicant may provide reliable evidence establishing, to the satisfaction of the Bureau, that a denial of a license would unduly limit the development of the legal market so as to perpetuate the illegal market for cannabis goods.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012 and 26051, Business and Professions Code.

§ 5020. Renewal of License.

(a) To timely renew a license, a completed license renewal form and annual license fee pursuant to section 5014 of this division shall be received by the Bureau from the licensee no earlier than 60 calendar days before the expiration of the license and no later than 5:00 p.m. Pacific Time on the last business day before the expiration of the license if the renewal form is submitted to the Bureau at its office(s), or no later than 11:59 p.m. on the last business day before the expiration of the license if the renewal form is submitted to the Bureau through its

electronic licensing system. Failure to receive a notice for license renewal does not relieve a licensee of the obligation to renew all licenses as required.

(b) In the event the license is not submitted for renewal prior to the expiration date, the licensee must not sell, transfer, transport, manufacture, test, or distribute any commercial cannabis goods until the license is renewed.

(c) A licensee may submit a license renewal form up to 30 calendar days after the license expires. Any late renewal form will be subject to a late fee equal to 50 percent of the applicable licensing fee required by subsection (a) of this section.

(d) The license renewal form shall contain the following:

(1) The name of the licensee. For licensees who are individuals, the applicant shall provide both the first and last name of the individual. For licensees who are business entities, the licensee shall provide the legal business name of the applicant.

(2) The license number and expiration date.

(3) The licensee's address of record and licensed premises address.

(4) Documentation demonstrating the licensee's gross revenue for the current licensed period, such as a copy of the licensee's state tax return filed with the California Department of Tax and Fee Administration.

(5) Documentation of any change to any item listed in the original application under section 5002 of this division that has not been reported to the Bureau through another process pursuant to the Act or this division.

(6) An attestation that all information provided to the Bureau in the license renewal form and the original application under section 5002 of this division or subsequent notification under sections 5023 and 5024 of this division is accurate and current.

(7) A limited waiver of sovereign immunity pursuant to section 5009 of this division.

(8) For a licensee with more than one employee, the licensee shall attest that it employs, or will employ within one year of renewing the license, one supervisor and one employee who has successfully completed a Cal-OSHA 30-hour general industry outreach course offered by a training provider that is authorized by an OSHA Training Institute Education Center to provide the course.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012 and 26050, Business and Professions Code.

§ 5021. Denial of License.

(a) The Bureau may deny an application for a new license or a renewal of a license for any reason specified in Business and Professions Code section 26057, and on any additional grounds including grounds for denial under section 5018 of this division, and grounds for discipline under the Act or this division.

(b) Upon denial of an application for a license or renewal of a license, the Bureau shall notify the applicant in writing of the reasons for denial, and the right to a hearing to contest the denial.

(c) The applicant may request a hearing to contest the denial by submitting a written request to the Bureau.

(1) The written request for a hearing must be postmarked within 30 calendar days of service of the notification of denial.

(2) If the written request for a hearing is not received within the required timeframe, the applicant's right to a hearing is waived.

(3) Upon timely receipt of the written request for hearing, the Bureau shall set a date for hearing to be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Authority: Section 26013, Business and Professions Code; Reference: Sections 26012, 26057 and 26058, Business and Professions Code.

§ 5022. Cancellation of License.

(a) Every licensee who abandons, quits, or closes the licensed premises for a period exceeding 30 consecutive calendar days shall request in writing that the Bureau cancel the license, within 14 calendar days after closing, quitting, or abandoning the licensed premises, by submitting the Notification and Request Form, BCC-LIC-027 (New 10/18), incorporated herein by reference. The Bureau may revoke the license of a licensee who fails to comply with the provisions of this section. Upon cancellation or revocation of the license, the licensee shall not display and shall destroy the license certificate.

(b) The Bureau may cancel a license at any time upon request by the licensee if there are no outstanding fines or fees due to the Bureau and no disciplinary action is pending.

(c) If a licensee must close the licensed premises for a period exceeding 30 consecutive calendar days to make renovations or repairs, the Bureau may allow the licensee to retain the license if the licensee complies with section 5027 of this division.

(d) A person whose license has been cancelled or revoked pursuant to subsection (a) of this section may submit to the Bureau a written request for the license to be reinstated. Any request shall be submitted to the Bureau prior to the expiration date listed on the cancelled or revoked license. The written request shall specify the reason the licensee failed to comply with subsection (a) of this section and why the license should be reinstated. The Bureau in its discretion may reinstate the license.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012 and 26050, Business and Professions Code.

§ 5023. Business Modifications.

Business modifications to items contained in the application shall be made in accordance with the following:

(a) Changes to standard operating procedures may be made without providing notification to the Bureau, except at renewal as required under section 5020 of this division. Licensees shall maintain a copy of all current and prior operating procedures as required by section 5037 of

this division.

(b) If at the time of licensure, a licensee employed less than 20 employees and later employs 20 or more employees, the licensee shall provide to the Bureau a document attesting that the licensee has entered into a labor peace agreement and will abide by the terms of the agreement, as soon as reasonably practicable once employing 20 or more employees. Once the licensee has entered into the labor peace agreement, the licensee shall provide the Bureau with a copy of the page of the labor peace agreement that contains the signatures of the union representative and the applicant.

(c) Licenses are not transferrable or assignable to another person or owner. In the event of the sale or other transfer of the business or operations covered by the licensee, changes in ownership shall be made in accordance with the following:

(1) If one or more of the owners of a license change, the new owners shall submit the information required under section 5002(c)(20) for each new owner to the Bureau within 14 calendar days of the effective date of the ownership change. The business may continue to operate under the active license while the Bureau reviews the qualifications of the new owner(s) in accordance with the Act and these regulations to determine whether the change would constitute grounds for denial of the license, if at least one existing owner is not transferring his or her ownership interest and will remain as an owner under the new ownership structure. If all owners will be transferring their ownership interest, the business shall not operate under the new ownership structure until a new license application has been submitted to and approved by the Bureau, and all application and license fees for the new application have been paid.

(A) A change in ownership occurs when a new person meets the definition of owner in section 5003 of this division.

(B) A change in ownership does not occur when one or more owners leave the business by transferring their ownership interest to the other existing owner(s).

(2) In cases where one or more owners leave the business by transferring their ownership interest to the other existing owner(s), the owner or owners that are transferring their interest shall provide a signed statement to the Bureau confirming that they have transferred their interest.

(d) When there is a change in persons with financial interest(s) in the commercial cannabis business that do not meet the requirements for a new license application under this section, the licensee shall submit the information required by sections 5002(c)(19) and 5004 of this division to the Bureau within 14 calendar days of the change.

(e) When any of the following changes occur, the licensee shall notify the Bureau within 14 calendar days of the change:

(1) Any change to contact information from the information provided to the Bureau in the original application.

(2) Any change in name if the licensee is an individual, or any change in legal business name if the licensee is a business entity.

(3) Any change in business trade name (DBA) or fictitious business names.

(4) Any change to financial information including funds, loans, investments, and gifts required in the original application under section 5002(c)(18) of this division.

(5) Any change in the bond required under section 5008 of this division.

(6) Any change or lapse in insurance coverage required under section 5308 of this division.

(f) Licensees may request to add an A-designation or M-designation to their license by sending a notification to the Bureau signed by at least one owner as defined in section 5003 of this division. A licensee shall not operate under the requested designation until they have received approval from the Bureau.

(g) Microbusiness licensees may add a commercial cannabis activity to their license or remove a commercial cannabis activity from their license if doing so is consistent with the requirement set forth in section 5500(a) of this division that licensees engage in at least three (3) commercial cannabis activities. Licensees shall request the modification by completing a request to modify the licensed premises pursuant to section 5027 of this division. A licensee shall not engage in a new commercial cannabis activity until they have paid for the modification and received approval from the Bureau.

(h) Licenses may not be transferred from one premises to another. Licensees shall not operate out of a new premises until they have been issued a new license.

(i) For any business modification or notification under this section, licensees shall use and submit to the Bureau the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated herein by reference, unless the change can be made through the Bureau's online system.

Authority: Section 26013, Business and Professions Code. Reference: Sections 136 and 26012, Business and Professions Code.

§ 5024. Death, Incapacity, or Insolvency of a Licensee.

(a) In the event of the death, incapacity, receivership, assignment for the benefit of creditors or other event rendering one or more owners incapable of performing the duties associated with the license, the owner or owners' successor in interest (e.g., appointed guardian, executor, administrator, receiver, trustee, or assignee) shall notify the Bureau in writing, within 14 calendar days, by submitting the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated herein by reference.

(b) To continue operations or cancel the existing license, the successor in interest shall submit to the Bureau the following:

(1) The name of the successor in interest.

(2) The name of the owner(s) for which the successor in interest is succeeding and the license number;

(3) The phone number, mailing address, and email address of the successor in interest; and

(4) Documentation demonstrating that the owner(s) is incapable of performing the duties associated with the license such as a death certificate or a court order, and documentation demonstrating that the person making the request is the owner or owners' successor in interest such as a court order appointing guardianship, receivership, or a will or trust agreement.

(c) The Bureau may give the successor in interest written approval to continue operations on the licensed business premises for a period of time specified by the Bureau:

(1) If the successor in interest or another person has applied for a license from the Bureau for the licensed premises and that application is under review;

(2) If the successor in interest needs additional time to destroy or sell cannabis goods; or

(3) At the discretion of the Bureau.

(d) The successor in interest is held subject to all terms and conditions under which a state cannabis license is held pursuant to the Act.

(e) The approval creates no vested right to the issuance of a state cannabis license.

Authority: Section 26013, Business and Professions Code. Reference: Section 26012, Business and Professions Code.

§ 5024.1. Cannabis Goods After Termination of License.

In the event a license is terminated for any reason while cannabis goods remain on the premises, the following actions may be taken:

(a) The cannabis goods may be destroyed by the former licensee; or

(b) A licensed distributor or licensed microbusiness authorized to engage in distribution may be authorized by the Bureau to purchase and distribute the former licensee's entire inventory stock in accordance with the following:

(1) A licensed distributor or licensed microbusiness authorized to engage in distribution shall, within 14 calendar days of the termination of the former licensee's license, submit a written request to the Bureau, on the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated by reference, for authorization to purchase the cannabis goods from the former licensee; and

(2) Upon approval from the Bureau, the licensed distributor or licensed microbusiness authorized to engage in distribution shall transport the cannabis goods to their premises, arrange for laboratory testing, and perform quality assurance in accordance with Chapter 2 of this division. If the cannabis goods have already been tested in accordance with Chapter 6 of this division and have a valid certificate of analysis for regulatory compliance testing that is less than 12 months old, the cannabis goods are not required to undergo additional testing.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26011.5 and 26013, Business and Professions Code.

§ 5025. Premises.

(a) Each license shall have a designated licensed premises, with a distinct street address and suite number if applicable, for the licensee's commercial cannabis activity. Each licensed premises shall be subject to inspection by the Bureau.

(b) The Bureau may allow a licensee to conduct both adult-use and medicinal commercial cannabis activity on the same licensed premises if all of the following

criteria are met:

(1) The licensee holds both an A-designation and an M-designation on the license for the identical type of commercial cannabis activity; and

(2) The licensee only conducts one type of commercial cannabis activity on the licensed premises.

(c) Licensed retailers and licensed microbusinesses authorized to engage in retail sales shall only serve customers who are within the licensed premises, or at a delivery address that meets the requirements of this division.

(1) The sale and delivery of cannabis goods shall not occur through a pass-out window or a slide-out tray to the exterior of the licensed premises.

(2) Licensed retailers or licensed microbusinesses authorized to engage in retail sales shall not operate as or with a drive-in or drive-through at which cannabis goods are sold to persons within or about a motor vehicle.

(3) No cannabis goods shall be sold and/or delivered by any means or method to any person within a motor vehicle.

(d) Alcoholic beverages as defined in Business and Professions Code section 23004 shall not be stored or consumed on a licensed premises.

(e) Any licensed premises that is adjacent to another premises engaging in manufacturing or cultivation shall be separated from those premises by walls, and any doors leading to the cultivation or manufacturing premises shall remain closed.

(f) Cannabis shall not be dispersed in the air throughout the premises or throughout a portion of the premises by an oil diffuser or any other vaporizing device that is intended to disperse the vapor throughout the premises or throughout a portion of the premises. This section shall not be interpreted to prohibit cannabis consumption on the premises of a licensed retailer or licensed microbusiness authorized to engage in retail sales that is conducted in accordance with Business and Professions Code section 26200(g).

(g) Notwithstanding subsection (c) of this section, an applicant or licensee may have a drive-in or drive-through window only if, prior to June 1, 2018:

(1) The licensee or applicant received a license or permit from the local jurisdiction for a premises including a drive-in or drive-through window which was disclosed on the local application; or

(2) The licensee or applicant has submitted an application to the local jurisdiction for a license or permit which, at the time of submission of the application, included information that a drive-in or drive-through window was already part of, or proposed to be part of, the premises, and after June 1, 2018, the local jurisdiction approves the premises with a drive-in or drive-through window.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26001, 26012 and 26053, Business and Professions Code.

§ 5026. Premises Location.

(a) A premises licensed under this division shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued.

(b) Notwithstanding subsection (a) of this section, if a local jurisdiction has issued a license or permit to conduct commercial cannabis activity at a premises that is located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center, the Bureau may approve the premises for licensure if the following conditions are met:

(1) The applicant submits a copy of a valid license or permit from the local jurisdiction with the application for licensure; and

(2) The local jurisdiction notifies the Bureau that the applicant is in compliance with all applicable local ordinances and regulations pursuant to Business and Professions Code section 26055(g)(2)(C).

(c) A licensed premises shall not be in a location that requires persons to pass through a business that sells alcohol or tobacco or a private residence to access the licensed premises.

(d) A licensed premises shall not be in a location that requires persons to pass through the licensed premises to access a business that sells alcohol or tobacco or a private residence.

(e) A licensed premises shall not be located within a private residence.

(f) Licensees shall ensure that the Bureau has immediate access to their licensed premises. If the Bureau is denied access to a licensee's premises for any reason, the licensee shall be held responsible and subject to discipline. If the Bureau is denied access to one licensee's premises because of another licensee's refusal to grant access when the only access to one licensed premises is through another licensed premises, all licensees shall be held responsible and subject to discipline.

(g) Nothing in this section shall be interpreted to prohibit two or more licensed premises from occupying separate portions of the same parcel of land or sharing common use areas, such as a bathroom, breakroom, hallway, or building entrance.

(h) All structures included as part of the licensed premises shall be permanently affixed to the land by a method that would cause the structure to ordinarily remain affixed for an indefinite period of time. Structures that will not be considered to be permanent structures include, but are not limited to, shipping containers that are not affixed to the land, modular buildings that are not affixed to the land, structures that rest on wheels, or any structure that can be readily moved.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26051.5, 26054 and 26055, Business and Professions Code.

§ 5027. Physical Modification of Premises.

(a) A licensee shall not, without the prior written approval of the Bureau, make a physical change, alteration, or modification of the licensed premises that materially or substantially alters the licensed premises or the use of the licensed premises from the premises diagram originally filed with the license application. A licensee whose licensed premises is to be materially or substantially changed, modified, or altered is responsible for filing a request for premises modification with the Bureau.

(b) Material or substantial changes, alterations, or modifications requiring approval include, but are not limited to:

(1) The removal, creation, or relocation of a common entryway, doorway, passage, or a means of public entry or exit, when such common entryway, doorway, or passage alters or changes limited-access areas within the licensed premises;

(2) The removal, creation, or relocation of a wall or barrier; or

(3) Changing the activities conducted in or the use of an area identified in the last premises diagram provided to the Bureau.

(c) A licensee shall request approval of a physical change, alteration, or modification in writing, by submitting the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated herein by reference, and the request shall include:

(1) A new premises diagram that conforms to requirements in section 5006 of this division; and

(2) A fee pursuant to section 5014 of this division.

(d) A licensee shall provide additional documentation requested by the Bureau to evaluate the licensee's request to modify the licensed premises.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012 and 26055, Business and Professions Code.

§ 5028. Subletting of Premises.

A licensee shall not sublet any area designated as the licensed premises for the licensee's commercial cannabis activity.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012 and 26070, Business and Professions Code.

§ 5030. Licensee's Responsibility for Acts of Employees and Agents.

In construing and enforcing the provisions of the Act and the regulations in this division, the act, omission, or failure of an agent, officer, representative, or other person acting for or employed by a licensee, within the scope of his or her employment or office, shall in every case be deemed the act, omission, or failure of the licensee.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26031 and 26110, Business and Professions Code.

§ 5031. Age Restriction.

Employees or persons retained by a licensee to work within or on a licensed premises or to handle cannabis goods shall be at least 21 years of age.

Authority: Section 26013, Business and Professions Code. Reference: Section 26140, Business and Professions Code.

§ 5032. Commercial Cannabis Activity.

(a) All commercial cannabis activity shall be conducted between licensees. Licensed retailers

and licensed microbusinesses authorized to engage in retail sales may conduct commercial cannabis activity with customers in accordance with Chapter 3 of this division.

(b) Licensees shall not conduct commercial cannabis activities on behalf of, at the request of, or pursuant to a contract with any person who is not licensed under the Act.

(c) Licensees may conduct business with other licensees irrespective of the M-designation or A-designation on their licenses.

(d) Licensed distributors or licensed microbusinesses authorized to engage in distribution shall only transport and sell cannabis goods designated as “For Medical Use Only,” pursuant to the requirements prescribed by the State Department of Public Health in regulation, to M-designated retailers or M-designated microbusinesses authorized to engage in retail sales.;

(e) Products designated as “For Medical Use Only,” pursuant to requirements prescribed by the State Department of Public Health in regulation, shall only be sold to medicinal customers by M-designated retailers or M-designated microbusinesses authorized to engage in retail sales.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26001, 26013 and 26053, Business and Professions Code.

§ 5033. Storage of Inventory.

(a) All inventory stored on the licensed premises shall be secured in a limited-access area.

(b) A licensee shall not store cannabis goods outdoors.

(c) Employee break rooms, changing facilities, and bathrooms shall be separated from all storage areas.

(d) Each location where cannabis goods are stored must be separately licensed.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012 and 26070, Business and Professions Code.

§ 5034. Significant Discrepancy in Inventory.

A determination by a licensee on whether a discrepancy in inventory is significant shall be made in accordance with the following:

(a) A significant discrepancy in inventory means a difference in actual inventory compared to records pertaining to inventory of at least 3 percent of the average monthly sales of the licensee.

(b) For the purposes of this section, average monthly sales shall be calculated by taking a per month average of the total sales for the previous 6 months. If the licensee has not been in operation for at least 6 months, only the months in which the licensee was operating shall be used in determining average monthly sales.

(c) For the purposes of this section, the licensee’s acquisition price shall be used to determine the value of cannabis goods in a licensee’s inventory.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070,

Business and Professions Code.

§ 5035. Notification of Criminal Acts, Civil Judgments, Violations of Labor Standards, and Revocation of a Local License, Permit, or Other Authorization After Licensure.

(a) A licensee shall ensure that the Bureau is notified in writing of a criminal conviction of any owner, either by mail or electronic mail, within 48 hours of the conviction. The written notification to the Bureau shall include the date of conviction, the court docket number, the name of the court in which the licensee was convicted, and the specific offense(s) for which the licensee was convicted.

(b) A licensee shall ensure that the Bureau is notified in writing of a civil penalty or judgment rendered against the licensee or any owner in their individual capacity, either by mail or electronic mail, within 48 hours of delivery of the verdict or entry of judgment, whichever is sooner. The written notification shall include the date of verdict or entry of judgment, the court docket number, the name of the court in which the matter was adjudicated, and a description of the civil penalty or judgment rendered against the licensee.

(c) A licensee shall ensure that the Bureau is notified in writing of an administrative order or civil judgment for violations of labor standards against the licensee or any owner in their individual capacity, either by mail or electronic mail, within 48 hours of delivery of the order. The written notification shall include the date of the order, the name of the agency issuing the order, and a description of the administrative penalty or judgment rendered against the licensee.

(d) A licensee shall ensure that the Bureau is notified in writing of the revocation of a local license, permit, or other authorization, either by mail or electronic mail, within 48 hours of receiving notice of the revocation. The written notification shall include the name of the local agency involved, a written explanation of the proceeding or enforcement action, and the specific violation(s) that led to revocation.

(e) For any notification required under this section, licensees shall use and submit to the Bureau the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated herein by reference.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26030 and 26031, Business and Professions Code.

§ 5036. Notification of Theft, Loss, and Criminal Activity.

(a) A licensee shall notify the Bureau and local law enforcement within 24 hours of discovery of any of the following situations:

(1) The licensee discovers a significant discrepancy, as defined in section 5034 of this division, in its inventory.

(2) The licensee discovers diversion, theft, loss, or any other criminal activity pertaining to the operations of the licensee.

(3) The licensee discovers diversion, theft, loss, or any other criminal activity by an agent or employee of the licensee pertaining to the operations of the licensee.

(4) The licensee discovers loss or unauthorized alteration of records related to cannabis

goods, customers, or the licensee's employees or agents.

(5) The licensee discovers any other breach of security.

(b) The notification to the Bureau pursuant to subsection (a) of this section shall be submitted on the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated herein by reference, and shall include the date and time of occurrence of the theft, loss, or criminal activity, the name of the local law enforcement agency that was notified, and a description of the incident including, where applicable, the item(s) that were taken or lost.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§ 5037. Record Retention.

(a) Each licensee shall keep and maintain the following records related to commercial cannabis activity for at least seven years:

(1) Financial records including, but not limited to, bank statements, sales invoices, receipts, tax records, and all records required by the California Department of Tax and Fee Administration

(formerly Board of Equalization) under title 18, California Code of Regulations, sections 1698 and 4901.

(2) Personnel records, including each employee's full name, social security or individual tax payer identification number, date employment begins, and date of termination of employment if applicable.

(3) Training records including, but not limited to, the content of the training provided and the names of the employees that received the training.

(4) Contracts with other licensees regarding commercial cannabis activity.

(5) Permits, licenses, and other local authorizations to conduct the licensee's commercial cannabis activity.

(6) Security records, except for surveillance recordings required pursuant to section 5044 of this division.

(7) Records relating to the composting or destruction of cannabis goods.

(8) Documentation for data or information entered into the track and trace system.

(9) All other documents prepared or executed by an owner or their employees or assignees in connection with the licensed commercial cannabis business.

(b) All required records shall be prepared and retained in accordance with the following conditions:

(1) Records shall be legible; and

(2) Records shall be stored in a secured area where the records are protected from debris, moisture, contamination, hazardous waste, fire, and theft.

(c) The Bureau may make any examination of the books and records of any licensee as it deems necessary to perform its duties under the Act.

(d) All records are subject to review by the Bureau any time the licensee is exercising the privileges of the license or at any other time as mutually agreed to by the Bureau and the licensee. Prior notice by the Bureau to review records is not necessary. The Bureau may review records outside of the licensee's standard daily business hours.

(e) Records shall be kept in a manner that allows records to be produced for the Bureau immediately upon request at the licensed premises in either hard copy or electronic form, whichever the Bureau requests.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26160 and 26161, Business and Professions Code.

§ 5038. Disaster Relief.

(a) If a licensee is unable to comply with any licensing requirements due to a disaster, the licensee may notify the Bureau of this inability to comply and request relief from the specific licensing requirement.

(b) The Bureau may exercise its discretion to provide temporary relief from specific regulatory requirements in this division and from other licensing requirements when allowed by law.

(c) Temporary relief from specific licensing requirements shall be issued for a reasonable amount of time in order to allow the licensee to recover from the disaster.

(d) The Bureau may require that certain conditions be followed in order for a licensee to receive temporary relief from specific licensing requirements.

(e) A licensee shall not be subject to an enforcement action for a violation of a licensing requirement in which the licensee has received temporary relief.

(f) For the purposes of this section, "disaster" means condition of extreme peril to the safety of persons and property within the state or a county, city and county, or city caused by such conditions as air pollution, fire, flood, storm, tidal wave, epidemic, riot, drought, terrorism, sudden and severe energy shortage, plant or animal infestation or disease, Governor's warning of an earthquake or volcanic prediction, or an earthquake, or similar public calamity, other than conditions resulting from a labor controversy, for which the Governor has proclaimed a state of emergency in accordance with Government Code sections 8558 and 8625, or for which a local governing body has proclaimed a local emergency in accordance with Government Code sections 8558 and 8630.

(g) A licensed premises that has been vacated by a licensee due to a disaster shall not be deemed to have been abandoned or quit under section 5022 of this division.

(h) Notwithstanding subsection (a) of this section, if a licensee needs to move cannabis goods stored on the licensed premises to another location immediately to prevent loss, theft, or degradation of the cannabis goods from the disaster, the licensee may move the cannabis goods without obtaining prior approval from the Bureau if the following conditions are met:

(1) The cannabis goods are moved to a secure location where access to the cannabis goods

can be restricted to the licensee, its employees, and contractors;

(2) The licensee notifies the Bureau in writing, by submitting the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated herein by reference, that the cannabis goods have been moved and that the licensee is requesting relief from complying with specific licensing requirements pursuant to subsection (a) of this section within 24 hours of moving the cannabis goods;

(3) The licensee agrees to grant the Bureau access to the location where the cannabis goods have been moved to for inspection; and

(4) The licensee submits in writing the Notification and Request Form, BCC-LIC-027 (New 10/18), incorporated herein by reference, to the Bureau within 14 calendar days of moving the cannabis goods a request for temporary relief that clearly indicates what statutory and regulatory sections relief is requested from, the time period for which the relief is requested, and the reasons relief is needed for the specified amount of time.

Authority: Section 26013, Business and Professions Code. Reference: Section 26012, Business and Professions Code.

Article 4. Posting and Advertising

§ 5039. License Posting Requirement.

Upon issuance of any license, the licensee shall prominently display the license on the licensed premises where it can be viewed by state and local agencies. If the licensed premises is open to the public, the license shall be displayed in an area that is within plain sight of the public.

Authority: Section 26013, Business and Professions Code. Reference: Section 26012, Business and Professions Code.

§ 5040. Advertising Placement.

(a) Any advertising or marketing, as defined in Business and Professions Code section 26150, that is placed in broadcast, cable, radio, print, and digital communications:

(1) Shall only be displayed after a licensee has obtained reliable up-to-date audience composition data demonstrating that at least 71.6 percent of the audience viewing the advertising or marketing is reasonably expected to be 21 years of age or older;

(2) Shall not use any depictions or images of minors or anyone under 21 years of age;

(3) Shall not contain the use of objects, such as toys, inflatables, movie characters, cartoon characters, or include any other display, depiction, or image designed in any manner likely to be appealing to minors or anyone under 21 years of age; and

(4) Shall not advertise free cannabis goods or giveaways of any type of products, including non- cannabis products. This includes promotions such as:

(A) Buy one product, get one product free;

(B) Free product with any donation; and

(C) Contests, sweepstakes, or raffles.

(b) In addition to the requirements for advertising and marketing in subsection (a) of this section, all outdoor signs, including billboards, shall:

(1) Be affixed to a building or permanent structure;

(2) Comply with the provisions of the Outdoor Advertising Act, commencing with section 5200 of the Business and Professions Code, if applicable; and

(3) Not be located within a 15-mile radius of the California border on an Interstate Highway or on a State Highway that crosses the California border.

(c) For the purposes of this section, “reliable up-to-date audience composition data” means data regarding the age and location demographics of the audience viewing a particular advertising or marketing medium. “Reliable up-to-date audience composition data” does not include data from the most recent United States decennial or special census, or the annual population estimate for California counties published by the Demographic Research Unit, State Department of Finance.

(d) Immediately upon request, a licensee shall provide to the Bureau audience composition data as required in subsection (a) of this section for advertising or marketing placed by the licensee.

(e) If the Bureau determines that audience composition data for advertising or marketing provided by a licensee does not comply with the requirements of subsection (a) of this section, or the licensee fails to provide audience composition data to the Bureau upon request, the licensee shall remove the advertising or marketing placement in question.

(f) In construing and enforcing the advertising provisions of the Act and this division, any action, omission, or failure of an advertising agent, representative, or contractor retained by the licensee shall in every case be deemed the act, omission, or failure of the licensee.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26151 and 26152, Business and Professions Code.

§ 5040.1. Marketing Cannabis Goods as Alcoholic Products.

Licensees shall not sell or transport cannabis goods that are labeled as beer, wine, liquor, spirits, or any other term that may create a misleading impression that the product is an alcoholic beverage as defined in Division 9 of the Business and Professions Code.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26054, 26151 and 26152, Business and Professions Code.

§ 5041. Age Confirmation in Advertising.

(a) Prior to any advertising or marketing from the licensee involving direct, individualized communication or dialogue, the licensee shall use age affirmation to verify that the recipient is 21 years of age or older.

(b) For the purposes of this section, direct, individualized communication or dialogue may occur through any form of communication, including in-person, telephone, physical mail, or electronic.

(c) A method of age verification is not necessary for a communication if the licensee can

verify that the licensee has previously had the intended recipient undergo a method of age affirmation and the licensee is reasonably certain that the communication will only be received by the intended recipient.

(d) A licensee shall use a method of age affirmation before having a potential customer added to a mailing list, subscribe, or otherwise consent to receiving direct, individualized communication or dialogue controlled by a licensee.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26151 and 26152, Business and Professions Code.

§ 5041.1 Branded Merchandise Approval.

(a) If a licensed distributor, licensed retailer, or licensed microbusiness authorized to engage in distribution or retail sales wishes to sell branded merchandise that is not listed in section 5000, subsection (b), of this division, the licensee must receive written approval from the Bureau.

(b) To obtain approval, a licensee must submit a written request to the Bureau for approval to sell a specific item of branded merchandise and provide a photograph of the branded merchandise.

Requests may be submitted by mail to the Bureau office or by email to bcc@dca.ca.gov.

(c) The licensee shall not sell the merchandise until receiving written approval from the Bureau for the specific item of branded merchandise.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26013 and 26152, Business and Professions Code.

Article 5. Security Measures

§ 5042. Limited-Access Areas.

(a) Licensees shall ensure that only employees of the licensee and other authorized individuals access the limited-access areas of the licensed premises.

(b) For the purpose of this section, authorized individuals include outside vendors, contractors, or other individuals conducting business that requires access to the limited-access areas.

(c) An individual who enters the limited-access area and is not employed by the licensee shall be escorted by an employee of the licensee at all times while within the limited-access area.

(d) A licensee shall maintain a record of all authorized individuals who are not employees of the licensee who enter the limited-access areas. The record shall include the name of the individual, the company the individual works for, the reason the individual entered the limited-access area, the date, and the times the individual entered and exited the limited-access area. These records shall be made available to the Bureau immediately upon request.

(e) A licensee shall not receive consideration or compensation for permitting an individual to enter the limited-access areas.

(f) Entrances to all limited-access areas shall have a solid door and a lock meeting the requirements of section 5046 of this division. The door shall remain closed when not in

use during regular business hours.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26160, Business and Professions Code.

§ 5043. Licensee Employee Badge Requirement.

All agents, officers, or other persons acting for or employed by a licensee shall display a laminated or plastic-coated identification badge issued by the licensee at all times while engaging in commercial cannabis activity. The identification badge shall, at a minimum, include the licensee's "doing business as" name and license number, the employee's first name, an employee number exclusively assigned to that employee for identification purposes, and a color photograph of the employee that clearly shows the full front of the employee's face and that is at least 1 inch in width and 1.5 inches in height.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§ 5044. Video Surveillance System.

(a) Each licensed premises shall have a digital video surveillance system with a minimum camera resolution of 1280 × 720 pixels.

(b) The video surveillance system shall at all times be able to effectively and clearly record images of the area under surveillance.

(c) Each camera shall be permanently mounted and in a fixed location. Each camera shall be placed in a location that allows the camera to clearly record activity occurring within 20 feet of all points of entry and exit on the licensed premises, and allows for the clear and certain identification of any person and activities in all areas required to be filmed under subsection (d) of this section.

(d) Areas that shall be recorded on the video surveillance system include the following:

(1) Areas where cannabis goods are weighed, packed, stored, loaded, and unloaded for transportation, prepared, or moved within the licensed premises;

(2) Limited-access areas;

(3) Security rooms;

(4) Areas storing a surveillance-system storage device with at least one camera recording the access points to the secured surveillance recording area; and

(5) Entrances and exits to the licensed premises, which shall be recorded from both indoor and outdoor vantage points.

(e) Licensed retailers and licensed microbusinesses authorized to engage in retail sales shall also record point-of-sale areas and areas where cannabis goods are displayed for sale on the video surveillance system. At each point-of-sale location, camera placement must allow for the recording of the facial features of any person purchasing or selling cannabis goods, or any person in the retail area, with sufficient clarity to determine identity.

- (f) Cameras shall record continuously 24 hours per day and at a minimum of 15 frames per second (FPS).
- (g) The physical media or storage device on which surveillance recordings are stored shall be secured in a manner to protect the recording from tampering or theft.
- (h) Surveillance recordings shall be kept for a minimum of 90 calendar days.
- (i) Surveillance recordings are subject to inspection by the Bureau, and shall be kept in a manner that allows the Bureau to view and obtain copies of the recordings at the licensed premises immediately upon request. The licensee shall also send or otherwise provide copies of the recordings to the Bureau upon request within the time specified by the Bureau.
- (j) Recorded images shall clearly and accurately display the time and date. Time is to be measured in accordance with the standards issued by the United States National Institute of Standards and Technology.
- (k) The video surveillance system shall be equipped with a failure notification system that provides notification to the licensee of any interruption or failure of the video surveillance system or video surveillance-system storage device.
- (l) If multiple licensed premises are contained within the same building, a single video surveillance system covering the entire building may be used by all of the licensees under the following conditions:
- (1) Each applicant or licensee shall disclose on their premises diagram where the surveillance recordings are stored.
 - (2) Each applicant or licensee shall include in their security operating procedures, submitted with the application pursuant to section 5002(c)(29)(D) of this division, an explanation of how the video surveillance system will be shared, including who is responsible for monitoring the video footage and storing any video recordings.
 - (3) All licensees shall have immediate access to the surveillance recordings to produce them pursuant to subsection (i) of this section.
 - (4) All licensees shall be held responsible and subject to discipline for any violations of the video surveillance requirements.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§ 5045. Security Personnel.

- (a) A licensed retailer or licensed microbusiness authorized to engage in retail sales shall hire or contract for security personnel who are at least 21 years of age to provide on-site security services for the licensed retail premises during the hours of operation. All security personnel hired or contracted for by the licensee shall be licensed by the Bureau of Security and Investigative Services and shall comply with Chapters 11.4 and 11.5 of Division 3 of the Business and Professions Code.
- (b) Notwithstanding subsection (a) of this section, a licensed non-storefront retailer or licensed microbusiness who is not engaged in storefront retail sale is not required to hire or contract for

security personnel.

(c) If multiple licensed premises are contained within the same building, security personnel may be shared by all of the licensees to cover the entire building under the following conditions:

(1) Each licensee shall include in their security operating procedures, submitted with the application pursuant to section 5002(c)(29)(D) of this division, an explanation of how security personnel will be shared, including who is responsible for employing or contracting the security personnel.

(2) All licensees shall be held responsible and subject to discipline for any violations of the security personnel requirements.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§ 5046. Locks.

A licensee shall ensure that the limited-access areas described in section 5042 of this division can be securely locked using commercial-grade, nonresidential door locks. A licensee shall also use commercial-grade, nonresidential door locks on all points of entry and exit to the licensed premises.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§ 5047. Alarm System.

(a) A licensee shall maintain an alarm system as defined in Business and Professions Code section 7590.1(n) at the licensed premises.

(b) A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors, and responds to the alarm system.

(c) Upon request, a licensee shall make available to the Bureau all information related to the alarm system, monitoring, and alarm activity.

(d) If multiple licensed premises are contained within the same building, a single alarm system covering the entire building may be used by all of the licensees under the following conditions:

(1) Each licensee shall include in their security operating procedures, submitted with the application pursuant to section 5002(c)(29)(D) of this division, an explanation of how the alarm system will be shared, including who is responsible for contracting with the alarm company.

(2) All licensees shall have access to and be able to provide the information under subsection (c) of this section.

(3) All licensees shall be held responsible and subject to discipline for any violations of the alarm system requirements.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070,

Business and Professions Code.

Article 6. Track and Trace Requirements

§ 5048. Track and Trace System.

(a) A licensee shall create and maintain an active and functional account within the track and trace system prior to engaging in any commercial cannabis activity, including the purchase, sale, test, packaging, transfer, transport, return, destruction, or disposal, of any cannabis goods.

(b) A licensee shall designate one individual owner as the track and trace system account manager. The account manager may authorize additional owners or employees as track and trace system users and shall ensure that each user is trained on the track and trace system prior to its access or use.

(1) The account manager shall attend and successfully complete all required track and trace system training, including any orientation and continuing education.

(2) If the account manager did not complete the required track and trace system training prior to receiving their annual license, the account manager shall sign up for and complete state mandated training, as prescribed by the Bureau, within five calendar days of license issuance.

(c) The account manager and each user shall be assigned a unique log-on, consisting of a username and password. The account manager or each user accessing the track and trace system shall only do so under his or her assigned log-on, and shall not use or access a log-on of any other individual. No account manager or user shall share or transfer his or her log-on, username, or password, to be used by any other individual for any reason.

(d) The account manager shall maintain a complete, accurate, and up-to-date list of all track and trace system users, consisting of their full names and usernames.

(e) A licensee shall monitor all compliance notifications from the track and trace system, and timely resolve the issues detailed in the compliance notification.

(1) A licensee shall keep a record, independent of the track and trace system, of all compliance notifications received from the track and trace system, and how and when compliance was achieved.

(2) If a licensee is unable to resolve a compliance notification within three business days of receiving the notification, the licensee shall notify the Bureau immediately, by submitting the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated herein by reference.

(f) A licensee is accountable for all actions its owners or employees take while logged into or using the track and trace system, or otherwise while conducting track and trace activities.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26067, 26070, 26160 and 26161, Business and Professions Code.

§ 5049. Track and Trace Reporting.

(a) A licensee shall record in the track and trace system all commercial cannabis

activity, including:

- (1) Packaging of cannabis goods.
- (2) Sale and transfer of cannabis goods.
- (3) Transportation of cannabis goods to a licensee.
- (4) Receipt of cannabis goods.
- (5) Return of cannabis goods.
- (6) Destruction and disposal of cannabis goods.
- (7) Laboratory testing and results.
- (8) Any other activity as required pursuant to this division, or by any other licensing authority.

(b) The following information shall be recorded for each activity entered in the track and trace system:

- (1) Name and type of the cannabis goods.
- (2) Unique identifier of the cannabis goods.
- (3) Amount of the cannabis goods, by weight or count, and total wholesale cost of the cannabis goods, as applicable.
- (4) Date and time of the activity or transaction.
- (5) Name and license number of other licensees involved in the activity or transaction.
- (6) If the cannabis goods are being transported:
 - (A) The licensee shall transport pursuant to a shipping manifest generated through the track and trace system, that includes items (1) through (5) of this subsection, as well as:
 - (i) The name, license number, and licensed premises address of the originating licensee.
 - (ii) The name, license number, and licensed premises address of the licensee transporting the cannabis goods.
 - (iii) The name, license number, and licensed premises address of the destination licensee receiving the cannabis goods into inventory or storage.
 - (iv) The date and time of departure from the licensed premises and approximate date and time of departure from each subsequent licensed premises, if any.
 - (v) Arrival date and estimated time of arrival at each licensed premises.
 - (vi) Driver license number of the personnel transporting the cannabis goods, and the make, model, and license plate number of the vehicle used for transport.
 - (B) Upon pick-up or receipt of cannabis goods for transport, storage, or inventory, a licensee shall ensure that the cannabis goods received are as described in the shipping manifest, and shall record acceptance or receipt, and acknowledgment of the cannabis goods in the track and

trace system.

(C) If there are any discrepancies between the type or quantity of cannabis goods specified in the shipping manifest and the type or quantity received by the licensee, the licensee shall record and document the discrepancy in the track and trace system and in any relevant business record.

(7) If cannabis goods are being destroyed or disposed of, the licensee shall record in the track and trace system the following additional information:

(A) The name of the employee performing the destruction or disposal.

(B) The reason for destruction and disposal.

(C) The entity disposing of the cannabis waste.

(8) Description for any adjustments made in the track and trace system, including, but not limited to:

(A) Spoilage or fouling of the cannabis goods.

(B) Any event resulting in damage, exposure, or compromise of the cannabis goods.

(9) Any other information as required pursuant to this division, or by any other applicable licensing authorities.

(c) Unless otherwise specified, all transactions must be entered into the track and trace system within 24 hours of occurrence.

(d) Licensees shall only enter and record complete and accurate information into the track and trace system, and shall correct any known errors entered into the track and trace system immediately upon discovery.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26067, 26070, 26160, and 26161, Business and Professions Code.

§ 5050. Loss of Connectivity.

(a) If at any point a licensee loses connectivity to the track and trace system for any reason, the licensee shall prepare and maintain comprehensive records detailing all commercial cannabis activities that were conducted during the loss of connectivity.

(b) The licensee shall notify the Bureau immediately for any loss of connectivity, and shall not transport, receive, or deliver any cannabis goods until such time as connectivity is restored. Licensees shall submit such notices on the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated by reference.:

(c) Once connectivity has been restored, the licensee shall:

(1) Within three calendar days, enter all commercial cannabis activity that occurred during the loss of connectivity into the track and trace system.

(2) Document the cause for loss of connectivity, and the date and time for when connectivity to the track and trace system was lost and when it was restored.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26067, 26070 and 26160, Business and Professions Code.

§ 5051. Track and Trace System Reconciliation.

(a) In addition to other inventory reconciliation requirements under this division, a licensee shall reconcile the physical inventory of cannabis goods at the licensed premises with the records in the track and trace database at least once every 30 calendar days.

(b) If a licensee finds a discrepancy between its physical inventory and the track and trace system database, the licensee shall conduct an audit, and notify the Bureau of any reportable activity pursuant to section 5036 of this division.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26067, 26070 and 26160, Business and Professions Code.

§ 5052. Temporary Licenses; Licensees in Operation at Time of Licensure.

(a) A licensee operating under a temporary license issued pursuant to section 5001 of this division is not required to record commercial cannabis activity in the track and trace system as otherwise required by this article.

(b) Temporary licensees shall track and record all commercial cannabis activities and information required pursuant to this division and any other provision of law, at a minimum, on paper receipts, invoices, or manifests.

(c) Any commercial cannabis activity conducted between annual license holders shall be recorded in the track and trace system.

(d) Any licensee in operation at the time the annual license is issued shall enter all inventory into the track and trace system no later than 30 calendar days after the track and trace system account manager attends the training required pursuant to section 5048 of this division.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26050.1, 26067, 26070, 26160 and 26161, Business and Professions Code.

Article 7. Returns and Destruction

§ 5052.1. Acceptance of Shipments.

(a) Licensees shall accept or reject, in whole, shipments of cannabis goods.

(b) Notwithstanding subsection (a) of this section, partial shipments of cannabis goods shall be rejected in the following circumstances:

(1) If a licensee receives a shipment containing cannabis goods that differ from those listed on the sales invoice or receipt, the licensee shall reject the portion of the shipment that is not accurately reflected on the sales invoice or receipt.

(2) If a licensee receives a shipment containing any cannabis goods that were damaged during transportation, the licensee shall reject that portion of the shipment that was damaged.

(3) If a licensee receives a shipment containing cannabis goods that is non-compliant with

labeling requirements or exceeds its provided expiration date, the licensee shall reject the portion of the shipment that is non-compliant with labeling requirements or expired.

(c) The licensee rejecting a shipment of cannabis goods, whether in whole or in part, shall record in the track and trace system, as required by Chapter 1, Article 6 of this division, and indicate on any relevant manifest, invoice, or sales receipt, the specific reason for rejection.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26013, 26067, 26070 and 26161, Business and Professions Code.

§ 5053. Returns Between Licensees.

(a) If a licensee discovers that a manufactured cannabis good that was purchased from another licensee is defective, the purchasing licensee may return the manufactured cannabis good to the selling licensee only in exchange for a non-defective version of the same type of manufactured cannabis good or in exchange for a manufactured cannabis good of equal value.

(b) Except as provided in subsection (a) of this section, a licensee shall not return cannabis goods purchased from another licensee.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26013 and 26070, Business and Professions Code.

§ 5054. Destruction of Cannabis Goods Prior to Disposal.

(a) Licensees shall not dispose of cannabis goods, unless disposed of as cannabis waste, defined under section 5000(g) of this division.

(b) Cannabis waste shall be stored, managed, and disposed of in accordance with all applicable waste management laws, including, but not limited to, Division 30 of the Public Resources Code.

(c) Cannabis goods intended for disposal shall remain on the licensed premises until rendered into cannabis waste. The licensee shall ensure that:

(1) Access to the cannabis goods is restricted to the licensee, its employees or agents; and

(2) Storage of the cannabis goods allocated for disposal is separate and distinct from other cannabis goods.

(d) To be rendered as cannabis waste for proper disposal, including disposal as defined under Public Resources Code section 40192, cannabis goods shall first be destroyed on the licensed premises. This includes, at a minimum, removing or separating the cannabis goods from any packaging or container and rendering it unrecognizable and unusable. Nothing in this subsection shall be construed to require vape cartridges to be emptied of cannabis oil prior to disposal, provided that the vape cartridge itself is unusable at the time of disposal.

(e) Cannabis waste on the licensed premises shall be secured in a receptacle or area that is restricted to the licensee, its employees, or an authorized waste hauler.

(f) A licensee shall report all cannabis waste activities, up to and including disposal, into the track and trace system, as required under Chapter 1, Article 6 of this division.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26013

and 26070, Business and Professions Code.

Chapter 2. DISTRIBUTORS

§ 5300. Distribution Activities.

A licensed distributor shall distribute only cannabis goods, cannabis accessories, and licensees' branded merchandise or promotional materials.

Authority: Sections 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§ 5301. Storage Services.

(a) A licensed distributor may provide storage services, including storage-only services that are unrelated to the quality assurance and laboratory testing processes, to a licensed cultivator, licensed manufacturer, licensed microbusiness, licensed retailer, or another licensed distributor.

(b) A licensed distributor may provide storage services to other licensees for cannabis goods packaged as they will be sold at retail, cannabis accessories, and licensees' branded merchandise or promotional materials only.

(c) A licensed distributor shall ensure that each batch of cannabis goods that are stored for another licensee are stored in accordance with section 5302 of this division.

(d) Notwithstanding subsection (b) of this section, a licensed distributor shall not store live plants, except for seeds, on the licensed premises.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26110, Business and Professions Code.

§ 5302. Storage of Batches for Testing.

(a) A licensed distributor shall ensure that all cannabis goods batches are stored separately and distinctly from other cannabis goods batches on the licensed distributor's premises.

(b) A licensed distributor shall ensure a label with the following information is physically attached to each container of each batch:

(1) The name, license number, and licensed premises address of the licensed manufacturer or licensed cultivator who provided the batch;

(2) The date of entry into the licensed distributor's storage area;

(3) The unique identifiers and batch number associated with the batch;

(4) A description of the cannabis goods with enough detail to easily identify the batch;

(5) The weight of or quantity of units in the batch; and

(6) The best-by, sell-by, or expiration date of the batch, if any.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26110

and 26120, Business and Professions Code.

§ 5303. Packaging, Labeling, and Rolling.

(a) A licensed distributor may package, re-package, label, and re-label cannabis, including pre-rolls, for retail sale. All packages of cannabis, including pre-rolls, shall comply with the following:

(1) Until January 1, 2020, all packages shall meet the following requirements:

(A) The package shall protect the cannabis, including pre-rolls, from contamination and shall not expose the cannabis or pre-rolls to any harmful substance.

(B) The package shall be tamper-evident.

(C) If the package of cannabis or pre-rolls contains more than one serving, then the packaging shall be resealable.

(D) The package shall not imitate any package used for goods that are typically marketed to children.

(2) Beginning January 1, 2020, all packages shall meet the requirements of subsection (a)(1) of this section and shall also meet the following requirements:

(A) The package shall be child-resistant until the package is first opened. For purposes of this division, the following packages are considered child-resistant:

(i) Any package that has been certified as child-resistant under the requirements of the Poison Prevention Packaging Act of 1970 Regulations (16 C.F.R. §1700.15(b)(1)) (Rev. July 1995), which is hereby incorporated by reference.

(ii) Plastic packaging that is at least 4 mils thick and heat-sealed without an easy-open tab, dimple, corner, or flap.

(B) The package shall be labeled with the statement “This package is not child-resistant after opening.”

(3) Notwithstanding subsections (a)(1)-(a)(2) of this section, immature plants and seeds shall not be required to be packaged in child-resistant, tamper-evident, and resealable packaging.

(b) A licensed distributor shall not process cannabis, but may roll pre-rolls that consist exclusively of any combination of flower, shake, leaf, or kief. Pre-rolls shall be rolled prior to regulatory compliance testing.

(c) Licensed distributors may label and re-label a package containing manufactured cannabis goods with the amount of cannabinoids and terpenoids based on regulatory compliance testing results.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26013 and 26120, Business and Professions Code.

§ 5303.1. Net Weight of Dried Flower.

For purposes of this division, the net weight on any package of dried flower shall not be considered inaccurate if the actual weight is within plus or minus 3% of the labeled weight.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26013, 26120 and 26152, Business and Professions Code.

§ 5304. Testing Arrangements.

After taking physical possession of a cannabis goods batch, the licensed distributor shall contact a licensed testing laboratory and arrange for a laboratory employee to come to the licensed distributor's licensed premises to select a representative sample for laboratory testing.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26104 and 26110, Business and Professions Code.

§ 5305. Testing Sample.

(a) The licensed distributor shall ensure that the batch size from which the sample is taken meets the requirements of this division.

(b) A licensed distributor or an employee of the licensed distributor shall be physically present to observe the laboratory employee obtain the sample of cannabis goods for testing and shall ensure that the increments are taken from throughout the batch.

(c) The sampling shall be video recorded with the batch number stated verbally or in writing on the video at the beginning of the video and a visible time and date indication on the video recording footage. The video recordings shall be maintained for 90 calendar days by the licensed distributor.

(d) After the sample has been selected, both the licensed distributor and the laboratory employee shall sign and date the chain of custody form pursuant to section 5706 of this division, attesting to the sample selection having occurred.

(e) A licensed distributor shall not assist the laboratory employee nor touch the cannabis goods or the sampling equipment while the laboratory employee is obtaining the sample.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26104 and 26110, Business and Professions Code.

§ 5305.1 Re-sampling.

Once a sample has been obtained from a batch for regulatory compliance testing, a licensed distributor may not arrange for or allow another licensed testing laboratory to sample or re-sample the same batch for regulatory compliance testing, unless all of the requirements of section 5705 subsection (g) of this division are met.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5306. Laboratory Testing Results.

(a) A sample batch "passes" a laboratory test when the sample meets specifications in Chapter 6 of this division.

(b) When a batch from a manufactured or harvest batch passes, the cannabis goods may be transported to one or more licensed retailers, licensed distributors, or licensed microbusinesses. A printed copy of the certificate of analysis for regulatory compliance testing shall

accompany the batch and be provided to the licensee receiving the cannabis goods.

(c) A batch “fails” a laboratory test when the sample does not meet specifications in Chapter 6 of this division.

(d) If a failed batch may be remediated pursuant to section 5727 of this division, a licensed distributor may transport or arrange for the transportation of the batch to a licensed manufacturer for remediation in accordance with the following:

(1) The licensed distributor shall ensure that a corrective action plan is submitted by a licensed manufacturer to the State Department of Public Health, or by a licensed microbusiness authorized to engage in manufacturing to the Bureau, within 30 calendar days of issuance of the certificate of analysis for regulatory compliance testing by the licensed testing laboratory.

(2) The licensed distributor shall ensure that the licensed manufacturer or licensed microbusiness authorized to engage in manufacturing begins remediating the cannabis goods within 30 calendar days of receiving approval from the State Department of Public Health or the Bureau to remediate the cannabis goods.

(3) If the licensed distributor is unable to arrange for a licensed manufacturer or licensed microbusiness authorized to engage in manufacturing to remediate the cannabis goods within 30 calendar days of issuance of the certificate of analysis for regulatory compliance testing by the licensed testing laboratory, the licensed distributor shall destroy the cannabis goods immediately.

(e) A licensed distributor shall destroy a batch that failed laboratory testing and cannot be remediated pursuant to section 5727 of this division within 30 calendar days of issuance of the certificate of analysis for regulatory compliance testing by the licensed testing laboratory.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070, 26100, 26104 and 26110, Business and Professions Code.

§ 5307. Quality-Assurance Review.

When a licensed distributor receives a certificate of analysis for regulatory compliance testing from the licensed testing laboratory or upon transfer from another licensed distributor stating that the batch meets specifications required by law, the licensed distributor shall ensure the following before transporting the cannabis goods, packaged as they will be sold at retail, to one or more licensed retailers or licensed microbusinesses authorized to engage in retail sales:

(a) The certificate of analysis for regulatory compliance testing that the licensed distributor received from the licensed testing laboratory or another licensed distributor is the certificate of analysis that corresponds to the batch;

(b) The date on the certificate of analysis for the regulatory compliance testing is less than 12 months old;

(c) The label on the cannabis goods is consistent with the certificate of analysis for regulatory compliance testing regarding cannabinoid content and contaminants required to be listed by law as follows:

(1) If the cannabis goods are labeled with the content for cannabinoids, terpenoids, Total THC, and/or Total CBD prior to receiving the certificate of analysis for regulatory compliance testing,

the licensed distributor shall ensure that the labeled amounts are accurate in accordance with section 5307.1 of this division, and

- (2) If the cannabis goods are not labeled with the content for cannabinoids, terpenoids, Total THC, and/or Total CBD prior to receiving the certificate of analysis for regulatory compliance testing, the licensed distributor shall label the cannabis goods with the amounts listed on the certificate of analysis pursuant to section 5303 of this division;
- (d) The packaging and labeling of the cannabis goods complies with Business and Professions Code Section 26120 and all applicable regulations within this division as well as California Code of Regulations, Title 3, Division 8 and Title 17, Division 1, Chapter 13, except cannabis goods are not required to be labeled or otherwise identified as medicinal products prior to retail sale unless the cannabis goods must be labeled as such pursuant to the requirements prescribed by the State Department of Public Health in regulation;
- (e) The cannabis goods have not exceeded their expiration or sell-by date if one is provided;
- (f) The weight or count of the cannabis batch comports with that in the track and trace system. A licensed distributor shall use scales as required by the Business and Professions Code; and
- (g) All events prior to receipt of the certificate of analysis for regulatory compliance testing have been entered into the track and trace system.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070, 26110 and 26120, Business and Professions Code.

§ 5307.1 Quality-Assurance Review for Labeling Cannabinoids and Terpenoids.

- (a) For purposes of this division, any one cannabinoid, Total THC, and/or Total CBD claimed to be present on a label shall not be considered inaccurate if the difference in percentage on the certificate of analysis is plus or minus 10.0%.
- (b) For purposes of this division, the terpenoid testing results on the label of any one terpenoid claimed to be present shall not be considered inaccurate if the difference in percentage on the certificate of analysis is plus or minus 10.0%.
- (c) For purposes of this section, the difference in percent shall be calculated using the following equation:

$$\text{Difference in percent} = \left| \frac{\text{laboratory measurement} - \text{label claim}}{\text{label claim}} \right| \times 100\%$$

For purposes of this section, Total THC and Total CBD shall have the same meaning as defined in Chapter 6 of this division.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100 and 26110, Business and Professions Code.

§ 5307.2. Licensed Distributor to Licensed Distributor Transfers.

Cannabis goods, packaged as they will be sold at retail, that have undergone and passed regulatory compliance testing and have an accompanying certificate of analysis may be transferred to one or more licensed distributors. However, cannabis goods that have not been transported to retail within 12 months of the date on the certificate of analysis must be destroyed

or retested by the licensed distributor in possession of the cannabis goods.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26110, Business and Professions Code.

§ 5308. Insurance Requirements.

(a) An applicant for a distributor license shall provide the Bureau with a certificate of insurance that shows the types of insurance coverage and minimum amounts that have been secured as required by this section, and documentation establishing compliance with subsection (d) of this section.

(b) A distributor licensee shall at all times carry and maintain commercial general liability insurance in the aggregate in an amount no less than \$2,000,000 and in an amount no less than \$1,000,000 for each loss.

(c) A distributor licensee shall maintain the insurance required in subsection (b) of this section from an insurance company that is:

(1) A non-admitted insurer that meets the requirements of Insurance Code section 1765.1 or 1765.2, and the insurance is placed pursuant to Insurance Code section 1763 and through a surplus line broker licensed under Insurance Code section 1765;

(2) An insurer qualified to do business in California by the Secretary of State and authorized by the Insurance Commissioner to write the liability and property classes of insurance as defined by Insurance Code sections 102, 103, 107, 114, 108, and 120; or

(3) A registered risk retention group compliant with the California Risk Retention Act of 1991. (See California Insurance Code sections 125-140.)

(d) Admitted insurers and risk retention groups must show proof of capitalization in the amount of at least \$10,000,000.

(e) A distributor licensee shall notify the Bureau in writing, by submitting the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated herein by reference, within 14 calendar days of a lapse in insurance in accordance with section 5023.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26051.5 and 26070, Business and Professions Code.

§ 5309. Inventory Accounting.

(a) A licensed distributor shall be able to account for all inventory and provide that information to the Bureau upon request.

(b) To account for inventory, a licensed distributor shall ensure all batches of cannabis goods are stored in accordance with section 5302 of this division and shall be able to provide the Bureau with the status of the batch as follows:

(1) The batch is being held in storage for another licensee;

(2) The batch is awaiting sampling for regulatory compliance testing;

- (3) The batch has been sampled and is awaiting testing results;
- (4) The batch has passed testing;
- (5) The batch has failed testing and is awaiting approval for remediation;
- (6) The batch has failed testing and is awaiting destruction; and
- (7) The batch is being stored or held for any other lawful purpose under the Act or this division.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26160, Business and Professions Code.

§ 5310. Records.

In addition to the records required by section 5037 of this division, a licensed distributor shall maintain the following records:

- (a) Records relating to branding, packaging and labeling;
- (b) Inventory logs and records;
- (c) Transportation bills of lading and shipping manifests for completed transports and for cannabis goods in transit;
- (d) Vehicle and trailer ownership records;
- (e) Quality-assurance records;
- (f) Records relating to destruction and disposal of cannabis goods;
- (g) Laboratory-testing records;
- (h) Warehouse receipts; and
- (i) Records relating to tax payments collected and paid under Revenue and Taxation Code sections 34011 and 34012.

Authority: Section 26013, Business and Professions Code. Reference: Section 26160, Business and Professions Code.

§ 5311. Requirements for the Transportation of Cannabis Goods.

The following requirements apply when transporting cannabis goods between licensees or licensed premises:

- (a) Transportation shall only be conducted by persons holding a distributor license under the Act, or employees of those persons. All vehicles and trailers used for transportation shall be owned or leased, in accordance with the Vehicle Code, by the licensee.
- (b) Prior to transporting any cannabis goods, the licensed distributor shall have a completed sales invoice or receipt that meets the requirements of Business and Professions Code section

26161. The licensed distributor shall only transport cannabis goods listed on the sales invoice or receipt. The sales invoice or receipt may not be altered or changed once transport begins.

(c) All vehicles transporting cannabis goods for hire shall be required to have a motor carrier permit pursuant to Chapter 2 (commencing with Section 34620) of Division 14.85 of the Vehicle Code.

(d) Transportation by means of aircraft, watercraft, drone, rail, human powered vehicle, or unmanned vehicle is prohibited.

(e) Cannabis goods shall only be transported inside of a vehicle or trailer and shall not be visible or identifiable from outside of the vehicle or trailer.

(f) Cannabis goods shall be locked in a fully enclosed box, container, or cage that is secured to the inside of the vehicle or trailer. No portion of the enclosed box, container, or cage shall be comprised of any part of the body of the vehicle or trailer. For the purposes of this section, the inside of the vehicle includes the trunk.

(g) While left unattended, vehicles and trailers shall be locked and secured.

(h) A licensed distributor shall not leave a vehicle or trailer containing cannabis goods unattended in a residential area or parked overnight in a residential area.

(i) At a minimum, a licensed distributor shall have a vehicle alarm system on all transport vehicles and trailers. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be used.

(j) Packages or containers holding cannabis goods shall not be tampered with, or opened, during transport.

(k) A licensed distributor transporting cannabis goods shall only travel between licensees shipping or receiving cannabis goods and its own licensed premises when engaged in the transportation of cannabis goods. The licensed distributor may transport multiple shipments of cannabis goods at once in accordance with applicable laws. A licensed distributor shall not deviate from the travel requirements described in this section, except for necessary rest, fuel, or vehicle repair stops.

(l) Under no circumstances may non-cannabis goods, except for cannabis accessories and licensees' branded merchandise or promotional materials, be transported with cannabis goods.

(m) Vehicles and trailers transporting cannabis goods are subject to inspection by the Bureau at any licensed premises or during transport at any time.

(n) Notwithstanding subsections (d)—(f) of this section, if it is not operationally feasible to transport cannabis goods inside of a vehicle or trailer because the licensed premises that the cannabis goods will be transported from and the licensed premises that will be receiving the cannabis goods are located within the same building or on the same parcel of land, the cannabis goods may be transported by foot, hand truck, fork lift, or other similar means. A shipping manifest that complies with this division is required when transporting cannabis goods pursuant to this subsection.

(o) Notwithstanding subsection (d) of this section, transportation of cannabis goods may be

conducted via waterway to licensees located on Catalina Island. The provisions of this section and other sections regarding vehicle requirements also apply to vessels used to transport cannabis goods via waterway pursuant to this section.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§ 5312. Required Transport Vehicle Information.

(a) In addition to the information required in section 5314 of this division, any licensed distributor who will be or is transporting cannabis goods shall provide the following information to the Bureau:

(1) Proof that the licensed distributor is the registered owner under the Vehicle Code for each vehicle and trailer used to transport cannabis goods;

(2) The year, make, model, license plate number, and numerical Vehicle Identification Number (VIN) for each vehicle and trailer used to transport cannabis goods; and

(3) Proof of insurance for each vehicle and trailer used to transport cannabis goods.

(b) The licensed distributor shall provide the Bureau with the information required by this section in writing for any new vehicle or trailer that will be used to transport cannabis goods prior to using the vehicle or trailer to transport cannabis goods.

(c) The licensed distributor shall provide the Bureau with any changes to the information required by this section in writing within 30 calendar days, submitted on the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated herein by reference.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§ 5313. Transport Personnel Requirements.

(a) No person under the age of 21 years old shall be in a commercial vehicle or trailer transporting cannabis goods; and

(b) Only a licensee, an employee of the licensed distributor, or security personnel who meets the requirements of section 5045 of this division shall be in a vehicle while transporting cannabis goods.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§ 5314. Shipping Manifest.

(a) Prior to transporting cannabis goods, a licensed distributor shall generate a shipping manifest through the track and trace system for the following activities:

(1) Testing and sampling;

(2) Sale of cannabis goods to a licensee;

(3) Destruction or disposal of cannabis goods; and

- (4) Any other activity, as required pursuant to this division, or by any other licensing authority.
- (b) The licensed distributor shall transmit the shipping manifest to the Bureau and the licensee that will receive the cannabis goods prior to transporting the cannabis goods.
- (c) The licensed distributor shall ensure and verify that the cannabis goods being taken into possession for transport at the originating licensed premises are as described and accurately reflected in the shipping manifest. For purposes of this section, the licensed distributor may verify that the cannabis goods are accurately reflected in the shipping manifest by confirming that the number of boxes of cannabis goods, type of cannabis goods, weight and/or units of cannabis goods matches the label on the boxes containing the cannabis goods.
 - (1) The licensed distributor shall not take into possession or transport:
 - (A) Any cannabis goods that are not on the shipping manifest; or
 - (B) Any cannabis goods that are less than or greater than the amount reflected on the shipping manifest.
 - (2) The licensed distributor is responsible for any discrepancies between the shipping manifest and the cannabis goods in its possession during transport, and subject to any enforcement or disciplinary action related to such discrepancy.
 - (3) A licensed distributor shall not void or change a shipping manifest after departing from the originating licensed premises.
- (d) A shipping manifest shall accompany every transport of cannabis goods.
- (e) Notwithstanding subsection (a) of this section, if a transporting licensed distributor has not obtained access to the track and trace system, the licensed distributor shall complete the shipping manifest outside of the track and trace system and transmit it to the Bureau and the licensee receiving the shipment by electronic mail.
- (f) If the transporting licensed distributor has access to the track and trace system and the licensee receiving the shipment has not obtained access to the track and trace system, the licensed distributor shall complete the shipping manifest in the track and trace system and transmit it to the Bureau. However, the licensed distributor shall send a copy to the licensee receiving the shipment by electronic mail.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26067 and 26070, Business and Professions Code.

§ 5315. Distributor Transport Only License.

- (a) A licensed distributor transport only licensee may transport cannabis goods between licensees; however, they shall not transport any cannabis goods except for immature cannabis plants and seeds to a licensed retailer or licensed microbusiness authorized to engage in retail sales.
- (b) A complete application for a distributor transport only license shall include all the information required in an application for a distributor license.
- (c) The licensing fee for a distributor transport only license will be based in part upon

whether the licensee intends to transport only cannabis goods that the licensee has cultivated or manufactured (self-distribution), or whether the licensee intends to transport cannabis goods cultivated or manufactured by other licensees.

(d) A distributor transport only licensee shall comply with all of the requirements for a holder of a distributor license, except for those related to quality assurance and testing.

(e) A distributor transport only licensee shall not hold title to any cannabis goods unless the licensee also holds a state-issued cultivation, manufacturing, retailer, or microbusiness license.

(f) Holding a distributor transport only license shall not authorize a licensee to:

(1) Engage in the delivery of cannabis goods as defined in Business and Professions Code section 26001(p);

(2) Engage in the wholesale, destruction, packaging, labeling, or storing of cannabis goods; or

(3) Arrange for the testing of cannabis goods by a testing laboratory.

(g) Notwithstanding subsection (e) of this section, a distributor transport only licensee who is licensed to engage in self-distribution and whose licensed premises will be on the same property as their licensed cultivation or licensed manufacturing premises shall not be required to comply with the security provisions contained in Chapter 1, Article 5 of this division.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012 and 26070, Business and Professions Code.

Chapter 3. RETAILERS

§ 5400. Access to Retailer Premises.

(a) Access to the licensed premises of a retailer with only an A-designation shall be limited to individuals who are at least 21 years of age.

(b) Access to the licensed premises of a retailer with only an M-designation shall be limited to individuals who are at least 18 years of age and have a valid physician's recommendation for medicinal cannabis, and individuals who are at least 21 years of age.

(c) Access to the licensed premises of a retailer with both an A- designation and an M-designation may include persons identified in subsections (a) and (b) of this section.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26140, Business and Professions Code.

§ 5402. Customer Access to the Retail Area.

(a) Individuals shall be granted access to the retail area to purchase cannabis goods only after the retailer or an employee of the retailer has confirmed the individual's age and identity pursuant to section 5404 of this division.

(b) The licensed retailer or at least one employee shall be physically present in the retail area at all times when individuals who are not employees of the licensed retailer are in the retail

area.

(c) All sales of cannabis goods must take place within the retail area of the retailer's licensed premises, except for cannabis goods sold through delivery, or a drive-in or drive-through window as authorized by section 5025(g) of this division.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26140, Business and Professions Code.

§ 5403. Hours of Operation.

A licensed retailer shall sell and deliver cannabis goods only between the hours of 6:00 a.m. Pacific Time and 10:00 p.m. Pacific Time.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§ 5403.1 Requirements While Not Open for Business.

At any time the licensed premises is not open for retail sales, a licensed retailer shall ensure that:

(a) The licensed premises is securely locked with commercial-grade, nonresidential door locks as required in section 5046 of this division;

(b) The licensed premises is equipped with an active alarm system pursuant to section 5047 of this division, which shall be activated when the licensed retailer or its employees are not on the licensed premises; and

(c) Only employees of the licensee and other authorized individuals are allowed access to the licensed premises. For the purposes of this section, authorized individuals include individuals employed by the licensee as well as any outside vendors, contractors, or other individuals conducting business that requires access to the licensed premises.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§ 5404. Retail Customers.

(a) A licensed retailer shall only sell adult-use cannabis goods to individuals who are at least 21 years of age after confirming the customer's age and identity by inspecting a valid form of identification provided by the customer as required by subsection (c) of this section.

(b) A licensed retailer shall only sell medicinal cannabis goods to individuals who are at least 18 years of age and possesses a valid physician's recommendation after confirming the customer's age, identity, and physician's recommendation as required by subsection (c) of this section.

(c) Acceptable forms of identification include the following:

(1) A document issued by a federal, state, county, or municipal government, or a political subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, height, gender, and photo of the person;

(2) A valid identification card issued to a member of the Armed Forces that includes the person's name, date of birth, and photo; or

(3) A valid passport issued by the United States or by a foreign government.

Authority: Section 26013, Business and Professions Code. Reference: Section 26140, Business and Professions Code.

§ 5405. Cannabis Goods Display.

(a) Cannabis goods for inspection and sale shall only be displayed in the retail area.

(b) Cannabis goods may be removed from their packaging and placed in containers to allow for customer inspection. The containers shall not be readily accessible to customers without assistance of retailer personnel. A container must be provided to the customer by the licensed retailer or its employees, who shall remain with the customer at all times that the container is being inspected by the customer.

(c) Cannabis goods removed from their packaging for display shall not be sold, shall not be consumed, and shall be destroyed pursuant to section 5054 of this division when the cannabis goods are no longer used for display.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§ 5406. Cannabis Goods for Sale.

A licensed retailer shall not make any cannabis goods available for sale or delivery to a customer unless:

(a) The cannabis goods were received by the retail licensee from a licensed distributor or licensed microbusiness authorized to engage in distribution;

(b) The licensed retailer has verified that the cannabis goods have not exceeded their best-by, sell-by, or expiration date if one is provided;

(c) In the case of manufactured cannabis products, the product complies with all requirements of Business and Professions Code section 26130 and California Code of Regulations, Title 3, Division 8 and Title 17, Division 1, Chapter 13;

(d) The cannabis goods have undergone laboratory testing as required by the Act and Chapter 6 of this division;

(e) The batch number is labeled on the package of cannabis goods and matches the batch number on the corresponding certificate of analysis for regulatory compliance testing;

(f) The packaging and labeling of the cannabis goods complies with Business and Professions Code Section 26120 and all applicable regulations within this division as well as California Code of Regulations, Title 3, Division 8 and Title 17, Division 1, Chapter 13; and

(g) The cannabis goods comply with all applicable requirements found in the Act and applicable regulations.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26120, Business and Professions Code.

§ 5407. Sale of Non-Cannabis Goods.

In addition to cannabis goods, a licensed retailer may sell only cannabis accessories and licensee's branded merchandise. Licensed retailers may provide customers with promotional materials.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070, 26151 and 26152, Business and Professions Code.

§ 5408. Sale of Live Plants and Seeds.

(a) A licensed retailer shall only sell live, immature cannabis plants and cannabis seeds if all of the following requirements are met:

(1) The plant is not flowering;

(2) The plant or seed originated from a nursery that holds a valid license from the Department of Food and Agriculture or a licensed microbusiness authorized to engage in cultivation; and

(3) A label is affixed to the plant or package containing any seeds which states "This product has not been tested pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act."

(b) A licensed retailer may not sell any other live plants.

(c) A licensed retailer shall not apply nor use any pesticide, nor cause any pesticide to be applied nor used, on live plants.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26100, Business and Professions Code.

§ 5409. Daily Limits.

(a) A licensed retailer shall not sell more than the following amounts to a single adult-use cannabis customer in a single day:

(1) 28.5 grams of non-concentrated cannabis.

(2) 8 grams of cannabis concentrate as defined in Business and Professions Code section 26001, including cannabis concentrate contained in cannabis products.

(3) 6 immature cannabis plants.

(b) A licensed retailer shall not sell more than the following amounts to a single medicinal cannabis patient, or to a patient's primary caregiver purchasing medicinal cannabis on behalf of the patient, in a single day:

(1) 8 ounces of medicinal cannabis in the form of dried mature flowers or the plant conversion as provided in Health and Safety Code section 11362.77.

(2) 12 immature cannabis plants.

(c) Notwithstanding subsection (b) of this section, if a medicinal cannabis patient's valid physician's recommendation contains a different amount than the limits listed in this section, the medicinal cannabis patient may purchase an amount of medicinal cannabis consistent with the patient's needs as recommended by a physician and documented in the physician's recommendation.

(d) The limits provided in subsection (a) and subsection (b) of this section shall not be combined to allow a customer to purchase cannabis goods in excess of any of the limits provided in this section.

(e) For the purposes of this section, a licensed retailer shall be responsible for determining that the amount of cannabis concentrates found in manufactured cannabis products sold to customers comply with the requirements of this section.

Authority: Section 26013, Business and Professions Code. Reference: Section 26012, Business and Professions Code; and Sections 11362.1 and 11362.77, Health and Safety Code.

§ 5410. Customer Return of Cannabis Goods.

(a) For the purposes of this section, "customer return" means a customer's return of cannabis goods that were purchased from a licensed retailer, back to the licensed retailer the cannabis goods were purchased from.

(b) A licensed retailer may accept customer returns of cannabis goods that were previously sold to a customer.

(c) A licensed retailer shall not resell cannabis goods that have been returned.

(d) A licensed retailer shall treat any cannabis goods abandoned on the licensed retailer premises as a customer return.

(e) Defective manufactured cannabis products returned by customers to a licensed retailer may be destroyed pursuant to section 5054 of this division, or returned to the licensed distributor from whom the cannabis goods were obtained in accordance with section 5053 of this division.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26011.5, 26012 and 26070, Business and Professions Code.

§ 5411. Free Cannabis Goods.

(a) A licensed retailer shall not provide free cannabis goods to any person. A licensed retailer shall not allow individuals who are not employed by the licensed retailer to provide free cannabis goods to any person on the licensed premises.

(b) Notwithstanding subsection (a) of this section, in order to provide access to medicinal cannabis patients who have difficulty accessing medicinal cannabis goods, a licensee who holds an M-Retailer license, an M-Retailer Non-storefront license, or an M-Microbusiness license that is authorized for retail sales may provide free medicinal cannabis goods if the following criteria are met:

(1) Free cannabis goods are provided only to a medicinal cannabis patient or primary caregiver for the patient in possession of an identification card issued under Section 11362.71 of the

Health and Safety Code.

- (2) The cannabis goods comply with all applicable laboratory testing requirements under this division.
 - (3) Prior to being provided to the patient or primary caregiver, the cannabis goods have been properly recorded in the track and trace system as belonging to the licensed retailer.
 - (4) The cannabis goods shall not leave the licensed premises unless placed in a resealable child-resistant opaque package as required for purchased cannabis goods under Business and Professions Code section 26070.1.
 - (5) The cannabis goods shall be applied toward the daily purchase limit for a medicinal cannabis customer pursuant to section 5409 of this division.
 - (6) The event shall be properly recorded in the licensed retailer's inventory records and the track and trace system.
- (c) In addition to the provision of free cannabis goods in subsection (b) of this section, a licensee may donate cannabis goods and the use of equipment in compliance with any compassionate use, equity, or other similar program administered by a local jurisdiction. The licensee shall ensure that all cannabis goods provided pursuant to this subsection comply with subsections (b)(2) and (b)(6) of this section.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26013, 26153, and 26160, Business and Professions Code.

§ 5412. Prohibition on Packaging and Labeling by a Retailer.

- (a) A licensed retailer shall not accept, possess, or sell cannabis goods that are not packaged as they will be sold at final sale, in compliance with this division.
- (b) A licensed retailer shall not package or label cannabis goods.
- (c) Notwithstanding subsection (b) of this section, a licensed retailer may place a barcode or similar sticker on the packaging of cannabis goods to be used in inventory tracking. A barcode or similar sticker placed on the packaging of a cannabis goods shall not obscure any labels required by the Act or this division.

Authority: Section 26013, Business and Professions Code. Reference: Section 26120, Business and Professions Code.

§ 5413. Cannabis Goods Packaging and Exit Packaging.

- (a) All cannabis goods sold by a licensed retailer shall be in compliance with the packaging requirements.
- (b) Beginning January 1, 2020, a package containing cannabis goods shall be resealable, tamper-evident, and child resistant.
- (c) All cannabis goods purchased by a customer shall not leave the licensed retailer's premises unless the goods are placed in an opaque exit package.
- (d) Notwithstanding subsections (a)—(c) of this section, immature plants and seeds sold by a licensed retailer are not required to be placed in resealable, tamper-evident, child resistant

packaging.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070.1 and 26120, Business and Professions Code.

§ 5414. Non-Storefront Retailer.

(a) A non-storefront retailer licensee shall be authorized to conduct retail sales exclusively by delivery as defined in Business and Professions Code section 26001(p).

(b) A complete application for a non-storefront retailer license shall include all the information required in an application for a retailer license.

(c) A non-storefront retailer licensee shall comply with all the requirements applicable to retailer licensees, except for those provisions related to public access to the licensed premises and the retail area.

(d) The licensed premises of a non-storefront retailer licensee shall be closed to the public.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012 and 26070, Business and Professions Code.

§ 5415. Delivery Employees.

(a) All deliveries of cannabis goods shall be performed by a delivery employee who is directly employed by a licensed retailer.

(b) Each delivery employee of a licensed retailer shall be at least 21 years of age.

(c) All deliveries of cannabis goods shall be made in person. A delivery of cannabis goods shall not be made through the use of an unmanned vehicle.

(d) The process of delivery begins when the delivery employee leaves the retailer's licensed premises with the cannabis goods for delivery. The process of delivering ends when the delivery employee returns to the retailer's licensed premises after delivering the cannabis goods, or attempting to deliver cannabis goods, to the customer(s). During the process of delivery, the licensed retailer's delivery employee may not engage in any activities except for cannabis goods delivery and necessary rest, fuel, or vehicle repair stops.

(e) A delivery employee of a licensed retailer shall, during deliveries, carry a copy of the retailer's current license, the employee's government-issued identification, and an identification badge provided by the employer pursuant to section 5043 of this division.

(f) Prior to providing cannabis goods to a delivery customer, a delivery employee shall confirm the identity and age of the delivery customer as required by section 5404 of this division and ensure that all cannabis goods sold comply with requirements of section 5413 of this division.

(g) A licensed retailer shall maintain an accurate list of the retailer's delivery employees and shall provide the list to the Bureau upon request.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26090, Business and Professions Code.

§ 5415.1. Deliveries Facilitated by Technology Platforms.

(a) A licensed retailer or licensed microbusiness shall not sell or otherwise transfer any cannabis goods to a customer through the use of an unlicensed third party, intermediary business, broker, or any other business or entity.

(b) Notwithstanding subsection (a) of this section, a licensed retailer or licensed microbusiness may contract with a service that provides a technology platform to facilitate the sale and delivery of cannabis goods, in accordance with all of the following:

(1) The licensed retailer or licensed microbusiness does not allow for delivery of cannabis goods by the technology platform service provider.

(2) The licensed retailer or licensed microbusiness does not share in the profits of the sale of cannabis goods with the technology platform service provider, or otherwise provide for a percentage or portion of the cannabis goods sales to the technology platform service provider.

(3) The licensed retailer or licensed microbusiness shall not advertise or market cannabis goods in conjunction with the technology platform service provider, outside of the technology platform, and shall ensure that the technology platform service provider does not use the licensed retailer's or licensed microbusiness's license number or legal business name on any advertisement or marketing that primarily promotes the services of the technology platform.

(4) The licensed retailer or licensed microbusiness shall ensure the following information is provided to customers:

(A) Any cannabis goods advertised or offered for sale on or through the technology platform shall disclose, at a minimum, the licensed retailer's or licensed microbusiness's legal business name and license number.

(B) Customers placing an order for cannabis goods through the technology platform shall be able to easily identify the licensed retailer or licensed microbusiness that each cannabis good is being ordered or purchased from. This information shall be available to the customer prior to the customer placing an order or purchasing the cannabis goods.

(5) All required sales invoices and receipts, including any receipts provided to the customer, shall disclose, at a minimum, the licensed retailer's or licensed microbusiness's legal business name and license number.

(6) All other delivery, marketing, and advertising requirements under this division are complied with.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26001, 26070, 26090, 26151 and 26152, Business and Professions Code.

§ 5416. Delivery to a Physical Address.

(a) A delivery employee may only deliver cannabis goods to a physical address in California.

(b) A delivery employee shall not leave the State of California while possessing cannabis goods.

(c) A delivery employee shall not deliver cannabis goods to an address located on publicly owned land or any address on land or in a building leased by a public agency. This prohibition applies to land held in trust by the United States for a tribe or an individual tribal member unless the delivery is authorized by and consistent with applicable tribal law.

(d) A delivery employee may deliver to any jurisdiction within the State of California provided that such delivery is conducted in compliance with all delivery provisions of this division.

(e) A delivery employee shall not deliver cannabis goods to a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26090, Business and Professions Code.

§ 5417. Delivery Vehicle Requirements.

(a) A licensed retailer's delivery employee, carrying cannabis goods for delivery, shall only travel in an enclosed motor vehicle. Any vehicle used in the delivery of cannabis goods shall be operated by a delivery employee of the licensee. A vehicle used in the delivery of cannabis goods shall not have any marking or other indications on the exterior of the vehicle that may indicate that the delivery employee is carrying cannabis goods for delivery. Only the licensee or an employee of the retailer licensee for whom delivery is being performed shall be in the delivery vehicle.

(b) While carrying cannabis goods for delivery, a licensed retailer's delivery employee shall ensure the cannabis goods are not visible to the public. Cannabis goods shall be locked in a fully enclosed box, container, or cage that is secured on the inside of the vehicle. No portion of the enclosed box, container, or cage shall be comprised of any part of the body of the vehicle or trailer. For purposes of this section, the inside of the vehicle includes the trunk.

(c) A licensed retailer's delivery employee shall not leave cannabis goods in an unattended motor vehicle unless the motor vehicle is locked and equipped with an active vehicle alarm system. Any cannabis goods left in an unattended vehicle must be stored in a container as required in subsection (b) of this section.

(d) A vehicle used for the delivery of cannabis goods shall be outfitted with a dedicated Global Positioning System (GPS) device for identifying the geographic location of the delivery vehicle and recording a history of all locations traveled to by the delivery employee while engaged in delivery. A dedicated GPS device must be owned by the licensee and used for delivery only. The device shall be either permanently or temporarily affixed to the delivery vehicle and shall remain active and inside of the delivery vehicle at all times during delivery. At all times, the licensed retailer shall be able to identify the geographic location of all delivery vehicles that are making deliveries for the licensed retailer and document the history of all locations traveled to by a delivery employee while engaged in delivery. A licensed retailer shall provide this information to the Bureau upon request. The history of all locations traveled to by a delivery employee while engaging in delivery shall be maintained by the licensee for a minimum of 90 days.

(e) Upon request, a licensed retailer shall provide the Bureau with information regarding any motor vehicle used for the delivery of cannabis goods, including the vehicle's make, model, color, Vehicle Identification Number, license plate number and Department of Motor Vehicles registration information.

(f) Any motor vehicle used by a licensed retailer to deliver cannabis goods is subject to inspection by the Bureau. Vehicles used to deliver cannabis goods may be stopped and inspected by the Bureau at any licensed premises or during delivery.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26090, Business and Professions Code.

§ 5418. Cannabis Goods Carried During Delivery.

(a) A licensed retailer's delivery employee shall not carry cannabis goods in the delivery vehicle with a value in excess of \$5,000 at any time. The value of cannabis goods carried in the delivery vehicle for which a delivery order was not received and processed by the licensed retailer prior to the delivery employee departing from the licensed premises may not exceed \$3,000.

(b) For the purposes of this section, the value of cannabis goods shall be determined using the current retail price of all cannabis goods carried by, or within the delivery vehicle of, the licensed retailer's delivery employee.

(c) A delivery employee may only carry cannabis goods in the delivery vehicle and may only perform deliveries for one licensed retailer at a time. A delivery employee must depart and return to the same licensed premises before taking possession of any cannabis goods from another licensee to perform deliveries.

(d) A licensed retailer's delivery employee shall not leave the licensed premises with cannabis goods without at least one delivery order that has already been received and processed by the licensed retailer.

(e) Before leaving the licensed premises, the licensed retailer's delivery driver must have a delivery inventory ledger of all cannabis goods provided to the licensed retailer's delivery driver. For each cannabis good, the delivery inventory ledger shall include the type of good, the brand, the retail value, the track and trace identifier, and the weight, volume or other accurate measure of the cannabis good. All cannabis goods prepared for an order that was received and processed by the licensed retailer prior to the delivery driver's departure from the licensed premises must be clearly identified on the inventory ledger. After each customer delivery, the delivery inventory ledger must be updated to reflect the current inventory in possession of the licensed retailer's delivery driver. Delivery inventory ledgers may be maintained electronically.

(f) The licensed retailer's delivery driver shall maintain a log that includes all stops from the time the licensed retailer's delivery driver leaves the licensed premises to the time that the licensed retailer's delivery driver returns to the licensed premises, and the reason for each stop. The log shall be turned in to the licensed retailer when the licensed retailer's delivery driver returns to the licensed premises. The licensed retailer must maintain the log as a commercial cannabis activity record as required by this division. The log may be maintained electronically.

(g) Prior to arrival at any delivery location, the licensed retailer must have received a delivery request from the customer and provided the delivery request receipt to the licensed retailer's delivery driver electronically or in hard copy. The delivery request receipt provided to the licensed retailer's delivery driver shall contain all of the information required in section 5420 of this division, except for the date and time the delivery was made, and the signature of the customer.

(h) Immediately upon request by the Bureau or any law enforcement officer, the licensed

retailer's delivery driver shall provide:

- (1) All delivery inventory ledgers from the time the licensed retailer's delivery driver left the licensed premises up to the time of the request;
 - (2) All delivery request receipts for cannabis goods carried by the driver, in the delivery vehicle, or any deliveries that have already been made to customers; and
 - (3) The log of all stops from the time the licensed retailer's delivery driver left the licensed premises up to the time of the request.
- (i) If a licensed retailer's delivery driver does not have any delivery requests to be performed for a 30-minute period, the licensed retailer's delivery driver shall not make any additional deliveries and shall return to the licensed premises. Required meal breaks shall not count toward the 30-minute period.
 - (j) Upon returning to the licensed premises, all undelivered cannabis goods shall be returned to inventory and all necessary inventory and track-and-trace records shall be updated as appropriate that same day.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070, 26090 and 26160, Business and Professions Code.

§ 5419. Cannabis Consumption During Delivery.

A licensed retailer's delivery employees shall not consume cannabis goods while delivering cannabis goods to customers.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26090, Business and Professions Code.

§ 5420. Delivery Request Receipt.

A licensed retailer shall prepare a hard copy or electronic delivery request receipt for each delivery of cannabis goods.

- (a) The delivery request receipt shall contain the following:
 - (1) The name and address of the licensed retailer;
 - (2) The first name and employee number of the licensed retailer's delivery employee who delivered the order;
 - (3) The first name and employee number of the licensed retailer's employee who prepared the order for delivery;
 - (4) The first name of the customer and a licensed retailer-assigned customer number for the person who requested the delivery;
 - (5) The date and time the delivery request was made;
 - (6) The delivery address;
 - (7) A detailed description of all cannabis goods requested for delivery. The description shall

include the weight, volume, or any other accurate measure of the amount of all cannabis goods requested;

(8) The total amount paid for the delivery, including any taxes or fees, the cost of the cannabis goods, and any other charges related to the delivery; and

(9) Upon delivery, the date and time the delivery was made, and the handwritten or electronic signature of the customer who received the delivery.

(b) At the time of the delivery, the delivery employee of the retailer shall provide the customer who placed the order with a hard or electronic copy of the delivery request receipt. The delivery employee shall retain a hard or electronic copy of the signed delivery request receipt for the licensed retailer's records.

(c) For the purposes of this section, an employee number is a distinct number assigned by a licensed retailer to an employee that would allow the licensed retailer to identify the employee in documents or records using the employee number rather than the employee's full name. A licensed retailer shall be able to identify the employee associated with each employee number upon request from the Bureau.

(d) For the purposes of this section, a customer number is a distinct number assigned by a licensed retailer to a customer that would allow the licensed retailer to identify the customer in documents or records using the customer number rather than the customer's full name. A licensed retailer shall be able to identify the customer associated with each customer number upon request from the Bureau.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070, 26090 and 26160, Business and Professions Code.

§ 5421. Delivery Route.

While making deliveries of cannabis goods, a licensed retailer's delivery employee shall only travel from the retailer's licensed premises to the delivery address; from one delivery address to another delivery address; or from a delivery address back to the retailer's licensed premises. A delivery employee of a licensed retailer shall not deviate from the delivery path described in this section, except for necessary rest, fuel, or vehicle repair stops, or because road conditions make continued use of the route unsafe, impossible, or impracticable.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26090, Business and Professions Code.

§ 5422. Receiving Shipments of Inventory.

(a) A licensed retailer shall receive a shipment of cannabis goods only from a licensed distributor or licensed microbusiness authorized to engage in distribution.

(b) A licensed retailer shall accept shipments of cannabis goods only between the hours of 6:00 a.m. Pacific Time and 10:00 p.m. Pacific Time.

(c) During business hours, shipments of cannabis goods shall not enter the licensed premises through an entrance or exit that is available for use by the public.

(d) A licensed retailer whose licensed premises only has one entryway may be exempt from the

requirements of subsection (c) of this section if the licensed retailer obtains authorization from the local jurisdiction explicitly authorizing this activity. The licensed retailer shall be required to provide this authorization to the Bureau upon request. For this section to apply, the licensed premises must physically have only one entryway and cannot have any other entryways.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012 and 26070, Business and Professions Code.

§ 5423. Inventory Documentation.

A licensed retailer shall maintain an accurate record of its inventory. A licensed retailer shall provide the Bureau with the record of inventory immediately upon request. A licensed retailer shall keep a record of the following information for all cannabis goods the licensed retailer has in its inventory:

- (a) A description of each item such that the cannabis goods can easily be identified;
- (b) An accurate measurement of the quantity of the item;
- (c) The date and time the cannabis goods were received by the licensed retailer;
- (d) The sell-by or expiration date provided on the package of cannabis goods, if any;
- (e) The name and license number of the licensed distributor or licensed microbusiness that transported the cannabis goods to the licensed retailer; and
- (f) The price the licensed retailer paid for the cannabis goods, including taxes, delivery costs, and any other costs.

Authority: Section 26013, Business and Professions Code. Reference: Section 26160, Business and Professions Code.

§ 5424. Inventory Reconciliation.

- (a) A licensed retailer shall be able to account for all of its inventory.
- (b) In conducting an inventory reconciliation, a licensed retailer shall verify that the licensed retailer's physical inventory is consistent with the licensed retailer's records pertaining to inventory.
- (c) The result of inventory reconciliation shall be retained in the licensed retailer's records and shall be made available to the Bureau upon request.
- (d) If a licensed retailer identifies any evidence of theft, diversion, or loss, the licensed retailer shall notify the Bureau and law enforcement pursuant to section 5036 of this division.
- (e) If a significant discrepancy as defined in section 5034 of this division is discovered between a licensed retailer's physical inventory and the licensed retailer's inventory records, the licensed retailer shall notify the Bureau and law enforcement pursuant to section 5036 of this division.

Authority: Section 26013, Business and Professions Code. Reference: Section 26160, Business and Professions Code.

§ 5426. Records.

All licensed retailer-specific records in this chapter shall be maintained in accordance with section 5037 of this division.

Authority: Section 26013, Business and Professions Code. Reference: Section 26160, Business and Professions Code.

§ 5427. Retailer Premises to Retailer Premises Transfer.

- (a) A licensee who holds multiple retail licenses may arrange for the transfer of cannabis goods from one licensed retail premises to another licensed retail premises if both retail licenses are held under the same ownership.
- (b) Cannabis goods transferred to a licensed retail premises under subsection (a) of this section may be sold by the licensed retailer receiving the cannabis goods only if the cannabis goods comply with all requirements found in the Act and this division.
- (c) The transportation of cannabis goods under this section must comply with all requirements found within the Act and this division.
- (d) Any movement of cannabis goods under this section shall be properly entered into the state track and trace system.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

Chapter 4. MICROBUSINESS

§ 5500. Microbusiness.

- (a) In order to hold a microbusiness license, a licensee must engage in at least three (3) of the following commercial cannabis activities: cultivation, manufacturing, distribution, and retail sale. License types created by the California Department of Food and Agriculture or the State Department of Public Health in regulation shall not be considered qualifying commercial cannabis activities for purposes of obtaining a microbusiness license, except for the Type N manufacturing license.
- (b) An applicant for a microbusiness license shall indicate on the application for licensure which commercial cannabis activities the applicant intends to engage in.
- (c) An application for a microbusiness license shall include:
 - (1) For an application indicating that the applicant intends to engage in cultivation under the microbusiness license, all the required information under sections 5002, 5501, 5502 and 5503 of this division.
 - (2) For an application indicating that the applicant intends to engage in manufacturing under the microbusiness license, all the required information under sections 5002, and 5506 of this division.
 - (3) For an application indicating that the applicant intends to engage in distribution under the microbusiness license, all the required information for an application seeking a distributor license.
 - (4) For an application indicating that the applicant intends to engage in distribution, transport- only under the microbusiness license, all the required information for an

application seeking a distributor, transport-only license.

(5) For an application indicating that the applicant intends to engage in retail sale under the microbusiness license, all the required information for an application seeking a retailer license.

(6) For an application indicating that the applicant intends to engage in non-storefront retail sale under the microbusiness license, all the required information for an application seeking a non- storefront retailer license.

(d) All cultivation, manufacturing, distribution, and retail activities performed by a licensee under a microbusiness license shall occur on the same licensed premises.

(e) A holder of a microbusiness license shall comply with the following:

(1) A holder of a microbusiness license engaged in cultivation shall comply with all the rules and requirements applicable to the cultivation license type suitable for the cultivation activities of the licensee.

(2) A holder of a microbusiness license engaged in manufacturing shall comply with all the rules and requirements applicable to a Manufacturer 1 license in Division 1 of Title 17 of the California Code of Regulations.

(3) A holder of a microbusiness license engaged in distribution shall comply with all the rules and requirements applicable to a distributor license in this division.

(4) A holder of a microbusiness license engaged in retail sale shall comply with all the rules and requirements applicable to a retailer license, or a non-storefront retailer license if retail sales are conducted by delivery only, in this division.

(f) A holder of a microbusiness license may only engage in the commercial cannabis activity requested in the license application and approved by the Bureau at the time the license is issued. If the holder of a microbusiness license wants to engage in an additional commercial cannabis activity after the license is issued, the licensee shall submit a request for a modification of the licensed premises pursuant to section 5027 of this division.

(g) A holder of a microbusiness license shall comply with all the security rules and requirements applicable to the corresponding license type suitable for the activities of the licensee.

(h) Areas of the licensed premises for manufacturing and cultivation shall be separated from the distribution and retail areas by a wall and all doors between the areas shall remain closed when not in use.

(i) A suspension or revocation of a microbusiness licensee shall affect all commercial cannabis activities allowed pursuant to that license.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26050, 26051.5 and 26070, Business and Professions Code.

§ 5501. Microbusiness Applications Including Cultivation Activities.

In addition to the information required in section 5002 of this division, an application for a microbusiness license to engage in cultivation shall include the following:

- (a) Evidence of enrollment with the applicable Regional Water Quality Control Board or State Water Resources Control Board for water quality protection programs or written verification from the appropriate Board that enrollment is not necessary.
- (b) Evidence that the applicant has conducted a hazardous materials record search of the EnviroStor database for the proposed premises. If hazardous sites were encountered, the applicant shall provide documentation of protocols implemented to protect employee health and safety.
- (c) For indoor and mixed-light cultivation, identification of all power sources for cultivation activities, including, but not limited to: illumination, heating, cooling, and ventilation.
- (d) A premises diagram pursuant to section 5006 of this division that shall also include:
 - (1) All roads and water crossings on the property.
 - (2) If the applicant is proposing to use a diversion from a waterbody, groundwater well, or rain catchment system as a water source for cultivation, the following locations on the property diagram with locations also provided as coordinates in either latitude and longitude or the California Coordinate System:
 - (A) Sources of water used, including the location of waterbody diversion(s), pump location(s), and distribution system; and
 - (B) Location, type, and capacity of each storage unit to be used for cultivation.
- (e) A proposed cultivation plan pursuant to section 5502 of this division.
- (f) Identification of all water sources used for cultivation activities and the applicable supplemental information for each source as required by section 5503 of this division:
 - (1) A retail water supplier;
 - (2) A groundwater well;
 - (3) A rainwater catchment system; or
 - (4) A diversion from a surface waterbody or an underground stream flowing in a known and definite channel.
- (g) A copy of any final lake or streambed alteration agreement issued by the California Department of Fish and Wildlife, pursuant to Fish and Game Code sections 1602 and 1617, or written verification from the California Department of Fish and Wildlife that a lake and streambed alteration agreement is not required.
- (h) An attestation that the applicant entity is an "agricultural employer" as defined by the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975; Division 2, Part 3.5 (commencing with Section 1140) of the Labor Code.
- (i) An attestation that the local fire department has been notified of the cultivation site if the applicant entity is an indoor license type.
- (j) An acknowledgement that the applicant understands that the information provided in the application that is relevant to the cultivation operation may be shared with the Department of

Food and Agriculture for purposes of evaluating the applicant's qualifications for licensure. If the Department of Food and Agriculture corresponds directly with the applicant on matters related to the application, the applicant shall agree to cooperate. The applicant shall further agree that the Department of Food and Agriculture may conduct inspections on the areas of the premises related to their respective oversight authority.

(k) If applicable, a detailed description of any fines or penalties for cultivation or production of a controlled substance on public or private land pursuant to Fish and Game Code section 12025 or 12025.1 against the applicant or a business entity in which the applicant was an owner or officer within 3 years preceding the date of application.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26050, 26051.5 and 26070, Business and Professions Code.

§ 5502. Cultivation Plan Requirements.

A cultivation plan shall include all of the following:

(a) A detailed premises diagram showing all cultivation activity areas, boundaries, and dimensions in feet. The total area of the following cultivation activity areas shall be less than 10,000 square feet as provided in Business and Professions Code section 26070.

- (1) Canopy area(s) (which shall contain mature plants, at any point in time), including aggregate square footage if the canopy areas are noncontiguous.
- (2) Area(s) outside of the canopy where only immature plants shall be maintained, if applicable.
- (3) Designated pesticide and other agricultural chemical storage area(s).
- (4) Designated processing area(s) if the licensee will process on site.
- (5) Designated packaging area(s) if the licensee will package products on site.
- (6) Designated composting area(s) if the licensee will compost plant or cannabis waste on site.
- (7) Designated secured area(s) for cannabis waste if different than subsection (a)(6) of this section.
- (8) Designated area(s) for harvested cannabis storage.
- (9) Designated research and development area(s) which may contain mature plants for nursery only.
- (10) Designated seed production area(s) which may contain mature plants for nursery only.

(b) For purposes of subsection(a)(1) in this section, canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all areas(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries. Canopy may be noncontiguous, but each unique area included in the total canopy calculation shall be separated by an identifiable boundary which include, but are not limited to: interior walls, shelves, greenhouse walls, hoop house walls, garden benches, hedgerows, fencing, garden beds, or garden plots. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation. Immature plants for cultivation activities of a microbusiness shall have the same definition as defined by the California Department of Food

and Agriculture in regulation.

(c) For indoor and mixed-light cultivation, a lighting diagram with the following information shall be included:

- (1) Location of all lights in the canopy area(s); and
- (2) Maximum wattage, or wattage equivalent, of each light.
- (d) A pest management plan which shall include, but not be limited to, the following:
 - (1) Product name and active ingredient(s) of all pesticides to be applied to cannabis during any stage of plant growth; and
 - (2) Integrated pest management protocols including chemical, biological, and cultural methods the applicant anticipates using to control or prevent the introduction of pests on the cultivation site.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26050, 26051.5 and 26070, Business and Professions Code.

§ 5503. Supplemental Water Source Information.

The following information shall be provided for each water source identified by the applicant:

- (a) Retail water supply sources:
 - (1) If the water source is a retail water supplier, as defined in Water Code section 13575, identify the retail water supplier.
 - (2) If the water source is a small retail water supplier, such as a delivery service, and is subject to Business and Professions Code section 26060.1(a)(1)(B):
 - (A) If the retail water supplier contract is for delivery or pickup of water from a surface water body or an underground stream flowing in a known and definite channel, provide all of the following:
 - (i) The name of the retail water supplier under the contract;
 - (ii) The geographic location coordinates in either latitude and longitude or the California Coordinate System of any point of diversion used by the retail water supplier to divert water delivered to the applicant under the contract;
 - (iii) The authorized place of use of any water right used by the retail water supplier to divert water delivered to the applicant under the contract; and
 - (iv) The maximum amount of water delivered to the applicant for cannabis cultivation in any year.
 - (B) If the retail water supplier contract is for delivery or pickup of water from a groundwater well, provide all of the following:
 - (i) The name of the retail water supplier;
 - (ii) The geographic location coordinates for any groundwater well used to supply water

delivered to the applicant, in either latitude and longitude or the California Coordinate System;

(iii) The maximum amount of water delivered to the applicant for cannabis cultivation in any year; and

(iv) A copy of the well log filed with the Department of Water Resources pursuant to Water Code section 13751 for each percolating groundwater well used to divert water delivered to the applicant. If no well log is available, the applicant shall provide evidence from the Department of Water Resources indicating that the Department of Water Resources does not have a record of the well log. When no well log is available, the State Water Resources Control Board may request additional information about the well.

(b) If the water source is a groundwater well:

(1) The groundwater well's geographic location coordinates in either latitude and longitude or the California Coordinate System; and

(2) A copy of the well log filed with the Department of Water Resources pursuant to Water Code section 13751. If no well log is available, the applicant shall provide evidence from the Department of Water Resources indicating that the Department of Water Resources does not have a record of the well log. If no well log is available, the State Water Resources Control Board may request additional information about the well.

(c) If the water source is a rainwater catchment system:

(1) The total square footage of the catchment footprint area(s);

(2) The total storage capacity, in gallons, of the catchment system(s); and

(3) A detailed description of the type, nature, and location of each catchment surface. Examples of catchment surfaces include a rooftop and greenhouse.

(d) If the water source is a diversion from a waterbody, provide any applicable statement, application, permit, license, or small irrigation use registration identification number(s), and either:

(1) A copy of any applicable registrations, permits, or licenses or proof of a pending application, issued under Part 2 (commencing with Section 1200) of Division 2 of the Water Code as evidence of approval of a water diversion by the State Water Resources Control Board;

(2) A copy of any statements of diversion and use filed with the State Water Resources Control Board before October 31, 2017, detailing the water diversion and use; or

(3) A copy of documentation submitted to the State Water Resources Control Board before October 31, 2017, demonstrating that the diversion is authorized under a riparian right and that no diversion occurred in any calendar year between January 1, 2010, and January 1, 2017.

(4) If the applicant has claimed an exception from the requirement to file a statement of diversion and use pursuant to Water Code section 5101, the applicant shall provide a copy of the documentation submitted to the State Water Resources Control Board before January 1, 2019, demonstrating that the diversion is subject to Water Code section 5101, subdivision (a), (c), (d), or (e).

Authority: Section 26013, Business and Professions Code. Reference: Sections 26050, 26051.5 and 26070, Business and Professions Code; and Section 13149, Water Code.

§ 5504. License Issuance in an Impacted Watershed.

If the State Water Resources Control Board or the Department of Fish and Wildlife finds, based on substantial evidence, that a licensed microbusiness' cannabis cultivation is causing significant adverse impacts on the environment in a watershed or other geographic area, the Bureau shall not issue new microbusiness licenses that include cultivation activities or increase the total number of plant identifiers within that watershed or area.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26011.5, 26055 and 26070, Business and Professions Code.

§ 5505. Cultivation Records for Licensees Engaging in Cultivation Activities.

In addition to the records required by section 5037 of this division, a licensed microbusiness engaging in cultivation activities shall maintain the following records:

- (a) Cultivation plan(s);
- (b) All records evidencing compliance with the environmental protection measures required in sections 5501, 5502, 5503 and 5504 of this division; and
- (c) All unique identifiers (UID) assigned to product in inventory and all unassigned UIDs. UIDs associated with product that has been retired from the track and trace system must be retained for six (6) months after the date the tags were retired.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26069, 26160, and 26161, Business and Professions Code.

§ 5506 Microbusiness Applications Including Manufacturing Activities.

In addition to the information required in section 5002 of this division, an application for a microbusiness license that engages or will engage in manufacturing, shall include the following:

- (a) The type of activity conducted at the premises (extraction, infusion, packaging, and/or labeling).
- (b) The types of products that will be manufactured, packaged, or labeled.
- (c) The name, title, and phone number of the on-site individual who manages the operation of the premises.
- (d) The name, title, and phone number of an alternate contact person for the premises.
- (e) The number of employees at the premises.
- (f) The following information:
 - (1) A description of inventory control procedures sufficient to demonstrate how the applicant will comply with the requirements of section 40282 of Title 17 of the California Code of Regulations, or a copy of the standard operating procedure addressing inventory control;

- (2) A copy of the product quality plan that meets the requirements of section 40253 of Title 17 of the California Code of Regulations; and
- (3) A description of security procedures sufficient to demonstrate how the applicant will comply with the requirements of section 40200 of Title 17 of the California Code of Regulations, or a copy of the standard operating procedure addressing security procedures.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26050, 26051.5, 26055 and 26070, Business and Professions Code.

§ 5506.1 Microbusiness Failed Manufactured Cannabis Product Batches.

A microbusiness licensee that engages or will engage in manufacturing shall handle failed manufactured cannabis product batches in accordance with the following:

- (a) A finished manufactured cannabis product batch that fails any laboratory testing requirement established by the Bureau pursuant to Business and Professions Code section 26100 shall be destroyed unless a corrective action plan for remediation or reprocessing is approved by the Bureau pursuant to subsection (d) of this section.
- (b) Remediation or reprocessing of a failed manufactured cannabis product batch or the use of a harvest batch that has failed any laboratory test shall comply with the requirements and procedures established by the Bureau in section 5727 of this division.
- (c) Edible cannabis products that fail laboratory testing requirements shall not be remediated or reprocessed and shall be destroyed. If any edible cannabis product that has failed laboratory testing is remediated, reprocessed, or otherwise mixed with another batch of cannabis product, such action shall render the final cannabis product adulterated, as defined in Business and Professions Code section 26131, regardless of the defect level of the final cannabis product.
- (d) A manufactured cannabis product batch or a harvest batch that fails laboratory testing or quality assurance review shall not be remediated or reprocessed unless the Bureau has approved a corrective action plan submitted by the microbusiness licensee. The corrective action plan shall include, at minimum, a description of how the product or harvest batch will be remediated so that the product or harvest batch, or any product produced therefrom, will meet all laboratory testing and quality assurance requirements. Corrective action plans will be reviewed by the Bureau on a case-by-case basis.
- (e) All remediation of harvest or manufactured cannabis product batches shall be documented in the microbusiness' manufacturing records. Remediated products, harvest batches, or products produced therefrom shall be tested and undergo quality assurance review in accordance with the requirements established by the Bureau in Chapter 2 of this division.
- (f) Notwithstanding subsection (c) of this section, if the edible cannabis products are orally- dissolving products, as defined in section 5700 of this division, and fail laboratory testing because the per-package limit of THC for adult-use products has been exceeded, the orally- dissolving products may be remediated by repackaging the orally-dissolving products as medicinal products in accordance with the following:
 - (1) A corrective action plan pursuant to subsection (d) of this section shall be submitted to and approved by the Bureau;

- (2) The orally-dissolving edible cannabis products batch is returned to the licensed microbusiness that packaged the products;
- (3) The orally-dissolving edible cannabis products are not altered in any way; and
- (4) The orally-dissolving edible cannabis product is labeled to accurately state the contents.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26050 and 26070, Business and Professions Code.

§ 5507 Microbusiness Records for Licensees Engaging in Manufacturing Activities.

In addition to the records required by section 5037 of this division, a licensed microbusiness engaging in manufacturing activities shall maintain all records required to be maintained by manufacturers under Chapter 13, Division 1 of Title 17 of the California Code of Regulations.

Authority: Section 26013, Business and Professions Code. Reference: Section 26160, Business and Professions Code.

Chapter 5. CANNABIS EVENTS

§ 5600. Cannabis Event Organizer License.

- (a) To obtain a temporary cannabis event license, the event organizer must first apply for and obtain a cannabis event organizer license.
- (b) A cannabis event organizer licensed under this section shall comply with chapter 1 of this division except for sections 5001-5002, 5006-5008, 5010-5010.3, 5016, 5019, 5025- 5028, 5032-5034, 5038, 5042, 5044, and 5046-5054.
- (c) A cannabis event organizer licensee is not authorized or licensed to cultivate, distribute, manufacture, or retail cannabis or cannabis products without first obtaining the appropriate licenses or authorizations to engage in such commercial cannabis activities.
- (d) A cannabis event organizer licensee shall comply with the record retention provisions of section 5037 of this division. Records shall be kept by the cannabis event organizer licensee in a manner that allows the records to be produced for the Bureau in either hard copy or electronic form, whichever the Bureau requests. Failure to produce records upon the Bureau's request may result in disciplinary action against the cannabis event organizer license and/or denial of a temporary cannabis event license.
- (e) Cannabis event organizer applications may be completed online at www.bcc.ca.gov or by delivering a printed copy to the Bureau's office(s).
- (f) Applicants who submit their applications online shall first register for a user account as provided by section 5002(b) of this division.
- (g) An application must be completed by an owner as defined by section 5003 of this division. An application for a cannabis event organizer license includes the following:
 - (1) The name of the applicant. For applicants who are individuals, the applicant shall provide both the first and last name of the individual. For applicants who are business entities, the applicant shall provide the legal business name of the applicant.
- (2) If applicable, the business trade name ("DBA") of the applicant.

- (3) Payment of an application fee pursuant to section 5014 of this division.
 - (4) Whether the owner is serving or has previously served in the military. Disclosure of military service is voluntary. An applicant who has served as an active duty member of the Armed Forces of the United States and was honorably discharged and who can provide evidence of such honorable discharge shall have his or her application expedited pursuant to Business and Professions Code section 115.4.
 - (5) A list of the license types and the license numbers issued from the Bureau and all other state cannabis licensing authorities that the applicant holds, including the date the license was issued and the licensing authority that issued the license.
 - (6) Whether the applicant has been denied a license or has had a license suspended or revoked by the Bureau or any other state cannabis licensing authority. The applicant shall provide the type of license applied for, the name of the licensing authority that denied the application, and the date of denial.
- (7) The mailing address for the applicant.
- (8) The telephone number for the applicant.
- (9) The website address of the applicant's business, if applicable.
- (10) The email address for the applicant's business.
 - (11) Contact information for the applicant's designated primary contact person including the name, title, phone number, and email address of the individual.
- (12) The federal employer identification number for the applicant's business.
 - (13) A description of the business organizational structure of the applicant, such as partnership or corporation.
 - (14) All business-formation documents, which may include, but are not limited to, articles of incorporation, bylaws, operating agreements, partnership agreements, and fictitious business name statements. The applicant shall also provide all documents filed with the California Secretary of State, which may include, but are not limited to, articles of incorporation, certificates of stock, articles of organization, certificates of limited partnership, and statements of partnership authority. If the commercial cannabis business is held in trust, the applicant shall provide a copy of the certificate of trust establishing trustee authority.
 - (15) A list of every fictitious business name the applicant is operating under including the address where the business is located.
 - (16) A commercial cannabis business that is a foreign corporation shall include in its application the certificate of qualification, certificate of registration, or certificate of status issued by the California Secretary of State.
- (17) The applicant shall supply the following financial information:
 - (A) A list of funds belonging to the applicant's cannabis event organizing business held in savings, checking, or other accounts maintained by a financial institution. The applicant shall provide, for each account, the financial institution's name, the financial institution's address, account type, account number, and the amount of money in the account.

- (B) A list of loans made to the applicant for its use in cannabis event organizing activities. For each loan, the applicant shall provide the amount of the loan, the date of the loan, term(s) of the loan, security provided for the loan, and the name, address, and phone number of the lender.
- (C) A list of investments made into the applicant's cannabis event organizing activities. For each investment, the applicant shall provide the amount of the investment, the date of the investment, term(s) of the investment, and the name, address, and phone number of the investor.
- (D) A list of all gifts of any kind given to the applicant for its use in cannabis event organizing activities. For each gift, the applicant shall provide the value of the gift or description of the gift, and the name, address, and phone number of the provider of the gift.
- (18) A complete list of every individual that has a financial interest in the cannabis event organizing business as defined in section 5004 of this division, who is not an owner as defined in section 5003 of this division.
- (19) A complete list of every owner of the applicant as defined in section 5003 of this division. Each individual named on this list shall submit the following information:
- (A) The full name of the owner.
- (B) The owner's title within the applicant entity.
- (C) The owner's date of birth and place of birth.
- (D) The owner's social security number or individual taxpayer identification number.
- (E) The owner's mailing address.
- (F) The owner's telephone number. This may include a number for the owner's home, business, or mobile telephone.
- (G) The owner's email address.
- (H) The owner's current employer.
- (I) The percentage of the ownership interest held in the applicant entity by the owner.
- (J) Whether the owner has an ownership or a financial interest as defined in sections 5003 and 5004, respectively, of this division in any other commercial cannabis business licensed under the Act.
- (K) A copy of the owner's government-issued identification. Acceptable forms of identification are a document issued by a federal, state, county, or municipal government that includes the name, date of birth, height, gender, and picture of the person, such as a driver license.
- (L) A detailed description of the owner's convictions. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Convictions dismissed under Penal Code section 1203.4 or equivalent non-California law must be disclosed. Convictions dismissed under Health and Safety Code section 11361.8 or equivalent non-California law must be disclosed. Juvenile adjudications and traffic infractions under \$300 that did not involve alcohol, dangerous drugs, or controlled substances do not need to be included. For each conviction, the owner shall provide the following:

- (i) The date of conviction.
- (ii) Dates of incarceration, if applicable.
- (iii) Dates of probation, if applicable.
- (iv) Dates of parole, if applicable.
- (v) A detailed description of the offense for which the owner was convicted.
- (vi) A statement of rehabilitation for each conviction. The statement of rehabilitation is to be written by the owner and may contain evidence that the owner would like the Bureau 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, a certificate of rehabilitation under Penal Code section 4852.01, and dated letters of reference from employers, instructors, or professional counselors that contain valid contact information for the individual providing the reference.

(M) If applicable, a detailed description of any administrative orders or civil judgments for violations of labor standards, any suspension of a commercial cannabis license, revocation of a commercial cannabis license, or sanctions for unlicensed commercial cannabis activity by a licensing authority, local agency, or state agency against the applicant or a business entity in which the applicant was an owner or officer within the three years immediately preceding the date of the application.

(N) Attestation to the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true, and accurate. I understand that a misrepresentation of fact is cause for rejection of this application, denial of the license, or revocation of a license issued.

(20) For an applicant with 20 or more employees, the applicant shall attest that the applicant has entered into a labor peace agreement and will abide by the terms of the agreement. The applicant shall submit a copy of the page of the labor peace agreement that contains signatures of the union representative and the applicant. For applicants who have not yet entered into a labor peace agreement, the applicant shall provide a notarized statement indicating the applicant will enter into and abide by the terms of a labor peace agreement as soon as reasonably practicable after licensure.

(21) The limited waiver of sovereign immunity required by section 5009 of this division, if applicable.

(22) The applicant's State Employer Identification Number (SEIN) issued by the California Employment Development Department.

(23) For an applicant with more than one employee, the applicant shall attest that the applicant employs, or will employ within one year of receiving a license, one supervisor and one employee who have successfully completed a Cal-OSHA 30-hour general industry outreach course offered by a training provider that is authorized by an OSHA Training Institute Education Center to provide the course.

Authority: Sections 115.4 and 26013, Business and Professions Code. Reference: Sections 115.4, 144, 26012 and 26200, Business and Professions Code.

§ 5601. Temporary Cannabis Event License.

(a) A temporary cannabis event license authorizes a licensed cannabis event organizer to hold a temporary cannabis event where the onsite sale and consumption of cannabis goods is authorized at the location indicated on the license during the dates indicated on the license.

(b) A temporary cannabis event license shall only be issued to a person who holds a cannabis event organizer license issued by the Bureau.

(c) Violations of the requirements applicable to temporary cannabis events may result in disciplinary action against the cannabis event organizer license or any other licenses held by a licensee participating in the temporary cannabis event and responsible for a violation under this division or the Act.

(d) A temporary cannabis event license shall only be issued for a single day or up to 4 consecutive days. No temporary cannabis event license will be issued for more than 4 days.

(e) An application for a temporary cannabis event license shall be submitted to the Bureau no less than 60 calendar days before the first day of the temporary cannabis event.

(f) A temporary cannabis event may only be held at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction for the purpose of holding a temporary cannabis event.

(g) A temporary cannabis event license shall not be issued for a premises that is licensed for the sale of alcohol or tobacco.

(h) An application for a temporary cannabis event license shall include the following:

(1) The name of the applicant. For applicants who are individuals, the applicant shall provide both the first and last name of the individual. For applicants who are business entities, the applicant shall provide the legal business name of the applicant.

(2) The license number for each state cannabis license held by the applicant.

(3) The address of the location where the temporary cannabis event will be held.

(4) The name of the temporary cannabis event.

(5) A diagram of the physical layout of the temporary cannabis event. The diagram shall clearly indicate where the temporary cannabis event will be taking place on the location grounds, all entrances and exits that will be used by participants during the event, all cannabis consumption areas, and all retail areas where cannabis goods will be sold. The hours during which cannabis goods will be sold shall be noted on the diagram. The diagram shall also clearly indicate the area where cannabis waste will be stored, all areas where cannabis goods will be stored, and the specific location of each cannabis licensee who will be participating in the event. Each cannabis licensee participating in the event shall be identified with an assigned temporary cannabis event location number. The diagram shall not contain highlighting and the markings on the diagram shall be in black-and-white print.

(6) The dates and hours of operation for which the temporary cannabis event license is being sought. A temporary event license is required for any date in which the applicant engages in onsite cannabis sales or allows onsite cannabis consumption.

(7) Contact information for the applicant's designated primary contact person regarding the temporary event license, including the name, title, address, phone number, and email address of

the individual.

(8) Contact information for a designated contact person(s) who shall be onsite at the event and reachable by telephone at all times that the event is occurring.

(9) Written approval from the local jurisdiction authorizing the applicant to engage in onsite cannabis sales to, and onsite consumption by, persons 21 years of age or older at the temporary cannabis event at the proposed location.

(10) A list of all licensees and employees that will be providing onsite sales of cannabis goods at the temporary cannabis event.

(11) Attestation to the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true, and accurate. I understand that a misrepresentation of fact is cause for rejection of this application, denial of the license, or revocation of a license issued.

(i) If the list of licensees and employees participating in the temporary cannabis event changes after the application is submitted or after the license is issued, the applicant shall submit with the Notification and Request Form, BCC-LIC-027 (New 10/18), incorporated herein by reference, an updated list and an updated diagram, as required in subsection (f)(5) of this section, to the Bureau no less than 72 hours before the event. Licensees not on the list submitted to the Bureau shall not participate in the temporary cannabis event.

(j) The licensed cannabis event organizer shall hire or contract for security personnel to provide security services at the licensed temporary cannabis event. All security personnel hired or contracted for by the licensee shall be at least 21 years of age, licensed by the Bureau of Security and Investigative Services, and comply with Chapters 11.4 and 11.5 of Division 3 of the Business and Professions Code. Security personnel shall be present on the licensed premises at all times cannabis goods are available for sale and/or cannabis consumption is allowed on the licensed premises.

(k) A licensed cannabis event organizer shall maintain a clearly legible sign, not less than 7" x 11" in size reading, "No Persons Under 21 Allowed" at or near each public entrance to any area where the sale or consumption of cannabis goods is allowed. The lettering of the sign shall be no less than 1 inch in height.

(l) All cannabis waste generated at a temporary cannabis event shall be collected and disposed of in accordance with the requirements of section 5054 this division. The licensed cannabis event organizer may contract or arrange for the collection and disposal of cannabis waste generated during the temporary cannabis event.

(m) A licensed cannabis event organizer and all other licensees participating in a temporary cannabis event are required to comply with section 5037 of this division and all other applicable requirements in the Act and this division pertaining to recordkeeping.

(n) The Bureau may require the event organizer and all participants to cease operations without delay if, in the opinion of the Bureau or local law enforcement, it is necessary to protect the immediate public health and safety of the people of the state. Upon notification from the Bureau that the event is to cease operations, the event organizer shall immediately stop the event and all participants shall be removed from the premises within the time frame provided by the Bureau.

(o) Upon notification from the Bureau, the event organizer shall immediately expel from the event any person selling cannabis goods without a license from the Bureau that authorizes the

participant to sell cannabis goods. The event organizer or their representative shall remain with the person being expelled from the premises at all times until he or she vacates the premises. If the person does not vacate the premises, the Bureau may inform the event organizer that the event must cease operations. Upon notification from the Bureau that the event is to cease operations, the event organizer shall immediately stop the event and all participants shall be removed from the premises within the time frame provided by the Bureau.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012 and 26200, Business and Professions Code.

§ 5602. Temporary Cannabis Event Sales.

(a) Only persons age 21 or older may purchase and consume cannabis goods at a temporary cannabis event. Prior to selling cannabis goods to a customer, the licensee making the sale shall confirm, using valid identification as specified in section 5404 of this division, the age and identity of the customer.

(b) All sales of cannabis goods at a temporary cannabis event must occur in a retail area as designated in the premises diagram pursuant to section 5601(h)(5) of this division.

(c) Each sale at a temporary cannabis event shall be performed by a licensed retailer, a licensed non-storefront retailer, or licensed microbusiness that is authorized to engage in retail sales. The cannabis event organizer may also sell cannabis goods at the temporary cannabis event if the organizer separately holds a license authorizing the retail sale of cannabis goods.

(1) Licensed retailers or licensed microbusinesses shall only conduct sales activities within their specifically assigned area, identified in the diagram of the physical layout of the temporary cannabis event.

(2) Mobile sales activities via wagon, cart, or similar means are prohibited at the temporary cannabis event site.

(d) Licensed retailers or licensed microbusinesses must prominently display their temporary cannabis event location number and state license within plain sight of the public.

(e) All sales at a temporary cannabis event shall occur on the dates stated on the license and shall occur at the location stated on the license. All onsite sales of cannabis goods must comply with the hours of operation requirements of section 5403 of this division.

(f) Sale of alcohol or tobacco shall not be allowed on the licensed temporary cannabis event premises.

(g) The cannabis goods sold onsite at a temporary cannabis event shall be transported by a licensed distributor or licensed microbusiness in compliance with the Act and this division. All shipments of cannabis and non-cannabis goods intended for sale at a temporary cannabis event must be checked by the temporary cannabis event organizer staff to prevent prohibited items, such as alcohol and tobacco, from entering the licensed premises.

(h) Except small amounts of cannabis goods used for display, all cannabis goods for sale at a temporary cannabis event shall be stored in a secure, locked container that is not accessible to the public. Cannabis goods being stored by a licensee at a temporary cannabis event shall not be left unattended. Licensees may share the secure, locked container; however, each licensee using the container shall be held responsible for any violations of this section and subject to disciplinary

action.

- (i) All cannabis goods made available for sale at a cannabis event shall comply with all requirements for the retail sale of cannabis goods within the Act and section 5406 of this division.
- (j) All cannabis goods made available for sale at a temporary cannabis event shall comply with all track and trace requirements within the Act and this division.
- (k) All cannabis goods used for display at a temporary cannabis event shall comply with the requirements of section 5405 of this division.
- (l) All cannabis goods sold at a temporary cannabis event shall comply with section 5413 of this division.
- (m) All customer returns of cannabis goods at a temporary cannabis event shall comply with section 5410 of this division.
- (n) The daily sales limits under section 5409 of this division apply to all sales made at a temporary cannabis event.
- (o) A licensed retailer shall only provide free cannabis goods to a person at a temporary cannabis event if the licensed retailer complies with all requirements of section 5411 of this division.
- (p) The licensed cannabis event organizer shall be responsible for ensuring that all rules and requirements for the onsite sale of cannabis goods are followed.
- (q) Any compensation paid from a licensed retailer to a licensed cannabis event organizer for participation in a temporary cannabis event shall not be determined based on, or be contingent on, the sale of cannabis goods.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26200, Business and Professions Code.

§ 5603. Temporary Cannabis Event Consumption.

- (a) Access to the area where cannabis consumption is allowed shall be restricted to persons 21 years of age or older.
- (b) The event organizer licensee shall ensure that cannabis consumption is not visible from any public place or non-age-restricted area.
- (c) Consumption of alcohol or tobacco shall not be allowed on the licensed premises.
- (d) All requirements for onsite cannabis consumption imposed by the relevant local jurisdiction shall be followed and smoking of cannabis goods shall be prohibited in any areas where smoking is prohibited by law.
- (e) The licensed cannabis event organizer, who holds the temporary cannabis event license, shall be responsible for ensuring that all rules and requirements for the onsite consumption of cannabis goods are followed.
- (f) A licensed cannabis event organizer and all other licensees participating in a temporary cannabis event are required to follow all applicable requirements in this division pertaining to

record keeping and waste management.

Authority: Section 26013, Business and Professions Code. Reference: Section 26200, Business and Professions Code.

§ 5604. Informational or Educational Cannabis Events.

(a) Informational or educational cannabis events where no sales of cannabis goods or consumption of cannabis goods is occurring are not required to be licensed by the Bureau.

(b) A person may display cannabis goods for informational or educational purposes consistent with Health and Safety Code sections 11362.1 and 11362.77.

Authority: Section 26013, Business and Professions Code. Reference: Section 26013, Business and Professions Code; and Sections 11362.1 and 11362.77, Health and Safety Code.

Chapter 6. TESTING LABORATORIES

Article 1. Chapter Definitions

§ 5700. Definitions.

In addition to the definitions in section 5000 of this division, the following definitions apply to this chapter.

(a) “Acceptance criteria” means the specified limits placed on the characteristics of an item or method that are used to determine data quality.

(b) “Accreditation body” means an impartial non-profit organization that operates in conformance with the International Organization for Standardization (ISO) / International Electrotechnical Commission (IEC) standard 17011 and is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA) for Testing.

(c) “Accredited college or university” means a college or university accredited by a regional or national accrediting agency that is an accreditor recognized by the Secretary of the US Department of Education.

(d) “Action level” means the threshold value that provides the criterion for determining whether a sample passes or fails an analytical test.

(e) “Analyte” means a chemical, compound, element, bacteria, yeast, fungus, or toxin to be identified or measured.

(f) “Analytical batch” means a set of no more than 20 samples that is prepared together for the same analysis and are prepared with laboratory quality control (LQC) samples.

(g) “Analytical method” means a technique used qualitatively or quantitatively to determine the composition of a sample or a microbial contamination of a sample.

(h) “Analytical sequence” means a group of samples that are analyzed sequentially using the same instrument calibration curve.

- (i) “Cannabinoid” means a class of diverse chemical compounds derived from a cannabis plant.
- (j) “Cannabis concentrate” means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. For purposes of this chapter, “cannabis concentrate” includes, but is not limited to, the separated resinous trichomes of cannabis, tinctures, capsules, suppositories, extracts, vape cartridges, inhaled products (such as dab, shatter, and wax), and tablets as defined by the State Department of Public Health in regulation.
- (k) “CAS number” means the unique numerical identifier assigned to every chemical substance by Chemical Abstracts Service, a division of the American Chemical Society.
- (l) “CBD” means cannabidiol, CAS number 13956-29-1.
- (m) “CBDA” means cannabidiolic acid, CAS number 1244-58-2.
- (n) “CBG” means cannabigerol, CAS number 25654-31-3.
- (o) “CBN” means cannabinol, CAS number 521-35-7.
- (p) “Certificate of accreditation” means a document issued by an accreditation body that attests to the laboratory’s competence to carry out specific testing analysis.
- (q) “Certificate of analysis” (COA) means the report prepared by the laboratory about the analytical testing performed and results obtained by the laboratory.
- (r) “Certified reference material” means a reference material prepared by a certifying body or a party independent of the laboratory with ISO/IEC 17034 accreditation.
- (s) “Chain of Custody” (COC) means the chronological documentation that records the sequence of custody, control, transfer, analysis, and disposal of a sample.
- (t) “Coefficient of Determination” (commonly denoted as “ r^2 ”) means a statistical measure that determines how well the regression approximates the actual data points in the calibration curve, with a regression of 1 being a perfect fit.
- (u) “Continuing calibration verification” (CCV) means a type of quality control sample that includes each of the target method analytes that is a mid-range calibration standard which checks the continued validity of the initial calibration of the instrument.
- (v) “Corrective action” means an action taken by the laboratory to resolve, and prevent from recurrence, a problem with the technical operations of the laboratory.
- (w) “Exclusivity” means the specificity of the test method for validating microbial testing methods. It evaluates the ability of the method to distinguish the target organisms from similar but genetically distinct non-target organisms.
- (x) “Foreign material” means any filthy, putrid, or decomposed substance including hair, insects, excreta, or related adulterant that may be hazardous or cause illness or injury to the consumer.
- (y) “Frequency” means the number of items occurring in each category. Frequency may be

determined by analytical method or laboratory specific requirements for accuracy, precision of the analysis, or statistical calculation.

(z) “Good laboratory practice” (GLP) means a system of management controls for laboratories to ensure the uniformity, consistency, reliability, reproducibility, quality, and integrity of analyses performed by the testing laboratory.

(aa) “Inclusivity” means, related to microbiological method validation, the sensitivity of the test method. It evaluates the ability of the test method to detect a wide range of target organisms by a defined relatedness.

(bb) “Inhalable” means consumable in gaseous or vapor form through the lungs.

(cc) “Initial Calibration Verification” (ICV) means a solution of each of the target method analytes of known concentration that is obtained from a source external to the laboratory and different from the source of calibration standards.

(dd) “ISO/IEC” means the joint technical committee of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC).

(ee) “ISO/IEC 17025” means the general requirements specified by the ISO/IEC for the competence of testing and calibration laboratories.

(ff) “ISO/IEC 17034” means the general requirements established by the ISO/IEC for the competence of reference material producers.

(gg) “ISO/IEC 17043” means the general requirements established by the ISO/IEC for proficiency testing.

(hh) “Laboratory” means “testing laboratory” as defined at Business and Professions Code section 26001(at).

(ii) “Laboratory Control Sample” (LCS) means a blank matrix to which known concentrations of each of the target method analytes are added. The spiked concentration must be at a mid-range concentration of the calibration curve for the target analytes. The LCS is analyzed in the same manner as the representative sample.

(jj) “Laboratory replicate sample” means a sub-sample taken of the representative sample used for laboratory quality control purposes to demonstrate reproducibility. It is prepared and analyzed in the identical manner as the representative sample. The results from replicate analyses are used to evaluate analytical precision.

(kk) “Laboratory employee” means any person directly employed by the laboratory for wages, salary, barter, or trade by the laboratory and who is not employed by any other licensee under the Act except for another testing laboratory. “Laboratory employee” does not mean an independent contractor, third party entity, or any other entity acting on behalf of the laboratory.

(ll) “Laboratory quality assurance” means the set of operating principles that enable laboratories to produce defensible data of known accuracy and precision and includes employee training, equipment preventative maintenance procedures, calibration procedures, and quality control testing, among other things.

(mm) “Limit of detection” (LOD) means the lowest quantity of a substance or analyte that can

be distinguished from the absence of that substance within a stated confidence limit.

(nn) “Limit of quantitation” (LOQ) means the minimum concentration of an analyte in a specific matrix that can be reliably quantified while also meeting predefined goals for bias and imprecision.

(oo) “Linear regression” means the determination, in analytical chemistry, of the best linear equation for calibration data to generate a calibration curve. The concentration of an analyte in a sample can then be determined by comparing a measurement of the unknown to the calibration curve. A linear regression uses the following equation:

$$y = mx + b; \text{ where } m = \text{slope, } b = \text{intercept}$$

(pp) “Matrix” means the substances that are present in a sample except for the analyte(s) of interest.

(qq) “Matrix spike sample” means a sample prepared by adding a known quantity of each of the target analyte to a sample matrix or to a matrix that is as closely representative of the matrix being analyzed as possible. The spiked concentration must be at a mid-range concentration of the calibration curve for the target analytes.

(rr) “Method blank” means an analyte free matrix to which all reagents are added in the same volumes or proportions as used in the sample preparation and is processed in exactly the same manner as the samples.

(ss) “Moisture content” means the percentage of water in a sample, by weight.

(tt) “Non-target organism” means an organism that the test method or analytical procedure is not testing for and can be used in evaluating the specificity of a test method.

(uu) “Orally-consumed product containing alcohol” means a liquid solution that contains more than 0.5% alcohol by volume as an ingredient, is not otherwise an alcoholic beverage as defined in Business and Professions Code section 23004, is packaged in a container no larger than two (2) fluid ounces and includes a capped calibrated dropper capable of accurately measuring servings.

(vv) “Orally-dissolving product” means an edible cannabis product that is intended to dissolve and release cannabinoids directly into the mouth, which allows them to enter the bloodstream through the tissue, such as sublingual lozenges or mouth strips. Orally dissolving products are not intended to be eaten or swallowed to enter the digestive system.

(ww) “Percent recovery” means the percentage of a measured concentration relative to the added (spiked) concentration in a reference material or matrix spike sample. A laboratory shall calculate the percent recovery by dividing the sample result by the expected result then multiplying the quotient by 100.

(xx) “Practical experience” means experience performing scientific analytical tests in a laboratory setting using equipment, instruments, kits, and materials routinely found in a laboratory. “Practical experience” includes experience in any type of laboratory setting and is not limited to cannabis-specific laboratories.

(yy) “Pre-roll” has the same meaning as in section 5000(q) of this division and also includes, for purposes of this chapter, pre-rolls infused with cannabis concentrate.

(zz) “Proficiency test” means an evaluation of a laboratory’s performance against pre-established criteria by means of interlaboratory comparisons of test measurements.

(aaa) “Proficiency test sample” means a sample that is prepared by a party independent of the testing laboratory with the ISO/IEC 17043 accreditation, where the concentration and identity of an analyte is known to the independent party, but is unknown to the testing laboratory and testing laboratory employees.

(bbb) “Quadratic regression” means the determination, in analytical chemistry, of the best parabola equation for calibration data to generate a calibration curve. The concentration of an analyte in a sample can then be determined by comparing a measurement of the unknown to the calibration curve. A quadratic regression uses the following equation:

$$y = ax^2 + bx + c; \text{ where } a, b, \text{ and } c \text{ are numerical coefficients}$$

(ccc) “Quality control” means the set of measures implemented within an analytical procedure to ensure that the measurement system is operating in a state of statistical control for which errors have been reduced to acceptable levels.

(ddd) “Quality control sample” means a sample that is produced and used by a laboratory for the purpose of assuring the quality of the data and results. Quality control samples include blank samples, matrix spike samples, laboratory control samples, replicate samples, and reference material samples.

(eee) “Reagent” means a compound or mixture added to a system to cause a chemical reaction or test if a reaction occurs. A reagent may be used to tell whether a specific chemical substance is present by causing a reaction to occur with the chemical substance.

(fff) “Reference material” means material containing a known concentration of an analyte of interest that is in solution or in a homogeneous matrix.

(ggg) “Reference method” means the method by which the performance of an alternate method is measured or evaluated.

(hhh) “Relative percent difference” (RPD) means the comparative statistic that is used to calculate precision or random error. RPD is calculated using the following equation:

$$RPD = \left| \frac{\text{representative sample measurement} - \text{replicate sample measurement}}{[\text{representative sample measurement} + \text{replicate sample measurement}] / 2} \right| \times 100\%$$

(iii) “Relative standard deviation” (RSD) means the standard deviation expressed as a percentage of the means recovery. RSD is calculated using the following equation:

$$RSD = (s / x) \times 100\%; \text{ where } s = \text{standard deviation and } x = \text{mean}$$

(jjj) “Representative” means a small quantity of the batch whose characteristics represent, as accurately as possible, the entire batch, thus allowing the results to be generalized.

(kkk) “Representative sample” means a sample that is comprised of several sample increments of cannabis goods that are collected from a batch for testing.

(lll) “Requester” means the person who submits a request to the laboratory for testing of cannabis goods from an entity licensed under the Act.

(mmm) “Reserve sample” means any portion of a representative sample that was not used in the testing process.

(nnn) “Sample” means a representative part of, or a single item from, a batch which is comprised of several sample increments.

(ooo) “Sample increment” means a portion of a batch that, together with other increments, makes up the sample.

(ppp) “Sampler” means the laboratory employee responsible for obtaining samples of cannabis goods from a licensed distributor or licensed microbusiness authorized to engage in distribution.

(qqq) “Sanitize” means to sterilize, disinfect, or make hygienic.

(rrr) “Scope of accreditation” means the tests or types of tests performed, materials or products tested, and the methods used for testing cannabis or cannabis products for which the accreditation has been granted.

(sss) “Standard operating procedure” (SOP) means a written document that provides detailed instructions for the performance of all aspects of an analysis, operation, or action.

(ttt) “Target organism” means an organism that is being tested for in an analytical procedure or test method.

(uuu) “THC” and “delta-9 THC” means tetrahydrocannabinol, CAS number 1972-08-3.

(vvv) “THCA” means tetrahydrocannabinolic acid, CAS number 23978-85-0.

(www) “Topical cannabis goods” means cannabis products intended to be applied to the skin and not intended to be ingested or inhaled. Liquid solutions that contain more than 0.5% alcohol by volume as an ingredient and are not otherwise an alcoholic beverage as defined in Business and Professions Code section 23004 shall only be considered topical cannabis goods if they are packaged in a container no larger than two (2) fluid ounces.

(xxx) “Total CBD” means the sum of CBD and CBDA. Total CBD is calculated using the following equation:

$$\text{Total CBD concentration (mg/g)} = (\text{CBDA concentration (mg/g)} \times 0.877) + \text{CBD concentration (mg/g)}$$

(yyy) “Total THC” means the sum of THC and THCA. Total THC is calculated using the following equation:

$$\text{Total THC concentration (mg/g)} = (\text{THCA concentration (mg/g)} \times 0.877) + \text{THC concentration (mg/g)}$$

(zzz) “Validation” means the confirmation by examination and objective evidence that the requirements for a specific intended use or analytical method are fulfilled.

(aaaa) “Water activity” means the measure of the quantity of water in a product that is available and therefore capable of supporting bacteria, yeasts, and fungi and which is reported in units Aw.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26013 and

26100, Business and Professions Code.

Article 2. Laboratory License

§ 5701. General Laboratory License Requirements.

(a) A licensed laboratory shall maintain ISO/IEC 17025 accreditation for the testing of the following:

- (1) Cannabinoids;
- (2) Heavy metals;
- (3) Microbial impurities;
- (4) Mycotoxins;
- (5) Residual pesticides;
- (6) Residual solvents and processing chemicals; and
- (7) If tested, terpenoids.

(b) Each testing laboratory licensed premises shall have ISO/IEC 17025 accreditation.

(c) A licensed laboratory shall retain, and make available to the Bureau upon request, all records associated with the licensee's ISO/IEC 17025 certificate of accreditation.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012 and 26100, Business and Professions Code.

§ 5702. Laboratory License Application.

In addition to the information required in section 5002 of this division, an application for a testing laboratory license includes the following:

(a) A valid certificate of accreditation, issued by an accreditation body, that attests to the laboratory's competence to perform testing, including all the required analytes for the following test methods:

- (1) Cannabinoids;
- (2) Heavy metals;
- (3) Microbial impurities;
- (4) Mycotoxins;
- (5) Residual pesticides;
- (6) Residual solvents and processing chemicals; and
- (7) If tested, terpenoids.

(b) Standard operating procedures for the following testing methods:

- (1) Cannabinoids;
 - (2) Foreign material;
 - (3) Heavy metals;
 - (4) Microbial impurities;
 - (5) Moisture content and water activity;
 - (6) Mycotoxins;
 - (7) Residual pesticides;
 - (8) Residual solvents and processing chemicals; and
 - (9) If tested, terpenoids.
- (c) Method validation reports for the following testing methods:

- (1) Cannabinoids;
- (2) Heavy metals;
- (3) Microbial impurities;
- (4) Water activity;
- (5) Mycotoxins;
- (6) Residual pesticides;
- (7) Residual solvents; and processing chemicals; and
- (8) If tested, terpenoids.

(d) Standard operating procedures for the sampling of cannabis goods.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26050, 26055, 26102 and 26104, Business and Professions Code.

§ 5703. Interim Testing Laboratory License.

(a) An applicant may apply for an interim license prior to receiving ISO/IEC 17025 accreditation provided that the applicant meets all other licensure requirements for a testing laboratory and submits to the Bureau an application in compliance with section 5002 of this division and an attestation that the applicant has or intends to seek ISO/IEC 17025 accreditation for all testing methods required by this division.

(b) An interim testing laboratory license shall be valid for 12 months. The annual license fee for an interim license shall be determined pursuant to the requirements in section 5014 of this division for determining the annual license fee for a testing laboratory license.

(c) To timely renew an interim license, a completed license renewal form and the annual renewal license fee pursuant to section 5014 of this division shall be received by the Bureau from the licensee no earlier than 60 calendar days before the expiration of the license and no later than

5:00 p.m. Pacific Time on the last business day before the expiration of the license if the renewal form is submitted to the Bureau at its office(s), or no later than 11:59 p.m. on the last business day before the expiration of the license if the renewal form is submitted to the Bureau through its electronic licensing system. Failure to receive a notice for license renewal does not relieve a licensee of the obligation to renew an interim license as required.

(d) In the event the license is not renewed prior to the expiration date, the licensee must not test any commercial cannabis goods until the license is renewed.

(e) A licensee may submit a license renewal form up to 30 calendar days after the license expires. Any late renewal form will be subject to a late fee equal to 50 percent of the applicable licensing fees required by subsection (c) of this section.

(f) The license renewal application shall contain the following:

(1) The name of the licensee. For licensees who are individuals, the applicant shall provide both the first and last name of the individual. For licensees who are business entities, the licensee shall provide the legal business name of the applicant;

(2) The license number and expiration date;

(3) The licensee's address of record and licensed premises address; and

(4) An attestation that all information provided to the Bureau in the original application under section 5002 of this division or subsequent notification under section 5023 of this division is accurate and current.

(g) The Bureau may renew an interim license for an initial renewal period of 12 months.

(h) After one renewal, the Bureau may renew the interim license for additional 12-month periods if the licensee has submitted an application for the ISO/IEC 17025 accreditation. In addition to the information required for a renewal form pursuant to subsection (f) of this section, any renewal request pursuant to this section shall also include an attestation that the licensee's application for each ISO/IEC 17025 is pending with the accrediting body, the name of the accrediting body, and the date the application was submitted to the accrediting body.

(i) The licensee shall notify the Bureau if the application for each ISO/IEC 17025 accreditation is granted or denied within 1 business day of receiving the decision from the accrediting body. The Licensee shall submit to the Bureau the information required, on the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated herein by reference. If the accrediting body grants or denies the licensee's application for any ISO/IEC 17025 accreditation before the expiration of the interim license, the Bureau may terminate the interim license at that time.

(j) The Bureau may revoke an interim license at any time.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26031, 26050 and 26102, Business and Professions Code.

Article 3. Sampling Cannabis and Cannabis Products

§ 5704. Sampling Standard Operating Procedures.

(a) The laboratory shall develop and implement a sampling standard operating procedure (SOP)

that describes the laboratory's method for obtaining representative samples of cannabis goods. The laboratory shall use and submit to the Bureau Sampling – Standard Operating Procedures, Form BCC-LIC-021 (New 7/18), which is incorporated herein by reference.

(b) The laboratory shall retain a copy of the sampling SOP on the licensed laboratory premises and ensure that the sampling SOP is accessible to the sampler during sampling.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26102, 26104 and 26110, Business and Professions Code.

§ 5705. General Sampling Requirements.

(a) The laboratory that obtains a representative sample from a licensed distributor or licensed microbusiness shall perform all the required testing at one licensed laboratory premises.

(b) The laboratory may obtain and analyze samples only from batches in final form as required by Business and Professions Code section 26100.

(c) The laboratory sampler shall collect a representative sample from each batch following the procedures specified in the laboratory's sampling standard operating procedure(s).

(d) The laboratory shall ensure that the sample is transported and subsequently stored at the licensed laboratory premises in a manner that prevents degradation, contamination, commingling, and tampering. If the cannabis good specifies on the label how the cannabis good shall be stored, the laboratory shall store the sample as indicated on the label.

(e) The laboratory shall complete a chain of custody form for each sample that the laboratory collects and analyzes.

(f) Once a representative sample has been obtained for regulatory compliance testing, the licensed testing laboratory that obtained the sample must complete the regulatory compliance testing.

(g) If a licensed laboratory is unable to competently complete the regulatory compliance testing after sampling and before a COA is issued, the licensed distributor or microbusiness authorized to engage in distribution who arranged for the testing of the batch(s) may request approval from the Bureau to have the impacted batch(s) re-sampled and tested by another licensed laboratory.

(1) The request shall be made in writing via email to bcc.labs@dca.ca.gov and shall include all of the following:

(A) The name and license number of the distributor;

(B) The batch numbers;

(C) The type and quantity of cannabis goods;

(D) The name and license number of the laboratory that took the initial sample and is not able to competently complete the regulatory compliance testing;

(E) The name and license number of the laboratory proposed to re-sample and complete the regulatory compliance testing for the batch(s); and

(F) The reason why the laboratory that initially took the sample cannot competently complete the regulatory compliance testing.

(2) The Bureau will review the request and determine if the laboratory that initially took the sample is unable to competently complete the regulatory compliance testing. If the Bureau determines that the laboratory is unable to competently complete the regulatory compliance testing, the Bureau, in its discretion, may approve the request in whole or part and set conditions for the re-sampling and testing.

(3) No re-sampling of any batch shall occur prior to the licensed distributor or licensed microbusiness authorized to engaged in distribution receiving written approval from the Bureau.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5706. Chain of Custody (COC).

(a) The laboratory shall develop and implement a COC protocol to ensure accurate documentation is recorded for the transport, handling, storage, and destruction of samples.

(b) The COC protocol shall require the use of a COC form. The sampler shall use a COC to record the following information for each sampled batch:

(1) Laboratory's name, licensed premises address, and license number;

(2) Date and time sampling started and ended;

(3) Licensed distributor or licensed microbusiness' name, licensed premises address, and license number;

(4) Licensed cultivator's, licensed manufacturer's, or licensed microbusiness' name, licensed premises address, and license number;

(5) Batch number of the batch from which the representative sample was obtained and assigned unique sample identifier;

(6) Sample matrix;

(7) Total batch size, by weight, or unit count;

(8) Total weight, or unit count of the representative sample;

(9) Sampling conditions or problems encountered during the sampling process, if any;

(10) Printed name and signature of the licensed distributor or licensed microbusiness' authorized to engage in distribution employee; and

(11) Printed name and signature of the sampler.

(c) Each time a sample changes custody between licensees, is transported, or is destroyed, the date, time, and the names and signatures of persons involved in these activities shall be recorded on the COC form.

(d) Once the custody of the sample changes between licensees, the COC form for that change of custody may not be altered.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26102, 26104 and 26110, Business and Professions Code.

§ 5707. Harvest Batch Sampling.

(a) The sampler shall obtain a representative sample from each prepacked or unpacked harvest batch. The representative sample must weigh 0.35% of the total harvest batch weight.

(b) A sampler may collect a representative sample greater than 0.35% of the total harvest batch weight of a prepacked or unpacked harvest batch if necessary to perform the required testing or to ensure that the samples obtained are representative.

(c) The prepacked or unpacked harvest batch from which a sample is obtained shall weigh no more than 50.0 pounds. Laboratory analyses of a sample collected from a harvest batch weighing more than 50.0 pounds shall be deemed invalid and the harvest batch from which the sample was obtained shall not be released for retail sale.

(d) When the sampler obtains a representative sample from an unpacked harvest batch, the sampler shall do all the following:

(1) Collect the number of sample increments relative to the unpacked harvest batch size as listed in the following table;

(2) Obtain sample increments from random and varying locations of the unpacked harvest batch, both vertically and horizontally. To the extent practicable, the sample increments obtained from an unpacked harvest batch shall be of equal weight; and

(3) To the extent practicable, collect an equal number of sample increments from each container if the unpacked harvest batch is stored in multiple containers.

Unpacked Harvest Batch Size (pounds)	Number of Increments (per sample)
≤ 10.0	8
10.1 – 20.0	16
20.1 – 30.0	23
30.1 – 40.0	29
40.1 – 50.0	34

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5708. Cannabis Product Batch and Pre-Roll Sampling.

- (a) The sampler shall obtain a representative sample from each cannabis product batch or pre-roll batch.
- (b) The sampler may collect a greater number of sample increments if necessary to perform the required testing or to ensure that the samples obtained are representative.
- (c) The cannabis product batch or pre-roll batch from which a representative sample is obtained shall contain no more than 150,000 units. Laboratory analyses of a sample collected from a cannabis product batch containing more than 150,000 units shall be deemed invalid and the cannabis product batch or pre-roll batch from which the representative sample was obtained shall not be released for retail sale.
- (d) The sampler shall obtain a representative sample of a cannabis product or pre-roll batch by collecting, at minimum, the number of sample increments relative to the batch size as listed in the following table. Each sample increment consists of 1 packaged unit.

Cannabis Product or Pre-roll Batch Size (units)	Number of Sample Increments (per sample)
≤ 50	2
51 – 150	3
151 – 500	5
501 – 1,200	8
1,201 – 3,200	13
3,201 – 10,000	20
10,001 – 35,000	32
35,001 – 150,000	50

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5709. Laboratory Transportation of Cannabis Goods Samples.

- (a) The following requirements apply when a licensed testing laboratory transports cannabis goods samples:
 - (1) While transporting cannabis goods samples, a licensed testing laboratory employee shall ensure the cannabis goods are not visible to the public. Cannabis goods shall be locked in a fully enclosed box, container, or cage that is secured to the inside of the vehicle or trailer. No portion of the enclosed box, container, or cage shall be comprised of any part of the body of the vehicle or trailer. For the purposes of this section, the inside of the vehicle includes the trunk.
 - (2) While left unattended, vehicles and trailers shall be locked and secured.
 - (3) The laboratory shall not leave a vehicle or trailer containing cannabis goods samples unattended in a residential area or parked overnight in a residential area.
 - (4) The laboratory shall ensure that any vehicle or trailer transporting cannabis goods samples has an alarm system.

(5) The laboratory shall ensure that packages or containers holding cannabis goods samples are neither tampered with, nor opened during transport.

(6) The laboratory transporting cannabis goods samples shall only travel between licensees for whom the laboratory is conducting regulatory compliance testing or quality assurance testing. A laboratory shall not deviate from the travel requirements described in this section, except for necessary rest, fuel, or vehicle repair stops.

(7) The laboratory may transport multiple cannabis goods samples obtained from multiple licensees at once.

(8) Vehicles or trailers transporting cannabis goods samples are subject to inspection by the Bureau at any licensed premises or during transport at any time.

(9) No person under the age of 21 years old shall be in a vehicle or trailer transporting cannabis goods samples.

(10) Only an employee of the laboratory or security personnel who meets the requirement of section 5045 of this division shall be in a vehicle while transporting cannabis goods samples.

(b) The laboratory shall provide the following required transport vehicle information to the Bureau:

(1) Proof that the laboratory is the registered owner under the Vehicle Code for each vehicle used to transport cannabis goods samples;

(2) The year, make, model, license plate number, and numerical Vehicle Identification Number (VIN) for each vehicle or trailer used to transport cannabis goods samples; and

(3) Proof of insurance for each vehicle used to transport cannabis goods samples.

(c) The laboratory shall provide the Bureau with the information required by this section in writing for any new vehicle or trailer that will be used to transport cannabis goods samples prior to using the vehicle or trailer.

(d) The laboratory shall provide the Bureau with the information required under subsection (c) of this section and with any changes to the information required by this section in writing within 30 calendar days, submitted on the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated herein by reference.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26102, 26104 and 26110, Business and Professions Code.

§ 5710. Laboratory Receipt of Samples Obtained from a Distributor or Microbusiness.

(a) The laboratory may accept and analyze a sample from a licensed distributor or licensed microbusiness authorized to engage in distribution for the required testing under section 5714 of this division only if there is an accompanying COC form for the sample.

(b) The laboratory employee who receives the sample shall date, print, and sign their name on the accompanying sample COC.

(c) The laboratory shall not analyze a sample obtained from a licensed distributor or licensed

microbusiness authorized to engage in distribution, and the batch from which the sample was obtained may not be released for retail sale, if any of the following occur:

- (1) The sample is received at the laboratory without the requisite COC form;
- (2) The tamper-evident material is broken prior to the sample being received at the laboratory; or
- (3) There is evidence of sample commingling, contamination, degradation, or a related occurrence rendering the sample unusable for analytical testing when the sample is received at the laboratory.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

Article 4. Standard Operating Procedures

§ 5711. Laboratory Analyses Standard Operating Procedures.

(a) The laboratory shall develop, implement, and maintain written standard operating procedures (SOP) for sample preparation and each required test method. The laboratory shall use and submit to the Bureau the following forms which are incorporated by reference:

- (1) Sample Preparation – Standard Operating Procedures, Form BCC-LIC-022 (New 7/18), which is incorporated herein by reference; and
 - (2) Test Methods – Standard Operating Procedures, Form BCC-LIC-023 (New 7/18), which is incorporated herein by reference.
- (b) The laboratory shall keep each SOP at the licensed laboratory premises and ensure that each SOP is accessible to laboratory employees during operating hours.
- (c) The laboratory shall make each SOP available for inspection by the Bureau upon request, as well as any other SOPs associated with the licensee’s ISO/IEC 17025 certificate of accreditation.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26100, 26102, 26104 and 26110, Business and Professions Code.

§ 5712. Test Methods.

- (a) The laboratory shall develop, implement, and validate test methods for the analyses of samples as required under this division.
- (b) To the extent practicable, the laboratory test methods shall comport with the following guidelines:
 - (1) US Food and Drug Administration’s *Bacterial Analytical Manual*, 2016;
 - (2) AOAC International’s *Official Methods of Analysis for Contaminant Testing of AOAC International*, 20th Edition, 2016; and
 - (3) United States Pharmacopeia and the National Formulary’s *Methods of Analysis for Contaminant Testing*, 2016.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26102,

§ 5713. Validation of Test Methods.

(a) The laboratory may use a nonstandard, amplified, or modified test method or a method that is designed or developed by the laboratory to validate the methods for analyses of samples.

(b) The laboratory shall follow the guidelines set forth in the US Food and Drug Administration's *Guidelines for the Validation of Analytical Methods for the Detection of Microbial Pathogens in Foods and Feeds*, 2nd Edition, April 2015, incorporated herein by reference, to validate test methods for the microbial analysis of samples. The laboratory shall include and address the criteria listed in the following table when validating test methods for microbial analyses of samples.

Criteria	Requirement
Number of target organisms; inclusivity	5
Number of non-target organisms; exclusivity	5
Number of analyte levels per matrix: Qualitative methods	3 levels: high and low inoculum levels and 1 uninoculated level
Number of analyte levels per matrix: Quantitative methods	4 levels: low, medium and high inoculum levels and 1 uninoculated level
Replicates per food at each level tested	2 or more replicates per level

(c) The laboratory shall follow the guidelines set forth in the US Food and Drug Administration's *Guidelines for the Validation of Chemical Methods for the FDA FVM Program*, 2nd Edition, April 2015, incorporated herein by reference, to validate test methods for chemical analysis of samples.

(1) The laboratory shall include and address the following criteria to validate test methods for chemical analyses of samples:

(A) Accuracy;

(B) Precision;

(C) Linearity and range;

(i) The Coefficient of Determination (r^2) for all calibration curves shall be greater than or equal to 0.99.

(ii) Linear regression or quadratic regression shall only be used for calibration curves. Curves shall not be weighted at all or only weighted at $1/x$.

(iii) LOQ for analytes tested shall be within the range of the calibration curve.

(D) Calibration standard;

(i) For calibration curves, there shall be a minimum of five calibration standards, not including zero; and

(ii) Each calibration curve must include an Initial Calibration Verification (ICV). The percent recovery must be between 70% to 130%.

(E) Sensitivity and selectivity;

(F) Limit of detection and limit of quantitation;

(G) Recovery;

(H) Reproducibility; and

(I) Robustness.

(2) The laboratory shall use certified reference materials to validate the following chemical analyses. The test method used for analysis is valid if the percent recovery of the certified reference material is between 80% to 120% for all required analytes.

(A) Cannabinoids, if available;

(B) Heavy metals;

(C) Microbial impurities;

(D) Mycotoxins;

(E) Residual pesticides;

(F) Residual solvents and processing chemicals; and

(G) Terpenoids, if available.

(d) The laboratory shall generate a validation report for each test method. Each validation report shall include the following information:

(1) Instrument calibration data, if any;

(2) Raw data, including instrument raw data, for each test method, if any;

(3) Cannabis reference materials or certified reference material results;

(4) Data and calculations pertaining to LOD and LOQ determinations, if any;

(5) LQC report, as described in this chapter, for the validation of each method; and

(6) Worksheets, forms, pictures, or copies of laboratory notebook pages and any other documentation necessary to meet the requirements described in subsections (b) and (c) of this section.

(7) The supervisory or management laboratory employee shall review, approve, sign, and date the validation report for each test method.

(8) Upon new test methods or altered test methods being used in the laboratory, the new validation report shall be submitted to the Bureau within 5 business days, accompanied by the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated herein by

reference.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26100, 26104 and 26110, Business and Professions Code.

Article 5. Laboratory Testing and Reporting

§ 5714. Required Testing.

- (a) All sample increments collected must be homogenized prior to sample analyses, notwithstanding foreign material testing.
- (b) The laboratory shall test each representative sample for the following:
 - (1) Cannabinoids;
 - (2) Foreign material;
 - (3) Heavy metals;
 - (4) Microbial impurities;
 - (5) Mycotoxins;
 - (6) Moisture content and water activity;
 - (7) Residual pesticides;
 - (8) Residual solvents and processing chemicals; and
 - (9) If applicable, terpenoids.
- (c) The laboratory shall report the results of each analysis performed by the laboratory on the certificate of analysis.
- (d) The laboratory that obtained the representative sample shall complete all required testing for each representative sample for regulatory compliance testing.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5715. Phase-In of Required Laboratory Testing.

- (a) Cannabis goods shall not be sold or transferred to a licensed retailer or licensed microbusiness, or released for retail sale, unless a representative sample of the cannabis goods has undergone and passed all testing as required by this section.
- (b) All cannabis harvested on or after January 1, 2018, and all cannabis products manufactured on or after January 1, 2018, shall be tested for the following analytes, if applicable:
 - (1) Cannabinoids as required in section 5724 of this division;
 - (2) Moisture content as required in section 5717 of this division;

(3) Category II Residual Solvents and Processing Chemicals as required in section 5718 of this division;

(4) Category I Residual Pesticides as required in section 5719 of this division; and

(5) Microbial Impurities as required in section 5720 of this division.

(c) In addition to the requirements of subsection (b) of this section, all cannabis harvested on or after July 1, 2018, and all cannabis products manufactured on or after July 1, 2018, shall be tested for the following analytes, if applicable:

(1) Category I Residual Solvents and Processing Chemicals as required in section 5718 of this division;

(2) Category II Residual Pesticides as required in section 5719 of this division; and

(3) Foreign Material as required in section 5722 of this division.

(d) In addition to the requirements in subsections (b) and (c) of this section, all cannabis harvested on or after December 31, 2018, and all cannabis products manufactured on or after December 31, 2018, shall be tested for the following analytes, if applicable:

(1) Terpenoids as required in section 5725 of this division;

(2) Mycotoxins as required in section 5721 of this division;

(3) Heavy Metals as required in section 5723 of this division; and

(4) Water Activity as required in section 5717 of this division.

(e) Licensees may have a sample of cannabis goods tested for analytes that are not yet required to be tested. However, if the sample fails any additional test(s) not required pursuant to this section on the date of testing, the batch from which the sample was collected fails testing and shall not be released for retail sale.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5717. Moisture Content and Water Activity Testing.

(a) The laboratory shall analyze at minimum 0.5 grams of the representative sample of dried flower to determine the level of water activity and the percentage of moisture content.

(1) The dried flower sample, including pre-rolls, shall be deemed to have passed water activity testing if the water activity does not exceed 0.65 Aw. The laboratory shall report the result of the water activity test on the certificate of analysis (COA) and indicate “pass” or “fail” on the COA.

(2) The laboratory shall report the result of the moisture content test on the COA as a percentage.

(b) The laboratory shall analyze at least 0.5 grams of the representative sample of solid edible cannabis products to determine the level of water activity. A solid edible cannabis product shall be deemed to have passed water activity testing if the water activity does not exceed 0.85 Aw.

The laboratory shall report the result of the water activity test on the COA and indicate “pass” or “fail” on the COA.

(c) If the sample fails water activity testing, the batch from which the sample was collected fails water activity testing and shall not be released for retail sale.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5718. Residual Solvents and Processing Chemicals Testing.

(a) The laboratory shall analyze at minimum 0.25 grams of the representative sample of cannabis product or pre-rolls to determine whether residual solvents or processing chemicals are present.

(b) The laboratory shall report the result of the residual solvents and processing chemicals testing in unit micrograms per gram (µg/g) on the COA and indicate “pass” or “fail” on the COA.

(c) The sample shall be deemed to have passed the residual solvents and processing chemicals testing if the presence of any residual solvent or processing chemical listed in the following tables in Category I and Category II does not exceed the indicated action levels.

(1) Notwithstanding subsection (c), the limit for ethanol does not apply to cannabis goods that are intended to be orally-consumed products containing alcohol as defined in section 5700 of this division.

(2) Notwithstanding subsection (c), the limit for ethanol or isopropyl alcohol does not apply to cannabis goods that are intended to be topical cannabis goods as defined in section 5700 of this division.

Category I Residual Solvent or Processing Chemical	CAS No.	Cannabis Product or Pre-Roll Action Level (µg/g)
1,2-Dichloroethane	107-06-2	1.0
Benzene	71-43-2	1.0
Chloroform	67-66-3	1.0
Ethylene oxide	75-21-8	1.0
Methylene chloride	75-09-2	1.0
Trichloroethylene	79-01-6	1.0

Category II Residual Solvent or Processing Chemical	CAS No.	Cannabis Product or Pre-roll Action Level (µg/g)
Acetone	67-64-1	5000

Acetonitrile	75-05-8	410
Butane	106-97-8	5000
Ethanol	64-17-5	5000
Ethyl acetate	141-78-6	5000
Ethyl ether	60-29-7	5000
Heptane	142-82-5	5000
Hexane	110-54-3	290
Isopropyl alcohol	67-63-0	5000
Methanol	67-56-1	3000
Pentane	109-66-0	5000
Propane	74-98-6	5000
Toluene	108-88-3	890
Total xylenes (ortho-, meta-, para-)	1330-20-7	2170

(d) If the sample fails residual solvents and processing chemicals testing, the batch from which the sample was collected fails residual solvents and processing chemicals testing and shall not be released for retail sale.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5719. Residual Pesticides Testing.

(a) The laboratory shall analyze at minimum 0.5 grams of the representative sample of cannabis goods to determine whether residual pesticides are present.

(b) The laboratory shall report whether any Category I Residual Pesticides are detected above the limit of detection (LOD) and shall report the result of the Category II Residual Pesticides testing in unit micrograms per gram ($\mu\text{g/g}$) on the COA. The laboratory shall indicate “pass” or “fail” on the COA.

(c) The laboratory shall establish a limit of quantitation (LOQ) of 0.10 $\mu\text{g/g}$ or lower for all Category I Residual Pesticides.

(d) The sample shall be deemed to have passed the residual pesticides testing if both of the following conditions are met:

(1) The presence of any residual pesticide listed in the following tables in Category I are not detected, and

(2) The presence of any residual pesticide listed in the following tables in Category II does not exceed the indicated action levels.

Category I Residual Pesticide	CAS No.
Aldicarb	116-06-3
Carbofuran	1563-66-2
Chlordane	57-74-9
Chlorfenapyr	122453-73-0
Chlorpyrifos	2921-88-2
Coumaphos	56-72-4
Daminozide	1596-84-5
DDVP (Dichlorvos)	62-73-7
Dimethoate	60-51-5
Ethoprop(hos)	13194-48-4
Etofenprox	80844-07-1
Fenoxycarb	72490-01-8
Fipronil	120068-37-3
Imazalil	35554-44-0
Methiocarb	2032-65-7
Methyl parathion	298-00-0
Mevinphos	7786-34-7
Paclobutrazol	76738-62-0
Propoxur	114-26-1
Spiroxamine	118134-30-8
Thiacloprid	111988-49-9

Category II Residual Pesticide	CAS No.	Action Level (µg/g)	
		Inhalable Cannabis Goods	Other Cannabis Goods
Abamectin	71751-41-2	0.1	0.3
Acephate	30560-19-1	0.1	5

Acequinocyl	57960-19-7	0.1	4
Acetamiprid	135410-20-7	0.1	5
Azoxystrobin	131860-33-8	0.1	40
Bifenazate	149877-41-8	0.1	5
Bifenthrin	82657-04-3	3	0.5
Boscalid	188425-85-6	0.1	10
Captan	133-06-2	0.7	5
Carbaryl	63-25-2	0.5	0.5
Chlorantraniliprole	500008-45-7	10	40
Clofentezine	74115-24-5	0.1	0.5
Cyfluthrin	68359-37-5	2	1
Cypermethrin	52315-07-8	1	1
Diazinon	333-41-5	0.1	0.2
Dimethomorph	110488-70-5	2	20
Etoxazole	153233-91-1	0.1	1.5
Fenhexamid	126833-17-8	0.1	10
Fenpyroximate	111812-58-9	0.1	2
Fonicamid	158062-67-0	0.1	2
Fludioxonil	131341-86-1	0.1	30
Hexythiazox	78587-05-0	0.1	2
Imidacloprid	138261-41-3	5	3
Kresoxim-methyl	143390-89-0	0.1	1

Category II Residual Pesticide	CAS No.	Action Level (µg/g)	
		Inhalable Cannabis Goods	Other Cannabis Goods
Malathion	121-75-5	0.5	5
Metalaxyl	57837-19-1	2	15

Methomyl	16752-77-5	1	0.1
Myclobutanil	88671-89-0	0.1	9
Naled	300-76-5	0.1	0.5
Oxamyl	23135-22-0	0.5	0.2
Pentachloronitrobenzene	82-68-8	0.1	0.2
Permethrin	52645-53-1	0.5	20
Phosmet	732-11-6	0.1	0.2
Piperonylbutoxide	51-03-6	3	8
Prallethrin	23031-36-9	0.1	0.4
Propiconazole	60207-90-1	0.1	20
Pyrethrins	8003-34-7	0.5	1
Pyridaben	96489-71-3	0.1	3
Spinetoram	187166-15-0, 187166-40-1	0.1	3
Spinosad	131929-60-7, 131929-63-0	0.1	3
Spiromesifen	283594-90-1	0.1	12
Spirotetramat	203313-25-1	0.1	13
Tebuconazole	107534-96-3	0.1	2
Thiamethoxam	153719-23-4	5	4.5
Trifloxystrobin	141517-21-7	0.1	30

(e) If the sample fails residual pesticides testing, the batch from which the sample was collected fails residual pesticides testing and shall not be released for retail sale.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5720. Microbial Impurities Testing.

(a) The laboratory shall analyze at minimum 1.0 grams of the representative sample of cannabis goods to determine whether microbial impurities are present.

(b) The laboratory shall report the result of the microbial impurities testing by indicating “pass” or “fail” on the COA.

(c) The sample of inhalable cannabis goods shall be deemed to have passed the microbial impurities testing if all of the following conditions are met:

- (1) Shiga toxin-producing *Escherichia coli* is not detected in 1 gram;
- (2) *Salmonella* spp. is not detected in 1 gram; and
- (3) Pathogenic *Aspergillus* species *A. fumigatus*, *A. flavus*, *A. niger*, and *A. terreus* are not detected in 1 gram.

(d) The sample of non-inhalable cannabis goods shall be deemed to have passed the microbial impurities testing if both the following conditions are met:

- (1) Shiga toxin-producing *Escherichia coli* is not detected in 1 gram, and
- (2) *Salmonella* spp. is not detected in 1 gram.

(e) If the sample fails microbial impurities testing, the batch from which the sample was collected fails microbial impurities testing and shall not be released for retail sale.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5721. Mycotoxin Testing.

- (a) The laboratory shall analyze at minimum 0.5 grams of the representative sample of cannabis goods to determine whether mycotoxins are present.
- (b) The laboratory shall report the result of the mycotoxins testing in unit micrograms per kilograms ($\mu\text{g}/\text{kg}$) on the COA and indicate “pass” or “fail” on the COA.
- (c) The sample shall be deemed to have passed mycotoxin testing if both the following conditions are met:
 - (1) Total of aflatoxin B1, B2, G1, and G2 does not exceed 20 $\mu\text{g}/\text{kg}$ of substance, and
 - (2) Ochratoxin A does not exceed 20 $\mu\text{g}/\text{kg}$ of substance.
- (d) If the sample fails mycotoxin testing, the batch from which the sample was collected fails mycotoxin testing and shall not be released for retail sale.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5722. Foreign Material Testing.

- (a) The laboratory shall analyze the representative sample of cannabis goods to determine whether foreign material is present.
- (b) The laboratory shall report the result of the foreign material test by indicating “pass” or “fail” on the COA.
- (c) The laboratory shall perform foreign material testing on the total representative sample

prior to sample homogenization.

(d) When the laboratory performs foreign material testing, at minimum, the laboratory shall do all of the following:

- (1) Examine both the exterior and interior of the dried flower sample, and
- (2) Examine the exterior of the cannabis product sample.

(e) The sample shall be deemed to have passed the foreign material testing if the presence of foreign material does not exceed:

- (1) 1/4 of the total sample area covered by sand, soil, cinders, or dirt;
- (2) 1/4 of the total sample area covered by mold;
- (3) 1 insect fragment, 1 hair, or 1 count mammalian excreta per 3.0 grams; or
- (4) 1/4 of the total sample area covered by an imbedded foreign material.

(f) If the sample fails foreign material testing, the batch from which the sample was collected fails foreign material testing and shall not be released for retail sale.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5723. Heavy Metals Testing.

(a) The laboratory shall analyze at minimum 0.5 grams of the representative sample of cannabis goods to determine whether heavy metals are present.

(b) The laboratory shall report the result of the heavy metals test in unit micrograms per gram ($\mu\text{g/g}$) on the COA and indicate “pass” or “fail” on the COA.

(c) The sample shall be deemed to have passed the heavy metals testing if the presence of heavy metals does not exceed the action levels listed in the following table.

Heavy Metal	Action Level ($\mu\text{g/g}$)	
	Inhalable Cannabis Goods	Other Cannabis Goods
Cadmium	0.2	0.5
Lead	0.5	0.5
Arsenic	0.2	1.5
Mercury	0.1	3.0

(d) If the sample fails heavy metals testing, the batch from which the sample was collected fails heavy metals testing and shall not be released for retail sale.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104

and 26110, Business and Professions Code.

§ 5724. Cannabinoid Testing.

(a) The laboratory shall analyze at minimum 0.5 grams of the representative sample of cannabis goods to determine the cannabinoid profile such as THC; THCA; CBD; CBDA; CBG; and CBN.

(b) The laboratory shall establish a limit of quantitation (LOQ) of 1.0 mg/g or lower for all cannabinoids analyzed and reported.

(c) The laboratory shall report the result of the cannabinoid testing on the COA, including, at minimum:

(1) A percentage for THC, THCA, CBD, and CBDA;

(A) When the laboratory reports the result of the cannabinoid testing for harvest batch representative samples on the COA in dry-weight percent, they shall use the following equation:

$$\text{Dry-weight percent cannabinoid} = \text{wet-weight percent cannabinoid} / (1 - \text{percent moisture} / 100)$$

(2) A percentage for Total THC and Total CBD, if applicable;

(3) Milligrams per gram (mg/g) if by dry-weight or milligrams per milliliter (mg/mL) if by volume for THC, THCA, CBD, and CBDA.

(4) Milligrams per gram (mg/g) if by dry-weight or milligrams per milliliter (mg/mL) if by volume for Total THC and Total CBD, if applicable;

(A) The laboratory shall calculate the total cannabinoid concentration as follows:

(i) For concentration expressed in weight:

$$\text{Total cannabinoid concentration (mg/g)} = (\text{cannabinoid acid form concentration (mg/g)} \times 0.877) + \text{cannabinoid concentration (mg/g)}$$

(ii) For concentration expressed in volume:

$$\text{Total cannabinoid concentration (mg/mL)} = (\text{cannabinoid acid form concentration (mg/mL)} \times 0.877) + \text{cannabinoid concentration (mg/mL)}$$

(5) Milligrams per package for THC and CBD;

(6) Milligrams per package for Total THC and Total CBD, if applicable;

(7) Milligrams per serving for THC and CBD, if any;

(8) Milligrams per serving for Total THC and Total CBD, if any and if applicable; and

(9) The laboratory shall report the results of all other cannabinoids analyzed on the COA both as a percentage and in either milligrams per gram (mg/g) if by weight or milligrams per milliliter (mg/mL) if by volume.

(d) The sample shall be deemed to have passed the cannabinoid testing if the following conditions are met:

(1) For all edible cannabis products, the milligrams per serving for THC does not exceed 10 milligrams per serving.

(2) For edible cannabis products that are not orally-dissolving products labeled “FOR MEDICAL USE ONLY”, the milligrams per package for THC does not exceed 100 milligrams per package.

(3) For edible cannabis products that are orally-dissolving products labeled “FOR MEDICAL USE ONLY,” the milligrams per package for THC does not exceed 500 milligrams per package.

(4) For cannabis concentrates and topical cannabis goods not labeled “FOR MEDICAL USE ONLY,” the milligrams per package for THC does not exceed 1000 milligrams per package.

(5) For cannabis concentrates and topical cannabis goods labeled “FOR MEDICAL USE ONLY,” the milligrams per package for THC does not exceed 2000 milligrams per package.

(e) The laboratory shall report the test results and indicate an overall “pass” or “fail” for the cannabinoid testing on the COA.

(f) Any cannabinoids found to be less than the LOQ shall be reported on the COA as “<1 mg/g” if by dry-weight or “<1 mg/mL” if by volume.

(g) If the sample fails cannabinoid testing, the batch from which the sample was collected fails cannabinoid testing and shall not be released for retail sale.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5725. Terpenoid Testing.

(a) If requested, the laboratory shall analyze at minimum 0.5 grams of the representative sample of cannabis goods to determine the terpenoid profile of the sample.

(b) The laboratory shall report the result of the terpenoid testing on the COA both as a percentage and in either milligrams per gram (mg/g) if by weight or milligrams per milliliter (mg/mL) if by volume.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5726. Certificate of Analysis (COA).

(a) The laboratory shall generate a COA for each representative sample that the laboratory analyzes.

(b) The laboratory shall ensure that the COA contains the results of all required analyses performed for the representative sample.

(c) The laboratory shall, within 1 business day of completing all analyses of a sample, both upload the COA into the track and trace system and simultaneously provide a copy of the COA to the Bureau via email at bcc.labs@dca.ca.gov.

- (d) The laboratory shall not release to any person any cumulative or individual test results prior to completing all analyses and providing the COA to the Bureau.
- (e) The COA shall contain, at minimum, the following information:
- (1) The term “Regulatory Compliance Testing” in font no smaller than 14-point, which shall appear in the upper-right corner of each page of the COA. No text or images shall appear above the term “Regulatory Compliance Testing” on any page of the COA.
 - (2) Laboratory’s name, licensed premises address, and license number;
 - (3) Licensed distributor’s or licensed microbusiness authorized to engage in distribution’s name, licensed premises address, and license number;
 - (4) Licensed cultivator’s, licensed manufacturer’s, or licensed microbusiness’ name, licensed premises address, and license number;
 - (5) Batch number of the batch from which the sample was obtained. For cannabis goods that are already packaged at the time of sampling, the labeled batch number on the packaged cannabis goods shall match the batch number on the COA;
 - (6) Sample identifying information, including matrix type and unique sample identifiers;
 - (7) Sample history, including the date collected, the date received by the laboratory, and the date(s) of sample analyses and corresponding testing results;
 - (8) A picture of the sample of cannabis goods. If the sample is pre-packaged, the picture must include an unobstructed image of the packaging;
 - (9) For dried flower samples, the total weight of the batch, in grams or pounds, and the total weight, of the representative sample in grams;
 - (10) For cannabis product or pre-rolls samples, the total unit count of both the representative sample and the total batch size;
 - (11) Measured density of the cannabis goods;
 - (12) The analytical methods, analytical instrumentation used, and corresponding Limits of Detection (LOD) and Limits of Quantitation (LOQ);
 - (13) An attestation on the COA from the laboratory supervisory or management employee that all LQC samples required by section 5730 of this division were performed and met the acceptance criteria; and
 - (14) Analytes detected during the analyses of the sample that are unknown, unidentified, or injurious to human health if consumed, if any.
- (f) The laboratory shall report test results for each representative sample on the COA as follows:
- (1) Indicate an overall “pass” or “fail” for the entire batch;
 - (2) When reporting qualitative results for each analyte, the laboratory shall indicate “pass” or “fail”;

- (3) When reporting quantitative results for each analyte, the laboratory shall use the appropriate units of measurement as required under this chapter;
- (4) When reporting results for each test method, the laboratory shall indicate “pass” or “fail”;
- (5) When reporting results for any analytes that were detected below the analytical method LOQ, indicate “<LOQ”, notwithstanding cannabinoid results;
- (6) When reporting results for any analytes that were not detected or detected below the LOD, indicate “ND”; and
- (7) Indicate “NT” for any test that the laboratory did not perform.
- (g) The laboratory supervisory or management employee shall validate the accuracy of the information contained on the COA and sign and date the COA.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

Article 6. Post Testing Procedures

§ 5727. Remediation and Retesting.

- (a) A cannabis goods batch that has been additionally processed after failed testing must be retested and successfully pass all the analyses required under this chapter.
- (b) The licensed distributor or licensed microbusiness authorized to engage in distribution shall arrange for remediation of a failed cannabis goods batch. If the batch cannot be remediated, the batch shall be destroyed by the licensed distributor or licensed microbusiness authorized to engage in distribution.
- (c) If a failed batch is not remediated or reprocessed in any way it cannot be retested. Any subsequent COAs produced without remediation or reprocessing of the failed batch will not supersede the initial regulatory compliance testing COA.
- (d) A cannabis goods batch may only be remediated twice. If the batch fails after the second remediation attempt and the second retesting, the entire batch shall be destroyed.
- (e) Within one business day of completing the required analyses of a representative sample obtained from a remediated cannabis goods batch, the laboratory shall upload the COA information into the track and trace system, or if the licensee does not yet have access to the track and trace system, it shall be emailed to the Bureau.
- (f) Nothing in this section shall be interpreted to prevent a cannabis goods batch from being retested when the COA is 12 or more months old.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5728. Post Testing Sample Retention.

- (a) The laboratory shall retain the reserve sample, consisting of any portion of a sample that was not used in the testing process. The reserve sample shall be kept, at minimum, for 45 business days after the analyses, after which time it may be destroyed and denatured to the point

the material is rendered unrecognizable and unusable.

(b) The laboratory shall securely store the reserve sample in a manner that prohibits sample degradation, contamination, and tampering.

(c) The laboratory shall provide the reserve sample to the Bureau upon request.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

Article 7. Laboratory Quality Assurance and Quality Control

§ 5729. Laboratory Quality Assurance (LQA) Program.

(a) The laboratory shall develop and implement a LQA program to assure the reliability and validity of the analytical data produced by the laboratory. The LQA program shall, at minimum, include a written LQA manual that addresses the following:

(1) Quality control procedures;

(2) Laboratory organization and employee training and responsibilities, including good laboratory practice (GLP);

(3) LQA objectives for measurement data;

(4) Traceability of data and analytical results;

(5) Instrument maintenance, calibration procedures, and frequency;

(6) Performance and system audits;

(7) Corrective action procedures;

(8) Steps to change processes when necessary;

(9) Record retention and document control;

(10) Test procedure standardization; and

(11) Method validation.

(b) The supervisory or management laboratory employee shall annually review, amend if necessary, and approve the LQA program and manual both when they are created and when there is a change in methods, laboratory equipment, or the supervisory or management laboratory employee.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5730. Laboratory Quality Control (LQC) Samples.

The laboratory shall use LQC samples and adhere to good laboratory practice (GLP) in the performance of each analysis according to the following specifications.

(a) The laboratory shall analyze LQC samples in the same manner as the laboratory analyzes

cannabis goods samples.

(b) The laboratory shall use at least one negative control, one positive control, and one laboratory replicate sample in each analytical batch for each target organism during microbial testing. If one of the controls produces unexpected results, the samples shall be re-prepped and reanalyzed with a new set of controls.

(c) If the result of the microbial analyses is outside the specified acceptance criteria in the following table, the laboratory shall determine the cause and take steps to remedy the problem until the result is within the specified acceptance criteria.

Laboratory Quality Control Sample	Acceptance Criteria	Corrective Action
Positive control	Produces expected result, positive result	Re-prepare and reanalyze the entire analytical batch, once. If problem persists, locate and remedy the source of unexpected result, then re-prepare samples and reanalyze with a new set of controls.
Negative control	Produces expected result, negative result	Re-prepare and reanalyze the entire analytical batch, once. If problem persists, locate and remedy the source of unexpected result, then re-prepare samples and reanalyze with a new set of controls.
Laboratory replicate sample	Sample results must concur	Reanalyze sample and associated replicate sample once. If problem persists, re-prepare samples and reanalyze.

(d) The laboratory shall prepare and analyze at least one of each of the following LQC samples for each analytical batch:

- (1) Method blank;
- (2) Laboratory control sample (LCS); and
- (3) Laboratory replicate sample or matrix spike sample.

(e) The laboratory shall analyze, at minimum, a continuing calibration verification (CCV) sample at the beginning of each analytical sequence and every 10 samples thereafter.

(f) If the result of the chemical analyses is outside the specified acceptance criteria in the following table, the laboratory shall determine the cause and take steps to remedy the problem until the result is within the specified acceptance criteria.

Laboratory Quality Control Sample	Acceptance Criteria	Corrective Action
Method blank sample	Not to exceed LOQ	Reanalyze entire analytical batch once. If method blank is still greater than the LOQ for any analyte, locate the source of contamination then re-prepare samples and reanalyze.

LCS	Percent recovery 70% to 130%	Reanalyze the entire analytical batch, once. If problem persists, re-prepare samples and reanalyze or re-run the initial calibration curve.
Laboratory replicate sample	RPD \leq 30%	Reanalyze sample and associated replicate sample once. If problem persists, re-prepare samples and reanalyze.
Matrix spike sample	Percent recovery between 70% to 130%	Reanalyze sample and associated matrix spike sample once. If problem persists, re-prepare samples and reanalyze.
CCV	Percent recovery between 70% to 130%	Reanalyze all samples that followed the last CCV that met the acceptance criteria. If CCV still fails, re-run the initial calibration curve and all samples in the analytical sequence.

(g) If any analyte is detected above any action level, as described in this chapter, the sample shall be re-prepped and reanalyzed in replicate within another analytical batch.

(1) For quantitative analyses, the re-prepped sample and its associated replicate must meet the acceptance criteria of RPD \leq 30%.

(2) For qualitative analyses, the re-prepped sample and its associated replicate results must concur.

(h) If any LQC sample produces a result outside of the acceptance criteria, the laboratory cannot report the result and the entire batch cannot be released for retail sale. The laboratory shall determine the cause and take steps to remedy the problem until the result is within the specified acceptance criteria.

(i) If the laboratory determines that the result is a false-positive or a false-negative, the Bureau may ask for the laboratory to re-sample or re-test.

(j) The laboratory shall compile and generate one LQC sample report for each analytical batch that includes LQC acceptance criteria, measurements, analysis date, and matrix.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5731. Limits of Detection (LOD) and Limits of Quantitation (LOQ) for Quantitative Analyses.

(a) The laboratory shall calculate the LOD for chemical method analyses according to any of the following methods:

(1) Signal-to-noise ratio of between 3:1 and 2:1;

(2) Standard deviation of the response and the slope of calibration curve using a minimum of 7 spiked blank samples calculated as follows;

$$\text{LOD} = (3.3 \times \text{standard deviation of the response}) / \text{slope of the calibration curve; or}$$

(3) A method published by the United States Food and Drug Administration (USFDA) or the United States Environmental Protection Agency (USEPA).

(b) The laboratory shall calculate the LOQ for chemical method analyses according to any of the following methods:

(1) Signal-to-noise ratio of 10:1, at minimum;

(2) Standard deviation of the response and the slope using a minimum of 7 spiked blank samples calculated as follows:

LOQ = (10 × standard deviation of the response) / slope of the calibration curve; or

(3) A method published by the USFDA or the USEPA.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104 and 26110, Business and Professions Code.

§ 5732. Data Package.

(a) The laboratory shall compile and generate one data package for each representative sample that the laboratory analyzes.

(b) The laboratory shall create a data package and use the Data Package Cover Page and Checklist Form, BCC-LIC-024, which is incorporated herein by reference. The data package and form BCC-LIC-024 shall be provided to the Bureau immediately upon request.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100, 26104, 26110 and 26160, Business and Professions Code.

§ 5733. Required Proficiency Testing.

(a) The laboratory shall participate in a proficiency testing program provided by an organization that operates in conformance with the requirements of ISO/IEC 17043, at least once every six months.

(b) The laboratory shall annually, successfully participate in a proficiency testing program for each of the following test methods:

(1) Cannabinoids;

(2) Heavy metals;

(3) Microbial impurities;

(4) Mycotoxins;

(5) Residual pesticides;

(6) Residual solvents and processing chemicals; and

(7) If tested, terpenoids.

(c) The laboratory shall report all analytes available by the proficiency testing program provider and for which the licensee is required to test as required under this chapter.

- (d) The laboratory shall participate in the proficiency testing program by following the laboratory's existing SOPs for testing cannabis goods.
- (e) The laboratory shall rotate the proficiency testing program among the laboratory employees who perform the test methods.
- (f) Laboratory employees who participate in a proficiency testing program shall sign the corresponding analytical reports or attestation statements to certify that the proficiency testing program was conducted in the same manner as the laboratory tests of cannabis goods.
- (g) A supervisory or management laboratory employee shall review and verify the accuracy of results reported for all proficiency testing program samples analyzed.
- (h) The laboratory shall request the proficiency testing program provider to send results concurrently to the Bureau, if available, or the laboratory shall provide the proficiency testing program results to the Bureau within 3 business days after the laboratory receives notification of their test results from the proficiency testing program provider. Any results shall be reported by submitting the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated herein by reference.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100 and 26110, Business and Professions Code.

§ 5734. Satisfactory and Unsatisfactory Proficiency Test Performance.

- (a) The laboratory shall be deemed to have successfully participated in a proficiency testing program for an analyte tested in a specific method if the test results demonstrate a "satisfactory" or otherwise proficient performance determination by the proficiency testing program provider.
- (b) The laboratory may not report test results for analytes that are deemed by the proficiency testing program provider as "unacceptable," "questionable," "unsatisfactory", or otherwise deficient.
- (c) The laboratory may resume reporting test results for analytes that were deemed "unacceptable," "questionable," "unsatisfactory", or otherwise deficient, only if both of the following conditions are met:
 - (1) The laboratory satisfactorily remedies the cause of the failure for each analyte; and
 - (2) The laboratory submits, to the Bureau, a written corrective action report demonstrating how the laboratory has fixed the cause of the failure.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100 and 26110, Business and Professions Code.

§ 5735. Laboratory Audits.

- (a) The laboratory shall conduct an internal audit at least once per year or in accordance with the ISO/IEC 17025 accrediting body's requirement, whichever is more frequent.
- (b) The internal audit must include all of the components required by the ISO/IEC 17025 internal-audit standards.

(c) Within 3 business days of completing the internal audit, the laboratory shall submit the results of the internal audit to the Bureau.

(d) Within 3 business days of receiving the accrediting body on-site audit findings, the laboratory shall submit the results to the Bureau.

(e) The laboratory shall submit any audit results to the Bureau, accompanied by the Notification and Request Form, BCC-LIC-027 (New 10/18), which is incorporated herein by reference.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26100 and 26104, Business and Professions Code.

Article 8. Laboratory Employee Qualifications

§ 5736. General Laboratory Employee Qualifications.

(a) The laboratory may only employ persons who are at least 21 years of age.

(b) The laboratory shall develop and implement an employee training program to ensure competency of laboratory employees for their assigned functions.

(c) The laboratory shall ensure and document that each laboratory employee meets the employee qualifications.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26102 and 26104, Business and Professions Code.

§ 5737. Supervisor or Management Responsibilities and Qualifications.

(a) The laboratory shall employ a supervisor or management employee who must be responsible for:

(1) Overseeing and directing the scientific methods of the laboratory;

(2) Ensuring that the laboratory achieves and maintains a laboratory quality assurance program as required by section 5729 of this division; and

(3) Providing ongoing and appropriate training to laboratory employees.

(b) To be considered qualified, the supervisor or management employee must have at minimum:

(1) A doctoral degree in biological, chemical, agricultural, environmental, or related sciences from an accredited college or university;

(2) A master's degree in biological, chemical, agricultural, environmental, or related sciences from an accredited college or university, plus at least 2 years of full-time practical experience;

(3) A bachelor's degree in biological, chemical, agricultural, environmental, or related sciences from an accredited college or university, plus at least 4 years of full-time practical experience; or

(4) A bachelor's degree in any field from an accredited college or university, plus at least 8 years of full-time practical experience, 4 years of which must have been in a supervisory or management position.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26102 and 26104, Business and Professions Code.

§ 5738. Analyst and Sampler Qualifications.

- (a) The laboratory shall employ an analyst who, at minimum, must have either:
 - (1) Earned a master's degree or a bachelor's degree in biological, chemical, agricultural, environmental, or related sciences from an accredited college or university;
 - or
 - (2) Completed 2 years of college or university education that included coursework in biological, chemical, agricultural, environmental, or related sciences from an accredited college or university, plus at least 3 years of full-time practical experience.
- (b) The laboratory shall employ a sampler who, at minimum, must have either:
 - (1) Completed 2 years college or university education; or
 - (2) Earned a High School Diploma or passed a General Educational Development or High School Equivalency exam, plus at least 1 year of full-time practical experience.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26102 and 26104, Business and Professions Code.

Article 9. Record Retention

§ 5739. Records.

All laboratory records described in this chapter shall be maintained in accordance with section 5037 of this division.

Authority: Section 26013, Business and Professions Code. Reference: Section 26160, Business and Professions Code.

Chapter 7. ENFORCEMENT

§ 5800. Right of Access.

- (a) The Bureau, and its authorized representatives, shall have full and immediate access to inspect and:
 - (1) Enter onto any premises licensed by the Bureau.
 - (2) Test any vehicle or equipment possessed by, in control of, or used by a licensee or their agents and employees for the purpose of conducting commercial cannabis activity.
 - (3) Test any cannabis goods or cannabis-related materials or products possessed by, in control of, or used by a licensee or their agents and employees for the purpose of conducting commercial cannabis activity.
 - (4) Copy any materials, books, or records of any licensee or their agents and employees.
- (b) Failure to cooperate with and participate in any Bureau investigation pending against the

licensee may result in a licensing violation subject to discipline. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's business. Any constitutional or statutory privilege exercised by the licensee shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(c) The Bureau, and its authorized representatives, shall have the rights of full and immediate access under subsection (a) of this section, during any inspection, investigation, review, or audit, or as otherwise allowed by law.

(d) Prior notice of an inspection, investigation, review, or audit is not required.

(e) Any inspection, investigation, review, or audit of a licensed premises shall be conducted anytime the licensee is exercising privileges under the license, or as otherwise agreed to by the Bureau and the licensee or its agents, employees, or representatives.

(f) If the licensed premises is not accessible because access is only available by going through another licensed premises and the licensee occupying the other licensed premises denies the Bureau access, the licensees shall both be held responsible and subject to discipline.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26015 and 26160, Business and Professions Code; and Section 11181, Government Code.

§ 5801. Notice to Comply.

(a) The Bureau may issue a notice to comply to a licensee for violation(s) of the Act or regulations discovered during an investigation or observed during an inspection.

(b) The notice to comply shall be in writing and describe the nature and facts of each violation, including a reference to the statute or regulation violated, and may indicate the manner in which the licensee must correct the violation(s) to achieve compliance.

(c) The Bureau will serve the notice to comply prior to leaving the licensed premises after the inspection on any licensee, employee, agent, or person delegated by any of those listed, to facilitate the inspection or accept such notice, or will mail the notice to comply within 15 calendar days of the discovery of violation or the last date of inspection.

(d) The notice to comply shall inform the licensee that the licensee may, within 20 calendar days from the date of personal service or mailing of the notice to comply, sign and return the notice to comply declaring under penalty of perjury that each violation was corrected and describing how compliance was achieved.

(e) Failure to correct the violation(s) in the notice to comply may result in a disciplinary action.

Authority: Section 26013, Business and Professions Code; Reference: Sections 26012 and 26018, Business and Professions Code.

§ 5802. Citations; Orders of Abatement; Administrative Fines.

- (a) The Bureau may issue citations containing orders of abatement and fines against a licensee, or an unlicensed person, for any acts or omissions which are in violation of any provision of the Act or any regulation adopted pursuant thereto, or for any violation of state law or regulations applicable to cannabis licensees, including, but not limited to, state labor law.
- (b) The Bureau may issue a citation under this section to a licensee for a violation of a term or condition contained in a decision placing that licensee on probation.
- (c) Each citation may contain either order(s) of abatement, monetary fine(s), or both, and shall:
 - (1) Be in writing and describe with particularity the nature of the violation, including a reference to the law or regulation determined to have been violated;
 - (2) Fix a reasonable time for abatement of the violation if the citation contains an order of abatement, or assess an administrative fine of up to \$5,000 if the citation contains a fine;
 - (3) Be served personally or by certified mail; and
 - (4) Inform the licensee or person that they may request an informal conference, or contest the citation, or both, pursuant to section 5803 of this division.
- (d) Failure to pay a fine within 30 calendar days of the date of assessment, unless the citation is being contested, may result in further action being taken by the Bureau including, but not limited to, suspension or revocation of a license. If a citation is not appealed and the fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without the payment of the renewal fee and fine.
- (e) The amount of any fine assessed by the Bureau under this section shall take into consideration the factors listed in Business and Professions Code section 125.9(b)(3).
- (f) Nothing in this section shall be deemed to prevent the Bureau from filing an accusation to suspend or revoke a license where grounds for such suspension or revocation exist.

Authority: Sections 125.9 and 26013, Business and Professions Code. Reference: Sections 125.9, 148, 149 and 26012, Business and Professions Code.

§ 5803. Contesting Citations.

- (a) A cited licensee or person may, within 30 calendar days of service of the citation, contest the citation by submitting to the Bureau a written request for a hearing, conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. If a hearing is not requested, it is waived and payment of a fine will not constitute an admission of the violation charged.
- (b) In addition to requesting a hearing provided for in subsection (a) of this section, the cited licensee or person may, within 15 calendar days after service of the citation, submit a written request for an informal conference with the Bureau regarding the acts or omissions charged in the citation.

(c) The Bureau shall, within 15 calendar days from receipt of the written request, hold an informal conference with the licensee or person cited, and/or his or her legal counsel or authorized representative.

(d) At the conclusion of the informal conference, the Bureau may affirm, modify, or dismiss the citation, including any fines levied or orders of abatement issued. A written decision stating the reasons for the decision shall be mailed to the cited licensee or person and his or her legal counsel, if any, within 15 calendar days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the citation issued, including the levied fine and the order of abatement, if any.

(e) If the citation is dismissed, any request for a hearing shall be deemed withdrawn. If the citation is affirmed or modified, the cited licensee or person may, in his or her discretion, withdraw the request for a hearing or proceed with the administrative hearing process.

(f) If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 calendar days in accordance with Business and Professions Code section 125.9(b)(4).

Authority: Section 26013, Business and Professions Code. Reference: Sections 125.9, 26012 and 26016, Business and Professions Code.

§ 5804. Citation Compliance.

(a) The time to abate or correct a violation as provided for in an order of abatement may be extended for good cause. If a cited licensee or person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the licensee or person cited may request an extension of time from the Bureau in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When a citation is not contested, or if it is appealed and the person cited does not prevail, failure to abate the violation within the time allowed or pay a fine that was imposed shall constitute a violation and a failure to comply with the citation or order of abatement.

(c) Failure to timely comply with an order of abatement or pay a fine that was imposed may result in further action being taken by the Bureau, including, but not limited to, suspension or revocation of a license, or further administrative or civil proceedings.

Authority: Section 26013, Business and Professions Code. Reference: Sections 125.9 and 26012, Business and Professions Code.

§ 5805. Minor Decoys.

(a) Peace officers may use a person under 21 years of age to attempt to purchase cannabis goods, for the purposes of enforcing the Act, and to apprehend licensees, employees, or agents of licensees who sell cannabis goods to minors. For purposes of this section, a “minor” is a person under 21 years of age.

(b) The following minimum standards shall apply to the use of a minor decoy:

(1) At the time of the operation, the decoy shall be less than 20 years of age.

(2) A decoy shall either carry his or her own identification showing the decoy's correct date of birth, or carry no identification. A decoy who carries identification shall present it upon request to any seller of cannabis goods.

(3) A decoy shall answer truthfully any questions about his or her age.

(4) Following any completed sale, but not later than the time a citation, if any, is issued, the peace officer directing the decoy shall make a reasonable attempt to enter the licensed premises or respond to the location where the licensee is located and have the minor decoy who purchased cannabis goods identify the alleged seller of the cannabis goods.

Authority: Sections 26013 and 26140, Business and Professions Code. Reference: Section 26140, Business and Professions Code.

§ 5806. Attire and Conduct.

No license shall allow the following:

(a) Employment or use of any person in the sale or service of cannabis goods in or upon the licensed premises while such person is unclothed or in such attire, costume, or clothing as to expose to view any portion of the male or female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals.

(b) Employment or use of the services of any host or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire, costume, or clothing as described in subsection (a) of this section.

(c) Encouraging or permitting any person on the licensed premises to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person.

(d) Permitting any employee or person to wear or use any device or covering, exposed to view, which simulates the breast, genitals, anus, pubic hair, or any portion thereof.

Authority: Section 26013, Business and Professions Code. Reference: 26011.5, Business and Professions Code.

§ 5807. Entertainers and Conduct.

(a) Live entertainment is permitted on a licensed premises, except that no licensee shall permit any person to perform acts of or acts that simulate:

(1) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts that are prohibited by law.

(2) Touching, caressing, or fondling of the breast, buttocks, anus, or genitals.

(3) Displaying of the buttocks, breasts, pubic hair, anus, vulva, or genitals.

(b) No licensee shall permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in this section.

(c) No licensee shall permit any person to remain in or upon the licensed premises who exposes to public view any portion of his or her breast, buttocks, genitals, or anus.

Authority: Section 26013, Business and Professions Code. Reference: 26011.5, Business and Professions Code.

§ 5808. Additional Grounds for Discipline.

The following include, but are not limited to, additional grounds that constitute a basis for disciplinary action:

(a) Failure to pay a fine imposed by the Bureau or agreed to by the licensee.

(b) Failure to take reasonable steps to correct objectionable conditions on the licensed premises, including the immediately adjacent area that is owned, leased, or rented by the licensee, that constitute a nuisance, within a reasonable time after receipt of notice to make those corrections, under Penal Code section 373a.

(c) Failure to take reasonable steps to correct objectionable conditions that occur during operating hours on any public sidewalk abutting a licensed premises and constitute a nuisance, within a reasonable time after receipt of notice to correct those conditions from the Bureau. This subsection shall apply to a licensee only upon written notice to the licensee from the Bureau. The Bureau shall issue this written notice upon its own determination, or upon a request from the local law enforcement agency in whose jurisdiction the licensed premises is located, that is supported by substantial evidence that persistent objectionable conditions are occurring on the public sidewalk abutting the licensed premises. For purposes of this subsection:

(1) “Any public sidewalk abutting a licensed premises” means the publicly owned, pedestrian-traveled way, not more than 20 feet from the licensed premises, that is located between a licensed premises, including any immediately adjacent area that is owned, leased, or rented by the licensee, and a public street

(2) “Objectionable conditions that constitute a nuisance” means disturbance of the peace, public intoxication, drinking alcoholic beverages in public, smoking or ingesting cannabis or cannabis products in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking, or excessive loud noise.

(3) “Reasonable steps” means all of the following:

(A) Calling the local law enforcement agency. Timely calls to the local law enforcement agency that are placed by the licensee, or his or her agents or employees, shall not be construed by the Bureau as evidence of objectionable conditions that constitute a nuisance.

(B) Requesting those persons engaging in activities causing objectionable conditions to cease those activities, unless the licensee, or his or her agents or employees, feel that their personal safety would be threatened in making that request.

(C) Making good faith efforts to remove items that facilitate loitering, such as furniture, except

those structures approved or permitted by the local jurisdiction. The licensee shall not be liable for the removal of those items that facilitate loitering.

(4) When determining what constitutes “reasonable steps,” the Bureau shall consider site configuration constraints related to the unique circumstances of the nature of the business.

(d) Notwithstanding that the licensee corrects the objectionable conditions that constitute a nuisance, the licensee has a continuing obligation to meet the requirements of subsections (a) and (b) of this section, and failure to do so shall constitute grounds for disciplinary action.

(e) If a licensee has knowingly permitted the illegal sale, or negotiations for the sales, of controlled substances or dangerous drugs upon his or her licensed premises. Successive sales, or negotiations for sales, over any continuous period of time shall be deemed evidence of permission. As used in this section, “controlled substances” shall have the same meaning as is given that term in Article 1 (commencing with Section 11000) of Chapter 1 of Division 10 of the Health and Safety Code, and “dangerous drugs” shall have the same meaning as is given that term in Article 2 (commencing with Section 4015) of Chapter 9 of Division 2 of the Business and Professions Code.

(f) If the licensee has employed or permitted any persons to solicit or encourage others, directly or indirectly, to buy such persons cannabis goods in the licensed premises under any commission, percentage, salary, or other profit-sharing plan, scheme, or conspiracy.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26011.5, 26012, 26030 and 26031, Business and Professions Code.

§ 5809. Disciplinary Actions.

(a) When an accusation recommending disciplinary action against a licensee has been filed pursuant to Business and Professions Code section 26031, the accusation shall be served on the licensee in accordance with Government Code section 11505.

(b) A hearing shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code to determine if cause exists to take action against the licensee. At such a hearing, the Bureau shall have all the powers granted therein and by the Business and Professions Code.

(c) If a hearing on an accusation against a licensee results in a finding that the licensee has committed any of the acts or omissions constituting grounds for disciplinary action, the Bureau may order the license revoked, suspended outright for a specified period of time, suspended on probationary restriction for a specified period of time on such terms and conditions of probation as in its judgment are supported by its findings, impose a fine, or any combination thereof. The Bureau may also issue such other lawful orders it considers to be appropriate on the basis of its findings.

(d) An accusation may be terminated by written stipulation at any time prior to the conclusion of the hearing on the accusation. If a licensee submits a proposed stipulation to the Bureau for its consideration and the Bureau subsequently declines to accept the proposed stipulation, the Bureau shall not thereafter be disqualified from hearing evidence on the accusation and taking action thereon as authorized in this section.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26012, 26031 and 26034, Business and Professions Code.

§ 5810. Interim Suspension.

(a) Pursuant to Business and Professions Code section 494, the Bureau may petition for an interim order to suspend any license or impose licensing restrictions upon any licensee, if:

(1) - The licensee has engaged in acts or omissions constituting a violation of the Business and Professions Code or this division, or been convicted of a crime substantially related to the licensed activity, and

(2) Permitting the licensee to continue to engage in the licensed activity would endanger the public health, safety, or welfare.

(b) An interim order for suspension or restrictions may be issued with notice, as follows:

(1) The Bureau shall provide the licensee with at least 15 days' notice of the hearing on the petition for an interim order.

(2) The notice shall include documents submitted in support of the petition.

(c) An interim order for suspension or restrictions may issue without notice to the licensee, as follows:

(1) If it appears from the Bureau's petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(2) The Bureau shall provide the licensee with a hearing on the petition within 20 days after issuance of the initial interim order.

(3) Notice of the hearing shall be provided within two days after issuance of the initial interim order.

(d) The Bureau shall file an accusation, pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, within 15 calendar days of the issuance of the interim order.

Authority: Section 26013, Business and Professions Code; Reference: Sections 494, 26011.5, 26012 and 26031, Business and Professions Code.

§ 5811. Posting of Notice of Suspension.

(a) A licensee whose license has been suspended shall conspicuously and continuously display a notice on the exterior of the licensee's premises for the duration of the suspension.

(b) The notice shall be two feet in length and 14 inches in width. The notice shall read:

NOTICE OF SUSPENSION
The Bureau of Cannabis Control License(s) Issued For This Premises
Has Been Suspended For Violation of State Law

(c) Advertising or posting signs to the effect that the licensed premises has been closed or that business has been suspended for any reason other than the reason provided in the decision suspending the license, shall be deemed a violation of this section.

(d) Failure to display the notice as required in this section or removal of the notice prior to the expiration of the suspension shall be a violation of this section and may result in additional disciplinary action.

(e) A licensee shall notify the Bureau, by submitting the Notification and Request Form, BCC-LIC-027 (New 10/18), incorporated herein by reference, within 24 hours of discovering that the notice under subsection (b) of this section has been removed or damaged to an extent that makes the notice illegible.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26011.5 and 26012, Business and Professions Code.

§ 5812. Posting of Notice of Revocation.

(a) A person whose license has been revoked shall conspicuously display a notice on the exterior of the premises indicating that the license has been revoked. The notice shall remain continuously on the premises for at least 15 calendar days.

(b) The notice shall be two feet in length and 14 inches in width. The notice shall read:

NOTICE OF REVOCATION

The Bureau of Cannabis Control License(s) Issued For This Premises
Has Been Revoked For Violation of State Law

(c) Advertising or posting signs to the effect that the premises has been closed or that business has been suspended for any reason other than the reason provided in the decision revoking the license shall be deemed a violation of this section.

(d) If the Bureau revokes a license at a licensed premises that has one or more licenses at the location that will remain active after the revocation, the revocation notice shall remain posted for a period of at least 15 calendar days.

(e) Failure to display the notice for the time required in this section shall be a violation of this section and may result in additional disciplinary action.

(f) A licensee shall notify the Bureau, by submitting the Notification and Request Form, BCC-LIC-027 (New 10/18), incorporated herein by reference, within 24 hours of discovering that the notice under subsection (b) of this section has been removed or damaged to an extent that makes the notice illegible.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26011.5 and 26012, Business and Professions Code.

§ 5813. Enforcement Costs.

(a) In any order in resolution of a disciplinary proceeding for suspension or revocation of a license, the Bureau may request the administrative law judge to direct a licensee found to have committed a violation or violations of the Act, or any regulation adopted pursuant to the Act, to

pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the Bureau's designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(c) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subsection (a). The Bureau may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subsection (a).

(d) Where an order for recovery of costs is made and timely payment is not made as directed in the decision, the Bureau may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the Bureau may have as to any licensee to pay costs.

(e) In any action for recovery of costs, proof of the decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(f) Except as provided in subsection (g) of this section, the Bureau shall not renew or reinstate any license of any licensee who has failed to pay all of the costs ordered under this division.

(g) Notwithstanding subsection (f) of this section, the Bureau may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the Bureau for reimbursement within that one-year period for the unpaid costs.

(h) Nothing in this section shall preclude the Bureau from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

Authority: Section 26013, Business and Professions Code; Reference: Sections 125.3, 26012 and 26031, Business and Professions Code

§ 5814. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Act and the Administrative Procedure Act (Govt. Code section 11400 et seq.), the Bureau shall consider the disciplinary guidelines entitled "Bureau of Cannabis Control Disciplinary Guidelines October 2018," which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Bureau in its sole discretion determines that the facts of the particular case warrant such a deviation, e.g., the presence of mitigating factors, the age of the case, or evidentiary problems.

Authority: Section 26013, Business and Professions Code; Reference: Sections 26012 and 26031, Business and Professions Code.

§ 5815. Emergency Decision and Order.

(a) The Bureau may issue an emergency decision and order for temporary, interim relief to prevent or avoid immediate danger to the public health, safety, or welfare. Such circumstances include, but are not limited to, the following:

- (1) The Bureau has information that cannabis goods at a licensee's premises have a reasonable probability of causing serious adverse health consequences or death.
- (2) To prevent the sale, transfer, or transport of contaminated or illegal cannabis goods in possession of the licensee.
- (3) The Bureau observes or has information that conditions at the licensee's premises exist that present an immediate risk to worker or public health and safety.
- (4) To prevent illegal diversion of cannabis goods, or other criminal activity at the licensee's premises.
- (5) To prevent the destruction of evidence related to illegal activity or violations of the Act.
- (6) To prevent misrepresentation to the public, such as selling untested cannabis goods, providing inaccurate information about the cannabis goods, or cannabis goods that have been obtained from an unlicensed person.

(b) Temporary, interim relief may include a suspension or administrative hold by one or more of the following:

- (1) The temporary suspension of a license.
- (2) An order to segregate or isolate specific cannabis goods.
- (3) An order prohibiting the movement of cannabis goods to or from the premises.
- (4) (4) An order prohibiting the sale of specific cannabis goods.
- (5) An order prohibiting the destruction of specific cannabis goods.

(c) The emergency decision and order issued by the Bureau shall include a brief explanation of the factual and legal basis of the emergency decision that justify the Bureau's determination that emergency action is necessary, and the specific actions ordered. The emergency decision and order shall be effective when issued or as otherwise provided by the decision and order.

(d) To issue an administrative hold that prohibits activity related to specified cannabis goods, the Bureau shall comply with the following:

- (1) The notice of the administrative hold shall include a description of the cannabis goods subject to the administrative hold.
- (2) Following notice, the Bureau shall identify the cannabis goods subject to the administrative hold in the track and trace system.

(e) A licensee subject to an administrative hold shall comply with the following:

- (1) Within 24 hours of receipt of the notice of administrative hold, physically segregate all designated cannabis goods in a limited-access area of the licensed premises. The licensee shall ensure that all cannabis goods subject to the administrative hold are safeguarded and preserved in

a manner that prevents tampering, degradation, or contamination.

(2) While the administrative hold is in effect, the licensee shall not sell, donate, transfer, transport, gift, or destroy the cannabis goods subject to the hold.

(3) A microbusiness licensee subject to an administrative hold may continue to cultivate any cannabis subject to an administrative hold. If the cannabis subject to the hold must be harvested, the licensee shall place the harvested cannabis into separate batches.

(4) A licensee may voluntarily surrender cannabis goods that are subject to an administrative hold. The licensee shall identify the cannabis goods being voluntarily surrendered in the track and trace system. Voluntary surrender shall not be construed to waive the right to a hearing or any associated rights.

(f) To issue a temporary suspension, the Bureau shall specify in the order that the licensee shall immediately cease conducting all commercial cannabis activities under its license, unless otherwise specified in the order.

(g) A microbusiness licensee subject to a temporary suspension may continue to cultivate cannabis at the licensed premises only as prescribed by the Bureau in the order. If the order permits the cannabis to be harvested, the licensee shall place the harvested cannabis into separate batches.

(h) The emergency decision and order for temporary, interim relief shall be issued in accordance with the following procedures:

(1) The Bureau shall give notice of the emergency decision and order and an opportunity to be heard to the licensee prior to the issuance, or effective date, of the emergency decision and order, if practicable.

(2) Notice and hearing under this section may be oral or written and may be provided by telephone, personal service, mail, facsimile transmission, electronic mail, or other electronic means, as the circumstances permit.

(3) Notice may be given to the licensee, any person meeting the definition of owner for the license, or to the manager or other personnel at the licensed premises.

(4) Upon receipt of the notice, the licensee may request a hearing within three (3) business days by submitting a written request for hearing to the Bureau through electronic mail, facsimile transmission, or other written means. The hearing shall commence within five (5) business days of receipt of the written request for hearing, unless a later time is agreed upon by the Bureau and the licensee.

(5) The hearing may be conducted in the same manner as an informal conference under section 5803 of this division; however, the timeframes provided in section 5803 shall not apply to a hearing under this section. Pre-hearing discovery or cross-examination of witnesses is not required under this section.

(6) The emergency decision and order shall be affirmed, modified, or set aside as determined appropriate by the Bureau within five (5) business days of the hearing.

(i) Within ten (10) calendar days of the issuance or effective date of the emergency decision and order for temporary, interim relief, the Bureau shall commence adjudicative proceedings in

accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code to resolve the underlying issues giving rise to the temporary, interim relief, notwithstanding the pendency of proceedings for judicial review of the emergency decision as provided in subsection (k).

(j) After formal proceedings pursuant to subsection (i) of this section are held, a licensee aggrieved by a final decision of the Bureau may appeal the decision to the Cannabis Control Appeals Panel pursuant to Section 26043 of the Act.

(k) Notwithstanding administrative proceedings commenced pursuant to subsection (i), the licensee may obtain judicial review of the emergency decision and order pursuant to section 1094.5 of the Code of Civil Procedure in the manner provided in Section 11460.80 of the Government Code without exhaustion of administrative remedies.

(l) The Bureau's authority provided by this section may be used in addition to any civil, criminal, or other administrative remedies available to the Bureau.

Authority: Section 26013, Business and Professions Code. Reference: Section 26012, Business and Professions Code; and Sections 11460.10, 11460.20, 11460.30, 11460.40, 11460.50, 11460.60, 11460.70 and 11460.80, Government Code.

Chapter 8. OTHER PROVISIONS

Article 1. Research Funding

§ 5900. Eligibility.

(a) Only public universities in California shall be eligible to be selected to receive funds disbursed pursuant to Revenue and Taxation Code section 34019(b).

(b) Subject to available funding, the amounts to be disbursed to the university or universities will not exceed the sum of ten million dollars (\$10,000,000) for each fiscal year, ending with the 2028-2029 fiscal year.

Authority: Section 26013, Business and Professions Code. Reference: Section 34019, Revenue and Taxation Code.

§ 5901. Request for Proposals.

A Request for Proposal (RFP) is the document issued by the Bureau, which notifies all eligible fund recipients of the following, at a minimum:

(a) The funding available for research related to the Act or regulations adopted pursuant thereto;

(b) Disbursement of funds to eligible applicants through a review and selection process, including the criteria that will be used for review and selection;

(c) The specified timeframes for the proposal review and selection process, including the deadline for submission of proposals;

(d) Proposal requirements, including necessary documentation;

(e) Any priorities or restrictions imposed upon the use of the funds;

(f) (f) The governing statutes and regulations; and

(g) The name, address, and telephone number of a contact person within the Bureau, who can provide further information regarding the process for submission of proposals.

Authority: Section 26013, Business and Professions Code. Reference: Section 34019, Revenue and Taxation Code.

§ 5902. Selection Process and Criteria.

(a) The selection process shall involve eligible proposals timely received by the Bureau, in response to an applicable RFP, or similar notice.

(b) The Bureau will consider only one proposal per applicant for a given research project. Applicants may submit more than one proposal if the proposals are for separate and distinct research projects or activities.

(c) The Bureau will make a selection for funding, based on criteria including, but not limited to:

(1) The extent to which the proposed project is designed to achieve objectives as specified in Revenue and Taxation Code section 34019(b).

(2) The extent to which the proposed project is designed to achieve measurable outcomes, and the clarity of the measures for success, including, for research-based objectives, the scientific and technical merit of the proposed project as evaluated by relevant experts.

(3) The extent to which the proposed project is feasible, demonstrated by:

(A) A timeline for project completion, including readiness; and

(B) Budget detail.

(4) Qualifications of the staff who will be assigned or working on the proposed project.

(5) Any other criteria to determine the proposed project's efficacy in evaluating the implementation and effect of the Act.

(d) Applicants selected for funding will be notified in writing, along with the amount of the proposed funding.

(e) The Bureau's selection decision is final and not subject to appeal.

Authority: Section 26013, Business and Professions Code. Reference: Section 34019, Revenue and Taxation Code.

§ 5903. Release of Funds.

(a) The Bureau shall not cause funds to be disbursed until the Applicant has executed a Grant Agreement, and any other required documents.

(b) Selected recipients shall receive a single disbursement of funds for the duration of the research project.

(c) Funds released to the recipient that will be used for the purchase of any equipment related to the research project shall, at a minimum, meet the following conditions:

- (1) Prior to the purchase of any equipment, the recipient shall obtain written approval from the Bureau.
- (2) Receipts or other documentation for the purchase of any equipment shall be provided to the Bureau immediately upon purchase and request, and retained pursuant to section 5904 of this division.
- (d) Any funds that are not used prior to the completion of the research project shall be forfeited.

Authority: Section 26013, Business and Professions Code. Reference: Section 34019, Revenue and Taxation Code.

§ 5904. Reports to the Bureau.

The recipient of funds shall provide regular performance reports to the Bureau.

(a) Unless otherwise specified in the Grant Agreement, performance reports shall be provided to the Bureau in the following manner:

- (1) At monthly intervals for research projects with an estimated completion time not exceeding one year.
- (2) At quarterly intervals for research projects with an estimated completion time exceeding one year.

(b) Performance reports shall include, at a minimum:

- (1) A detailed, estimated time schedule of completion for the research project;
- (2) Description of any measurable outcomes, results achieved, or other completed objectives of the research project;
- (3) Description of remaining work to be completed;
- (4) Summary of the expenditures of the funds, and whether the research project is meeting the proposed budget, and if not, the reasons for any discrepancies and what actions will be taken to ensure the research project will be completed; and
- (5) Any changes to the information provided in the proposal, including, but not limited to, change in staff.

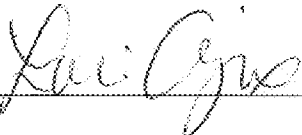
Authority: Section 26013, Business and Professions Code. Reference: Section 34019, Revenue and Taxation Code.

§ 5905. Research Records.

Recipients shall retain all research and financial data necessary to substantiate the purposes for which the funds were spent for the duration of the funding, and for a period of seven years after completion of the research project. Recipients shall provide such documentation to the Bureau upon request.

Authority: Section 26013, Business and Professions Code. Reference: Section 26160, Business and Professions Code; and Section 34019, Revenue and Taxation Code.

I certify that the above text represents a true and correct copy of the regulations; and that I am the Chief of the Bureau of Cannabis Control, and am authorized to make this certification.



Lori Ajax, Chief Bureau of Cannabis Control


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HEALTH AND SAFETY CODE - HSC

DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT [11000 - 11651] (*Division 10 repealed and added by Stats. 1972, Ch. 1407.*)

CHAPTER 6. Offenses and Penalties [11350 - 11392] (*Chapter 6 added by Stats. 1972, Ch. 1407.*)

ARTICLE 2.5. Medical Marijuana Program [11362.7 - 11362.85] (*Article 2.5 added by Stats. 2003, Ch. 875, Sec. 2.*)

11362.7. For purposes of this article, the following definitions shall apply:

- (a) "Attending physician" means an individual who possesses a license in good standing to practice medicine, podiatry, or osteopathy issued by the Medical Board of California, the California Board of Podiatric Medicine, or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of cannabis is appropriate.
- (b) "Department" means the State Department of Public Health.
- (c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.
- (d) "Primary caregiver" means the individual, designated by a qualified patient, who has consistently assumed responsibility for the housing, health, or safety of that patient, and may include any of the following:
- (1) In a case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.
 - (2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.
 - (3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.
- (e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Section 6922, 7002, 7050, or 7120 of the Family Code.
- (f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.
- (g) "Identification card" means a document issued by the department that identifies a person authorized to engage in the medical use of cannabis and the person's designated primary caregiver, if any.
- (h) "Serious medical condition" means all of the following medical conditions:

- (1) Acquired immune deficiency syndrome (AIDS).
 - (2) Anorexia.
 - (3) Arthritis.
 - (4) Cachexia.
 - (5) Cancer.
 - (6) Chronic pain.
 - (7) Glaucoma.
 - (8) Migraine.
 - (9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
 - (10) Seizures, including, but not limited to, seizures associated with epilepsy.
 - (11) Severe nausea.
 - (12) Any other chronic or persistent medical symptom that either:
 - (A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the federal Americans with Disabilities Act of 1990 (Public Law 101-336).
 - (B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.
- (i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit as part of an application for an identification card.
- (Amended by Stats. 2017, Ch. 775, Sec. 112. (SB 798) Effective January 1, 2018.)*

11362.71. (a) (1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.

(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

- (1) Provide applications upon request to individuals seeking to join the identification card program.
- (2) Receive and process completed applications in accordance with Section 11362.72.
- (3) Maintain records of identification card programs.
- (4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).
- (5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes cannabis.

(d) The department shall develop all of the following:

- (1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.
- (2) Application forms that shall be issued to requesting applicants.
- (3) An identification card that identifies a person authorized to engage in the medical use of cannabis and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medicinal cannabis in an amount established pursuant to this article, unless there is probable cause to believe that the information contained in the card is false or falsified,

the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

(Amended by Stats. 2017, Ch. 27, Sec. 135. (SB 94) Effective June 27, 2017.)

11362.712. (a) Commencing on January 1, 2018, a qualified patient must possess a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code. Failure to comply with this requirement shall not, however, affect any of the protections provided to patients or their primary caregivers by Section 11362.5.

(b) A county health department or the county's designee shall develop protocols to ensure that, commencing upon January 1, 2018, all identification cards issued pursuant to Section 11362.71 are supported by a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code.

(Added November 8, 2016, by initiative Proposition 64, Sec. 5.1.)

11362.713. (a) Information identifying the names, addresses, or social security numbers of patients, their medical conditions, or the names of their primary caregivers, received and contained in the records of the State Department of Public Health and by any county public health department are hereby deemed "medical information" within the meaning of the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code) and shall not be disclosed by the department or by any county public health department except in accordance with the restrictions on disclosure of individually identifiable information under the Confidentiality of Medical Information Act.

(b) Within 24 hours of receiving any request to disclose the name, address, or social security number of a patient, their medical condition, or the name of their primary caregiver, the State Department of Public Health or any county public health agency shall contact the patient and inform the patient of the request and if the request was made in writing, a copy of the request.

(c) Notwithstanding Section 56.10 of the Civil Code, neither the State Department of Public Health, nor any county public health agency, shall disclose, nor shall they be ordered by agency or court to disclose, the names, addresses, or social security numbers of patients, their medical conditions, or the names of their primary caregivers, sooner than the 10th day after which the patient whose records are sought to be disclosed has been contacted.

(d) No identification card application system or database used or maintained by the State Department of Public Health or by any county department of public health or the county's designee as provided in Section 11362.71 shall contain any personal information of any qualified patient, including, but not limited to, the patient's name, address, social security number, medical conditions, or the names of their primary caregivers. Such an application system or database may only contain a unique user identification number, and when that number is entered, the only information that may be provided is whether the card is valid or invalid.

(Added November 8, 2016, by initiative Proposition 64, Sec. 5.2.)

11362.715. (a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

(1) The name of the person and proof of his or her residency within the county.

(2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medicinal use of cannabis is appropriate.

(3) The name, office address, office telephone number, and California medical license number of the person's attending physician.

(4) The name and the duties of the primary caregiver.

(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

- (1) A conservator with authority to make medical decisions.
- (2) An attorney-in-fact under a durable power of attorney for health care or surrogate decisionmaker authorized under another advanced health care directive.
- (3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.
- (c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.
- (d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

(Amended by Stats. 2017, Ch. 27, Sec. 136. (SB 94) Effective June 27, 2017.)

11362.72. (a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

- (1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.
- (2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.
- (3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.
- (4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.
- (5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.

(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

- (1) A unique user identification number of the applicant.
- (2) The date of expiration of the identification card.
- (3) The name and telephone number of the county health department or the county's designee that has approved the application.
- (c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.
- (d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.735. (a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

- (1) A unique user identification number of the cardholder.
- (2) The date of expiration of the identification card.
- (3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.

(5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.74. (a) The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.

(2) The county health department or the county's designee determines that the information provided was false.

(3) The applicant does not meet the criteria set forth in this article.

(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.745. (a) An identification card shall be valid for a period of one year.

(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed.

(c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.755. (a) Each county health department or the county's designee may charge a fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

(b) In no event shall the amount of the fee charged by a county health department exceed one hundred dollars (\$100) per application or renewal.

(c) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

(d) Upon satisfactory proof that a qualified patient, or the legal guardian of a qualified patient under the age of 18, is a medically indigent adult who is eligible for and participates in the County Medical Services Program, the fee established pursuant to this section shall be waived.

(e) In the event the fees charged and collected by a county health department are not sufficient to pay for the administrative costs incurred in discharging the county health department's duties with respect to the mandatory identification card system, the Legislature, upon request by the county health department, shall reimburse the county health department for those reasonable administrative costs in excess of the fees charged and collected by the county health department.

(Amended November 8, 2016, by initiative Proposition 64, Sec. 5.3.)

11362.76. (a) A person who possesses an identification card shall:

(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.

(2) Annually submit to the county health department or the county's designee the following:

(A) Updated written documentation of the person's serious medical condition.

(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.

(b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.

(c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.

(d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.

(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.765. (a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. This section does not authorize the individual to smoke or otherwise consume cannabis unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute cannabis for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes cannabis for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away cannabis for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) An individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medicinal cannabis to the qualified patient or person or acquiring the skills necessary to cultivate or administer cannabis for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use cannabis under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

(Amended by Stats. 2017, Ch. 27, Sec. 137. (SB 94) Effective June 27, 2017.)

11362.768. (a) This section shall apply to individuals specified in subdivision (b) of Section 11362.765.

(b) No medicinal cannabis cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medicinal cannabis pursuant to this article shall be located within a 600-foot radius of a school.

(c) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medicinal cannabis cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.

(d) This section shall not apply to a medicinal cannabis cooperative, collective, dispensary, operator, establishment, or provider that is also a licensed residential medical or elder care facility.

(e) This section shall apply only to a medicinal cannabis cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medicinal cannabis and that has a storefront or mobile retail outlet which ordinarily requires a local business license.

(f) Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medicinal cannabis cooperative, collective, dispensary, operator, establishment, or provider.

(g) This section does not preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medicinal cannabis cooperative, collective, dispensary, operator, establishment, or provider.

(h) For the purposes of this section, "school" means any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is

primarily conducted in private homes.

(Amended by Stats. 2017, Ch. 27, Sec. 138. (SB 94) Effective June 27, 2017.)

11362.769. Indoor and outdoor medical cannabis cultivation shall be conducted in accordance with state and local laws. State agencies, including, but not limited to, the Department of Food and Agriculture, the State Board of Forestry and Fire Protection, the Department of Fish and Wildlife, the State Water Resources Control Board, the California regional water quality control boards, and traditional state law enforcement agencies shall address environmental impacts of medical cannabis cultivation and shall coordinate, when appropriate, with cities and counties and their law enforcement agencies in enforcement efforts.

(Amended by Stats. 2016, Ch. 32, Sec. 66. (SB 837) Effective June 27, 2016.)

11362.77. (a) A qualified patient or primary caregiver may possess no more than eight ounces of dried cannabis per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature cannabis plants per qualified patient.

(b) If a qualified patient or primary caregiver has a physician's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of cannabis consistent with the patient's needs.

(c) Counties and cities may retain or enact medicinal cannabis guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of cannabis under this section.

(e) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of cannabis consistent with this article.

(Amended by Stats. 2017, Ch. 27, Sec. 139. (SB 94) Effective June 27, 2017.)

11362.78. A state or local law enforcement agency or officer shall not refuse to accept an identification card issued pursuant to this article unless the state or local law enforcement agency or officer has probable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

(Amended by Stats. 2017, Ch. 27, Sec. 142. (SB 94) Effective June 27, 2017.)

11362.785. (a) Nothing in this article shall require any accommodation of medicinal use of cannabis on the property or premises of a place of employment or during the hours of employment or on the property or premises of a jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) This article does not prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use cannabis for medicinal purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) This article does not require a governmental, private, or any other health insurance provider or health care service plan to be liable for a claim for reimbursement for the medicinal use of cannabis.

(Amended by Stats. 2017, Ch. 27, Sec. 143. (SB 94) Effective June 27, 2017.)

11362.79. This article does not authorize a qualified patient or person with an identification card to engage in the smoking of medicinal cannabis under any of the following circumstances:

(a) In a place where smoking is prohibited by law.

(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medicinal use occurs within a residence.

(c) On a schoolbus.

(d) While in a motor vehicle that is being operated.

(e) While operating a boat.

(Amended by Stats. 2017, Ch. 27, Sec. 144. (SB 94) Effective June 27, 2017.)

11362.795. (a) (1) Any criminal defendant who is eligible to use cannabis pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medicinal cannabis while he or she is on probation or released on bail.

(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.

(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medicinal cannabis, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medicinal cannabis.

(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

(b) (1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medicinal cannabis pursuant to Section 11362.5 may request that he or she be allowed to use medicinal cannabis during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medicinal cannabis was made, and whether the request was granted or denied.

(2) During the period of the parole, where a physician recommends that the parolee use medicinal cannabis, the parolee may request a modification of the conditions of the parole to authorize the use of medicinal cannabis.

(3) Any parolee whose request to use medicinal cannabis while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.

(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

(Amended by Stats. 2017, Ch. 27, Sec. 145. (SB 94) Effective June 27, 2017.)

11362.8. A professional licensing board shall not impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of cannabis to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

(Amended by Stats. 2017, Ch. 27, Sec. 146. (SB 94) Effective June 27, 2017.)

11362.81. (a) A person specified in subdivision (b) shall be subject to the following penalties:

(1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars (\$1,000), or both.

(2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars (\$1,000), or both.

(b) Subdivision (a) applies to any of the following:

(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.

(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute cannabis.

(3) A person who counterfeits, tampers with, or fraudulently produces an identification card.

(4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subdivision (a), a person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.

(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and nondiversion of cannabis grown for medicinal use by patients qualified under the Compassionate Use Act of 1996.

(Amended by Stats. 2017, Ch. 27, Sec. 147. (SB 94) Effective June 27, 2017.)

11362.82. If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.83. Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following:

(a) Adopting local ordinances that regulate the location, operation, or establishment of a medicinal cannabis cooperative or collective.

(b) The civil and criminal enforcement of local ordinances described in subdivision (a).

(c) Enacting other laws consistent with this article.

(Amended by Stats. 2017, Ch. 27, Sec. 148. (SB 94) Effective June 27, 2017.)

11362.84. The status and conduct of a qualified patient who acts in accordance with the Compassionate Use Act shall not, by itself, be used to restrict or abridge custodial or parental rights to minor children in any action or proceeding under the jurisdiction of family or juvenile court.

(Added November 8, 2016, by initiative Proposition 64, Sec. 5.4.)

11362.85. Upon a determination by the California Attorney General that the federal schedule of controlled substances has been amended to reclassify or declassify cannabis, the Legislature may amend or repeal the provisions of this code, as necessary, to conform state law to such changes in federal law.

(Amended by Stats. 2017, Ch. 27, Sec. 149. (SB 94) Effective June 27, 2017. Note: Section 11362.9 is in Article 2, following Section 11362.5. Note: This section was added on Nov. 8, 2016, by initiative Prop. 64.)

EXHIBIT D

Exhibit IV

This is an emergency amendment to 7.34.4 NMAC, Section 28, effective 10/8/2020.

7.34.4.28 RECIPROCITY: Beginning July 1, 2020, an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo may lawfully purchase and possess cannabis, provided that the quantity of cannabis does not exceed the reciprocal limit identified in this section.

A. Reciprocal participation:

(1) General requirements: A reciprocal participant:

(a) may participate in the medical cannabis program in accordance with department rules;

(b) shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules;

(c) shall at all times possess proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo and shall present proof of that authorization when purchasing cannabis from a licensee; and

(d) shall register with a licensed non-profit producer for the purpose of tracking sales to the reciprocal participant in an electronic system specified by the department.

(2) Minors: In the event that a reciprocal participant is a minor, a licensed non-profit producer shall not sell or transfer cannabis to the minor, but may sell or transfer cannabis to a parent or legal guardian of the minor who holds proof of authorization to purchase cannabis on the minor's behalf that was issued by another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.

(3) Residency requirements:

(a) Non-residents: A person who is not a resident of New Mexico may participate in the medical cannabis program as a reciprocal participant, provided that the reciprocal participant's place of residence is consistent with their place of enrollment. (For example: a Colorado resident shall not be registered or otherwise participate as a reciprocal participant on the basis that he or she is enrolled in the medical cannabis program of a state or other jurisdiction other than Colorado.)

(b) New Mexico residents: A New Mexico resident who is not a member of a New Mexico Indian nation, tribe, or pueblo shall not participate in the medical cannabis program as a reciprocal participant, but may pursue enrollment as a qualified patient in accordance with rule 7.34.3 NMAC. A member of a New Mexico Indian nation, tribe or pueblo medical cannabis program may participate as a reciprocal participant, provided that the individual has proof of authorization to participate in the New Mexico Indian nation, tribe or pueblo's medical cannabis program.

B. Reciprocal limit: A reciprocal participant may collectively possess within any three-month period a quantity of usable cannabis no greater than 230 total units. For purposes of department rules, this quantity is deemed the reciprocal limit. (For ease of reference: 230 units is equivalent to 230 grams, or approximately eight ounces, of dried usable cannabis plant material.)

C. Registration; verification; tracking: A licensed non-profit producer shall require the submittal of a reciprocal participant's contact information for registration purposes, to include the individual's full name, date of birth, mailing address, and the enrollment number specified in the individual's medical cannabis program enrollment card (if applicable); and shall record that information in an electronic tracking system specified by the department.

(1) The licensed non-profit producer shall confirm the accuracy of a reciprocal participant's contact information prior to each transaction.

(2) A licensed non-profit producer that registers a reciprocal participant or that sells or transfers cannabis or a cannabis product to a reciprocal participant shall first verify the reciprocal participant's identity by ~~viewing~~ comparing the individual's proof of authorization from the other state, territory or tribe, ~~and also viewing~~ to the reciprocal participant's government-issued photo identification card, and verifying that the information, including but not limited to place of residence, is consistent.

(3) A licensed non-profit producer that sells or otherwise transfers cannabis or a cannabis product to a reciprocal participant shall track the sale or transfer using an electronic system specified for that purpose by the department.

(4) A licensed non-profit producer shall not register an employees or board member of the producer as a reciprocal participant.

(5) At the time of registration, a licensed non-profit producer shall electronically upload a copy of the reciprocal participant’s proof of authorization, and a copy of the reciprocal participant government issued photo ID which indicates the person’s place of residence, into the electronic tracking system specified by the department.

(6) A licensed non-profit producer shall ensure the individual registering as a reciprocal participant is not already registered as a reciprocal participant or a qualified patient in the New Mexico medical cannabis program, before entering registration information for the individual. Repeated registration of a reciprocal participant who was previously registered may result in disciplinary action in accordance with this rule.

D. Proof of authorization: Proof of authorization to participate in the medical cannabis program of another jurisdiction (an “originating jurisdiction”) shall consist of a card or other physical document issued by a governmental entity authorized by law to enroll the applicant in the medical cannabis program in the originating jurisdiction. For purposes of reciprocal participation in the New Mexico medical cannabis program, permission from a medical practitioner shall not in itself be deemed proof of authorization to participate in the medical cannabis program of another jurisdiction, but shall be accompanied by a card or other proof of enrollment issued by an authorized governmental entity of the originating jurisdiction. (For example, a written letter from a physician authorizing the individual to participate in the California medical cannabis program shall not be deemed proof of authorization for the purpose of participating in the New Mexico medical cannabis program.)

[D]-E. Refusal of service: A non-profit producer that reasonably suspects that either a person’s proof of authorization or identification card is falsified may refuse to dispense cannabis to cannabis to that individual.

[E] E. Informational materials: At the time of a sale or transfer of cannabis to a reciprocal participant, a non-profit producer shall provide informational materials to the reciprocal participant that include, at a minimum, a notice of the time and quantity limits for reciprocity under this section, and a notice concerning state and federal prohibitions against the transport of cannabis across state and international boundaries.

[7.34.4.28 NMAC - Rp. 7.34.4.28 NMAC, 6/23/2020; A, 10/8/2020]

Exhibit V

FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
10/13/2020 9:56 AM
KATHLEEN VIGIL CLERK OF THE COURT
Francine Lobato

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

CASE NO.: D-101-CV-2020-2059

NEW MEXICO TOP ORGANICS-ULTRA HEALTH, INC.,
Petitioner,

v.

NEW MEXICO DEPARTMENT OF HEALTH,
and DOMINICK ZURLO, in his official capacity as
Director of the New Mexico Medical Cannabis Program,
and SECRETARY BILLY JIMENEZ,
in her official capacity as Secretary of the
Department of Health,
Respondents.

WRIT OF MANDAMUS

THIS MATTER came before the Court on October 9, 2020, on the Petitioner's Petition for Alternative Writ of Mandamus. The Petitioner appeared through Jacob Candelaria. The Department of Health ("the DOH") appeared through Thomas Bird and Chris Woodward. Having reviewed the briefing in this matter and having entertained oral argument, THE COURT FINDS, CONCLUDES AND ORDERS:

1. The Court has subject matter and personal jurisdiction in this case.
2. The Medical Cannabis Act legalized the use and production of medical cannabis in New Mexico. NMSA 1978, § 26-2B-1, *et seq.*
3. "The purpose of the ... Act is to allow the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments." NMSA 1978, § 26-2B-2.

4. When first enacted, to participate in the medical cannabis program in New Mexico, an individual had to be a “qualified patient”. Section 26-2B-3(V) NMSA now defines a “qualified patient” [as] a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card pursuant to the ... Act on the basis of having been diagnosed, in person or via telemedicine, by a practitioner as having a debilitating medical condition; provided that a practitioner may only issue a written certification on the basis of an evaluation conducted via telemedicine if the practitioner has previously examined the patient in person....”

5. The Legislature amended the Medical Cannabis Act in 2019 to authorize the purchase and use of medical cannabis in New Mexico by reciprocal participants. The Act defines a “reciprocal participant” [as] an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo....” NMSA 1978, § 26-2B-3(W).

6. The statute further states that “[b]y March 1, 2020, the secretary of health shall adopt and promulgate rules relating to medical cannabis program reciprocity. The department may identify requirements for the granting of reciprocity, including provisions limiting the period of time in which a reciprocal participant may participate in the medical cannabis program.”

7. Under the Act, a reciprocal participant who wants to obtain reciprocal admission into the New Mexico medical cannabis program needs to meet the requirements established in NMSA 1978, § 26-2B-7(J), which reads:

A reciprocal participant:

- (1) may participate in the medical cannabis program in accordance with department rules;
- (2) shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules;
- (3) shall at all times possess proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo and shall present proof of that authorization when purchasing cannabis from a licensee; and
- (4) shall register with a licensee for the purpose of tracking sales to the reciprocal participant in an electronic system that is accessible to the department.

8. As authorized by statute, the DOH promulgated rules associated with the medical cannabis program reciprocity. The rules adopted by the DOH regarding reciprocity requirements essentially mirror the statutory language developed by the Legislature and they state:

7.34.4.28 RECIPROCALITY: Beginning July 1, 2020, an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo may lawfully purchase and possess cannabis, provided that the quantity of cannabis does not exceed the reciprocal limit identified in this section.

A. Reciprocal participation:

(1) General requirements: A reciprocal participant:

- (a) may participate in the medical cannabis program in accordance with department rules;
- (b) shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules;
- (c) shall at all times possess proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo and shall present proof of that authorization when purchasing cannabis from a licensee; and
- (d) shall register with a licensed non-profit producer for the purpose of tracking sales to the reciprocal participant in an electronic system specified by the department.

9. Neither the Legislature, by statute, nor the DOH, by rule, required that a reciprocal participant's government-issued identification and medical cannabis proof of authorization be issued by the jurisdiction where the participant lives, or that the reciprocal participant must produce a medical cannabis card as the only acceptable proof of authorization in order to obtain reciprocal admission into the New Mexico medical cannabis program.

10. Between June 23, 2020, and September 11, 2020, the DOH admitted reciprocal patients into the medical cannabis program in compliance with the statute and DOH rules. During this time, the DOH sanctioned and allowed licensed cannabis producers to sell medical cannabis to reciprocal participants whose government issued form of identification was not from the same state or jurisdiction that issued the reciprocal patient's proof of authorization to participate in a foreign jurisdiction's medical cannabis program. With regard to reciprocal patients who are authorized to participate in the California state medical cannabis program, the DOH further sanctioned and allowed licensed cannabis producers to accept a physician recommendation as proper proof of authorization for reciprocal admission into the New Mexico cannabis program.

11. Many reciprocal participants who have been patronizing New Mexico medical cannabis dispensaries are residents of New Mexico and Texas who present authorization to participate in California's medical cannabis program. Up until recently and under the rules established by the DOH, New Mexico residents could elect between participating in the New Mexico cannabis program as a "qualified patient" or as a "reciprocal participant". In essence, a New Mexico resident could bypass or circumvent the more stringent requirements for becoming a "qualified patient" and elect to participate in the program as a "reciprocal participant."

12. The DOH concluded that it was authorized to require, by rule, that reciprocal participants be residents of the same jurisdiction in which the authorizing healthcare provider practices, and that reciprocal participants must have cards as proof of authorization. On September 11, 2020, the DOH issued a “mandate” to licensed cannabis providers requiring that reciprocal patients’ government issued identification and proof of medical cannabis program authorization must be issued by the same jurisdiction, and, that reciprocal patients presenting a cannabis card is the only form of acceptable proof of authorization that the DOH will accept for California medical cannabis patients seeking reciprocal admission into the New Mexico medical cannabis program.

13. The Petitioner filed its Petition on September 22, 2020. On September 30, 2020, the Court issued a Notice of Hearing setting this matter for hearing on October 9, 2020. On October 8, 2020, at 5:02 p.m., the DOH filed with the New Mexico State Records Center an emergency amendment to 7.34.4 NMAC, Section 28. The emergency amendment essentially adopts the September 11, 2020, mandate as a DOH rule under NMSA 1978, 14-4-5.6 (Emergency rule).

14. Section 14-4-5.6 NMSA states “[a]n agency shall comply with the rulemaking procedures of the State Rules Act unless the agency finds that the time required to complete the procedure would: ... cause an imminent peril to the public health, safety or welfare....”

15. The DOH argues that any delay in implementing the emergency rule would cause imminent peril to the public health, safety and welfare, insofar as it would 1) permit New Mexico residents who would not otherwise meet criteria to enroll as qualified patients in the medical cannabis program to access cannabis; 2) allow non-residents who are not demonstrably authorized to participate in the medical cannabis program of another jurisdiction to access

cannabis; and 3) negatively impact the availability of medical cannabis in New Mexico by diverting medicine from qualified patients, thereby harming the health, safety, and welfare of qualified patients in the state.

16. The Cambridge English Dictionary defines “imminent peril” as “a situation in which something very bad is likely to happen, for example that you might be so badly hurt that you are unlikely to survive....” dictionary.cambridge.org/dictionary/english/imminent-peril. By the term “imminent peril” or “danger” is meant a place where there is certain danger – not a place where there is just a mere possibility of an injury occurring. “[I]mminent peril, which means certain, immediate, and impending, and not remote, uncertain or contingent, and likelihood or bare possibility of injury is not sufficient to create ‘imminent peril.’” *Calvert v. Super Propane Corp.*, 400 S.W.2d 133, 140 (1966). The Supreme Court in *State v. Morris*, 1965-NMSC-113, ¶ 22, 75 N.M. 475, 406 P.2d 349, defined “imminent peril” as a clear and present danger. The DOH’s justification for their emergency rule is inadequate. As a result, the DOH is in violation of the State Rules Act and the emergency rule is unenforceable.

17. The Petition for Writ of Mandamus is GRANTED.

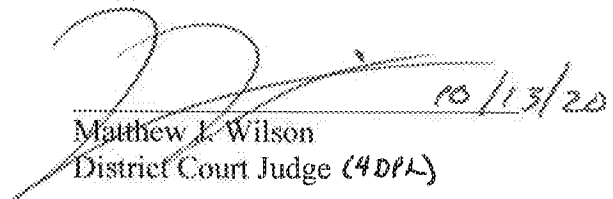
18. The Respondents are commanded to:

- a. Allow licensed cannabis producers to authorize and sell medical cannabis to reciprocal patients whose government-issued identification and proof of medical cannabis program authorizations are used by different jurisdictions or the same jurisdiction;
- b. Allow licensed cannabis producers to authorize and sell medical cannabis to reciprocal patients who present a valid proof of authorization, including those

reciprocal patients that present a California physicians authorization as their proof of authorization;

- c. Reauthorize and re-enroll any reciprocal patient removed from the program when the reason for the reciprocal participant's removal was because the reciprocal participant's state-of-residency and state-of-authorization are not the same, or, in the case of California-authorized reciprocal participants, the reciprocal participant did not produce a California issued medical cannabis program card as proof of authorization to participate in the California medical cannabis program.
- d. Otherwise permit all licensed cannabis producers to authorize and sell medical cannabis to reciprocal patients that meet the definition of "reciprocal participant" under the Medical Cannabis Act and the DOH Rule in existence prior to October 8, 2020.
- e. Immediately refrain from any further enforcement of the emergency rule of October 8, 2020, or the September 11, 2020, mandate.
- f. Administer the medical cannabis reciprocity program in full compliance with NMSA 1978, § 26-2B-7(J).

IT IS SO ORDERED.

 10/13/20
Matthew J. Wilson
District Court Judge (4DPL)

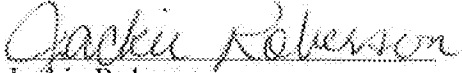
CERTIFICATE OF SERVICE

I, the undersigned, certify that a copy of this order was provided to the parties listed below via e-file and serve on the date that this order was accepted for filing by the Clerk's Office.

Jacob Candelaria, Esq.
Via e-file and serve

Thomas Bird, Esq.
Via e-file and serve

Chris Woodward, Esq.
Via e-file and serve


Jackie Roberson
TCAA

**STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE**

NEW MEXICO TOP ORGANICS-ULTRA HEALTH, INC.

Petitioner,

Case No.: D-101-CV-2020-02059

v.

**NEW MEXICO DEPARTMENT OF HEALTH,
and DOMINICK ZURLO, in his official capacity as
DIRECTOR of the NEW MEXICO MEDICAL
CANNABIS PROGRAM, and SECRETARY KATHYLEEN KUNKEL,
in her official capacity as Secretary of the
Department of Health**

Respondents.

**ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED FOR
DEFENDANTS' VIOLATIONS OF THE COURT'S
OCTOBER 13, 2020 MANDAMUS ORDER**

To: Mr. Dominick Zurlo, in his official capacity as Director of the New Mexico Medical Cannabis Program; and
Hon. Dr. Tracie C. Collins, in her official capacity as Secretary-Designate of the New Mexico Department of Health

THIS MATTER, having come before the Court upon Petitioner's *Motion for Order to Show Cause*, the Court FINDS

1. This Court entered its *Mandamus Order* in this case on October 13, 2020.
2. Inter alia, the District Court found that purported amendments made to the New Mexico medical cannabis reciprocal program Rules [7.34.4.28 NMAC] in the Department's September 11 *Mandate* and Emergency Rule of October 8, 2020 were unenforceable as a matter of law.

3. In both of its attempted “Rule” making efforts, the Department sought to restrict reciprocal admission into New Mexico Medical Cannabis Program only to patients whose government form of identification and medical cannabis authorization are issued by the *same* jurisdiction, and to those patients that that can produce a government-issued Medical Cannabis “card” to establish their participation in the medical cannabis program of another jurisdiction.
4. The District Court rejected the Department’s attempted changes to the Medical Cannabis reciprocal program as well as the Department’s arguments that these changes were consistent with the New Mexico Medical Cannabis Act or were otherwise within the Department’s rule making authority.
5. The District Court found that both the September 11 *Mandate* and the October 8 Emergency Rule conflicted with the plain language of the New Mexico Medical Cannabis Act, specifically NMSA 1978, 26-28-7 (Registry identification cards; department rules; duties; reciprocity) and were therefore unenforceable as a matter of law:

Neither the Legislature, by statute, nor the DOH [Department], by rule, required that a reciprocal patient’s government issued identification and medical cannabis proof of authorization be issued where the participant lives, or that the reciprocal participant must produce a medical cannabis card as the only acceptable proof of authorization in order to obtain reciprocal admission into the New Mexico medical cannabis program. [Mandamus Order, 9].

6. The Court ordered that the Department immediately cease any enforcement of the September 11 *Mandate* and the October 8 Emergency Rule.
7. In addition, the Court also specifically ordered the Department to “administer the medical cannabis reciprocity program in full compliance with NMSA 1978, § 26-2B-7(1).” [Mandamus Order, 18(f)].

8. The plan language of the Court's *Mandamus Order* operates both in a retrospective and prospective fashion--namely, the Court's *Mandamus Order* clearly restrains the Department from engaging in any future conduct contrary to the Court's *Mandamus Order*.
9. On November 12, 2020, the Department filed a *Notice of Appeal* to this Court's October 13, 2020 *Mandamus Order*.
10. Even when a matter is appealed, the trial court retains jurisdiction to enforce matters collateral to its judgment---such as issuing sanctions for the Department's violations of the Court's *Mandamus Order*. Kelly Inn No. 102, Inc. v. Kapnison, 113 N.M. 231, 1992-NMSC-005, 42, 824 P.2d 1033, 1046. ("The trial court retains the same jurisdiction to deal with matters collateral to or separate from the issues resolved in the judgment as it has following the filing of the notice of appeal. The necessity for further proceedings to carry the judgment into effect or otherwise to dispose of a matter that does not entail alteration or revision of decisions embodied in the judgment does not prevent finality of the judgment; and the court does not lose jurisdiction, after thirty days have passed or an appeal has been taken, to dispose of such matters.").
11. On October 27, 2020, the Department published *Notice of Amendments to Rule 7.34.4.28 NMAC* ("Reciprocity") in the New Mexico Registrar:

These include amendments adopted on October 8, 2020 via an emergency rule, including revisions to residency requirements for reciprocal participation in the Medical Cannabis Program; new requirements concerning what does and does not constitute "proof of authorization" for purposes of reciprocal participation in the Medical Cannabis Program; and revisions to registration, verification, and tracking requirements.
12. On its face, the Department's *Notice* makes an obvious mis-representation of fact to the public: the Department's October 8, 2020 Emergency Rule was never *adopted*, nor did it ever have legal effect.

13. To the contrary, the Court has specifically enjoined the Department from any enforcement of the October 8 Emergency Rule.
14. The Department is now *again* attempting to implement changes to the New Mexico Medical cannabis reciprocal program that this Court has already ruled are unlawful, are contradictory to legislative intent, and that exceed the Department's limited and narrow rule making authority.
15. To wit, the Department's October 27, 2020 Rule again unlawfully attempts to limit reciprocal admission into the New Mexico Medical Cannabis program to reciprocal patients that: (1) are not a New Mexico resident; (2) have a government issued identification card and proof of authorization to participate in a medical cannabis program issued by the *same* jurisdiction; and 3) present a "government issued" medical cannabis "card", or other government issued proof of authorization, as the only acceptable forms of proof of authorization.
16. The Department has essentially copied and pasted the language of its October 27, 2020 amendments to Rule 7.34.4.28.3(A) NMAC and 7.34.4.28.3(B) from the September 11, 2020 *Mandate* and the October 8, 2020 *Emergency Rule*; language that this Court has already ruled constitutes an unlawful exercise of the Department's authority.
17. The Court finds that Petitioner has set forth a prima facie, good faith basis that the Department has violated this Court's *Mandamus Order* and that a hearing and response from the Department is warranted.

**YOU ARE HEREBY COMMANDED TO APPEAR BEFORE THIS COURT AS
FOLLOWS:**

Date of Hearing: December 10, 2020

Time of hearing: 8:30 a.m.

Place/Method of hearing: 1 hour

You are further Ordered to respond to Petitioner's *Motion* by December 7, 2020 and explain why the Court should not grant Petitioner's *Motion* and impose sanctions upon the Department of Health.

NOTICE FROM THE COURT REGARDING TELEPHONIC APPEARANCES:

Until the current operating guidelines for the New Mexico Courts that have been put in place concerning the Coronavirus are modified, parties and attorneys are to appear telephonically for all hearings. Parties and attorneys may appear telephonically by calling 1-336-949-8079 and entering pin number 862702640# or by video at meet.google.com/bbu-aujx-qfx (which may be subject to change). Although proceedings are being conducted remotely, all rules governing demeanor and dress code remain in effect. As changes are being made frequently, please visit the court website firstdistrictcourt.nmcourts.gov the day before your hearing. Once at the court website, click on District Court Judges and scroll down to Judge Matthew J. Wilson, Division IX, then click on View Calendar for up to date information on how to appear telephonically.

Please call or join at the time of your hearing. (If the previous hearing is still in session, please mute your phone until your case is ready to be called. If you are unable to mute your phone, the Judge may have to mute it for you. Please do not hang up, remain on the line and once the Judge is ready to call your case you will need to unmute your phone or use the instructions given to you by the Judge if he muted the phone for you).

NOTICE FROM THE COURT REGARDING EXHIBITS:

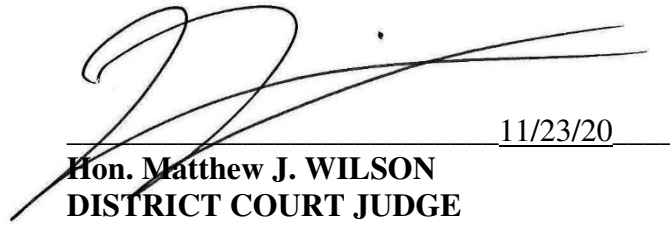
The parties, counsel and witnesses shall appear by phone or by video conferencing for this hearing.

If a party intends to introduce exhibit(s) into evidence at this hearing, the party seeking the introduction of the exhibit(s) into evidence shall provide a copy of the exhibit(s) to the other party. A copy of the exhibit(s) shall be provided to the Court at least 2 days before the hearing in an envelope or a binder with the case caption clearly marked on the envelope or binder. The Court will not review the exhibit(s) prior to the hearing. At the hearing, the Court will review the exhibit(s) for evidentiary purposes if there is no objection to the admission of the exhibit(s) or the moving party is able to introduce the exhibit(s) into evidence through an appropriate witness or otherwise.

****NOTE**** Due to the high volume of cases in this Division, this Court may not be able to accommodate notices of dates of unavailability.

*****NOTE**** Parties are to assume all hearing proceedings are on FTR. If the parties request transcripts, they should make arrangements in advance to provide their own Court Reporter

IT IS SO ORDERED.



11/23/20
Hon. Matthew J. WILSON
DISTRICT COURT JUDGE

PARTIES ENTITLED TO NOTICE

New Mexico Department of Health
Kelleher & McLeod
Attorneys for Respondents DOH
tcb@keleher-law.com

New Mexico Top Organics-Ultra Health, Inc.
CANDELARIA LAW LLC
Attorneys for Petitioner
jacob@jacobcandelaria.com

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

Case No.: D-101-CV-2020-02059

**NEW MEXICO TOP ORGANICS-ULTRA HEALTH, INC.
Petitioner,**

v.

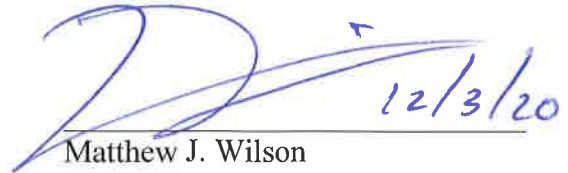
**NEW MEXICO DEPARTMENT OF HEALTH,
and DOMINICK ZURLO, in his official capacity as
DIRECTOR of the NEW MEXICO MEDICAL
CANNABIS PROGRAM, and SECRETARY KATHYLEEN KUNKEL,
in her official capacity as Secretary of the
Department of Health
Respondents.**

**ORDER HOLDING APPLICATION FOR TEMPORARY INJUNCTIVE RELIEF IN
ABEYANCE**

THIS MATTER came before the Court on the Verified Application for Temporary Injunctive Relief. THE COURT FINDS, CONCLUDES AND ORDERS:

1. The Court has subject matter and personal jurisdiction in this case.
2. The Court has reviewed the Verified Application for Temporary Injunctive Relief and the proposed Temporary Injunctive Order.
3. The Court set this matter for hearing on December 10, 2020.
4. The Court understands that there is a public hearing scheduled for December 4, 2020, and a presentation to the Medical Cannabis Advisory Board scheduled on December 9, 2020.
5. The Court will address all issues on December 10, 2020, and will hold the Application for Temporary Injunctive Relief in abeyance until that time.

So Ordered:


Matthew J. Wilson
District Court Judge

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that copies of this order were e-served on the date of acceptance for e-filing to counsel who registered for e-service as required by the rules and mailed to pro se parties, if any to:

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Attorneys for Respondent

Hollie Tanabe

Hollie Tanabe
Administrative Assistant



Ultra Health®

Via Email

Andrea Sundberg
New Mexico Department of Health
Medical Cannabis Program
P.O. Box 26110
Santa Fe, NM 87502-6110
MCP.comment@state.nm.us

Re: Comments on Department of Health Proposed Amendments to 7.34.4.28 NMAC

Dear Medical Cannabis Program,

I am completely bewildered by the Agency's desire to be callous and uncaring about the needs of medical cannabis patients.

The purpose of the Lynn & Erin Compassionate Use Act is clearly spelled out in the law: to allow the beneficial use of medical cannabis.

It is not about denying, restricting, or limiting participation. It is simple and clear: to allow the beneficial use of medical cannabis.

Without exception or debate, it is to allow for the beneficial use of medical cannabis. We should all be putting the emphasis on the word: ALLOW.

The current pandemic is the single biggest health event in the last 100 years. New Mexico is breaking record after record of new COVID 19 cases and even more sadly, with a record number of deaths.

Those we have lost we can not recover nor should we forget. And as for those of us who remain, and I am talking about both groups of those who have been already been infected and those who have not been, there is left a painful trail of depression, anxiety, stress, anger, fear, isolation, suicide, insomnia, increased use of alcohol and illicit drugs and overall an increase in general suffering and a decrease in well-being.

I have received more than one personal note from a patient saying the ability to access cannabis through the reciprocal participant program saved my marriage. One patient specifically said, you saved my life.

New Mexico is last on so many lists. Will we be last in realizing that this is a medicine like any other prescription? A medicine that is in need today, and a need that will exponentially increase going forward.

Cannabis is a meaningful medicine that actually changes and saves lives. Instead of continuing to put up barriers to access, we should be opening up our hearts and minds to the clear fact that we need more, not less of available cannabis care.

Which means broader, more compassionate reciprocity requirements. Remember, those barriers that the DOH keeps proposing are born not in the heart of compassion, but in the thoughts and minds of racism and discrimination.

There are more than 5,000 reciprocal participants in the program. DOH has failed to evaluate how devastating these new requirements would be for thousands of individuals. No official reports. No memos. No examination of how these regulations would strip access to medicine.

DOH is acting with reckless disregard concerning access to medicine for thousands of people. The department first promulgated regulations that reflected the Lynn and Erin Compassionate Use Act. The agency cannot strip these regulations and jeopardize the well-being of thousands of individuals during the biggest health event in the last 100 years all because they simply did not like the outcome of the regulations that reflect the statute.

For once, set aside your absurd rule-making on reciprocal participants and simply carry out the statute as written.

If you are not happy with the statute then go talk to the Legislature. Otherwise, simply follow the law and “allow the beneficial use of medical cannabis”.

Thank you.

/s/ Duke Rodriguez

Ultra Health