

Memo To: House State Veterans & Military Affairs Committee Members  
From: Barbara Brohl, Executive Director / Department of Revenue  
Date: April 23, 2013  
Subject: Department of Revenue Actions Regarding Medical Marijuana

Madam Chair, members of the Committee, thank you for this opportunity to present the activities undertaken by the Department of Revenue with regard to the Medical Marijuana Division.

Mr. Kammerzell and I appeared before the Joint Select Committee on the Implementation of Amendment 64 to identify questions and concerns from that Committee regarding the Medical Marijuana Enforcement Audit. Today, I would like to address those questions and concerns with you, and provide some context for the challenges the Division has faced, share what we've learned, the changes we've been making, and assure you that we are not only in control of the MMED, but will be able to effectively meet our regulatory and enforcement responsibilities for Adult Use Marijuana as well.

As I have said many times during and since the Audit, I take responsibility for my Department. And no one is more committed than I am to getting this right. Now let me tell you what taking responsibility means.

Taking responsibility meant coming into this Department on July 18, 2011 and start collecting facts and data about the different Divisions.

Based on those facts and data, I began to look at the MMED, and in November of 2011, I appointed a new Director for the MMED. Laura Harris brought with her more than 25 years in Liquor Enforcement. In addition, she received criminal investigator training at the Federal Law Enforcement Training Center. These skills qualified her for this new challenge. I specifically asked her to evaluate all of the operations of the Division with a critical eye. And she has done so.

In addition, I asked Ron Kammerzell to take on the Leadership position over the entire Enforcement Division. He has spent nearly 20 years with the Division of Gaming, where he served as audit manager, senior investigator, agent-in-charge, and then Director. During that time, he also served as a sworn agent of CBI on a year-long special assignment to investigate government corruption. Ron has extensive experience in complex criminal and financial investigations, auditing, internal controls, gaming regulation, and public administration. In addition, he is a Colorado POST Certified peace officer and graduated from the Jefferson County Sheriff's Office Law Enforcement Training Academy receiving an academic excellence award. Just as importantly, Ron is well respected by both Law Enforcement and the Business

Communities. These skills are critical to ensuring that appropriate regulatory enforcement occurs.

**Let me share the lessons we learned, the steps we've taken, and the work we continue to do.**

The first thing we discovered was that our revenue projections were too optimistic and we were experiencing a shortfall in our cash fund. The second thing we discovered was that our expenses needed to be addressed. Taking responsibility meant that beginning in the third quarter of FY 2012, the Department began to evaluate ways to reduce expenditures of the Division and to curtail operations in the wake of a shortage of revenues being collected. It also meant that the Division began to look at ways to increase revenues.

**Here is what we did.**

1. The dual license structure with Medical Marijuana requires that the Local Authority grant the license before the State can. What we found were large numbers of applications that were awaiting local licensure. That meant that the State could not collect annual licensing fees for those businesses. Therefore, the Department pursued legislation in the 2012 session to decouple the state and local licensing approval process in the hopes of improving the ability of the Division to approve licenses and renewals to establish a predictable revenue stream to support operations. At the same time, the legislation also contemplated using some of the funds collected by CDPHE as emergency funding to keep the Division operating at the level of 37 FTE. This legislation was not successful and the Division immediately began to take measures to reduce its costs including the implementation of a layoff plan, freezing or eliminating contract obligations (field office leases, vehicle leases, inventory system, etc.), and the elimination of discretionary expenditures. All of these measures were necessary to keep the Division operating.
2. The Division also eliminated its excess vehicle fleet and specifically targeted vehicles that had the most costly lease payments. We contacted State Fleet Management in April 2012, and within 60 days, the Division eliminated 25 vehicles by transferring them to other state agencies. The Division also identified other recurring costs that could be eliminated such as contract obligations and quickly acted to control these expenses. Most notably, the Division had to place the contract for the development of an inventory system on hold. The Division has continued to extend this contract and is now in negotiations with the vendor to finalize contract amendments and to complete the development of this system for the implementation of A64.

3. The Division initiated its layoff plan beginning in May 2012 and the Department worked diligently to transfer 20 employees to other DOR agencies. Two of our existing staff elected to resign in lieu of being transferred. At the time, an operating budget of \$2.4 million was established with the assistance of the DOR Office of Budget and Financial Services. The Division has operated within that budget since the beginning of FY 2013 (July 2012). At this time, we have 15 employees trying to do the work of 55.
  
4. The original management team made a policy decision to not collect license fees at the time of application for licensure. This practice has been abandoned and license fees are now collected at the time of application along with application fees. In the spring of 2012, the Department requested and received an informal opinion from the AG that the Division could collect the license fees for those businesses that still had a pending application with the Division on a one-time basis and the Division began collecting these fees. The Division has collected approximately \$4.8 million from these applications. This influx of license fees has permitted the Division to continue operations and remain solvent.
  
5. Since the beginning of the third quarter of FY 2012 (April 2012), the Department has instituted additional accounting and budgetary controls to include monthly budget meetings involving the Senior Director of Enforcement, the Department's Chief Financial Officer, the Director and other staff. The Division has also put into place strict expenditure controls for all expenses of the Division. Further, the Department created a controller position for the Enforcement Business Group and filled the position in the second quarter of FY 2013 (Fall of 2012). All of these measures were put in place to ensure that the Department and the Division meet their fiduciary duties to the State.
  
6. The Division has performed a critical assessment of its licensing process for medical marijuana businesses and has streamlined its procedures. This includes developing procedures for the processing, reviewing and approval of these licenses. This has resulted in a dramatic reduction in the time it takes the Division to conduct a background investigation of a business and conduct a pre-license inspection. The Division has also taken immediate steps to implement a risk-based approach for determining the need for pre-license inspections as recommended by the OSA. All of these corrective measures taken by the Division will also improve the licensing process for A64 implementation.

7. The Division has worked with local government licensing authorities very closely to improve the collaboration and communication between them and the state when it comes to licensing approval. While this has resulted in some improvement in local licensing authority approval notifications, this continues to be an area that delays the issuance of licenses by the state licensing authority. As a result, the Department has worked diligently to introduce legislation again this session to de-couple the state and local government licensing processes (HB-1238). This is the second attempt by the Department to seek a legislative change to address this issue. Both CML and CCI are in agreement.
  
8. The Division is actively working on establishing many of the recommendations contained in the OSA Performance Audit Report of the Division. As I mentioned earlier, the Division is already implementing a risk-based approach for assessing whether or not a pending business requires a pre-licensing inspection before receiving licensing approval from the state licensing authority. The Division is also actively developing written procedures and policies for critical areas highlighted in the audit report. The Division is also actively engaged in the development of a strategic plan and appropriate performance measures to assess our effectiveness in regulating the industry.
  
9. The Division is actively working toward the elimination of its backlog of pending MMED business license applications by the end of the current fiscal year. We have received additional resources from the Attorney General's office that will permit us to resolve the 138 problem applications. Additionally, the Division has 119 applications awaiting a pre-licensing inspection. The Division plans to utilize the previously-mentioned risk-based approach to determine whether a pre-license inspection is warranted. The Division has 328 pending applications that are awaiting local approval. As I mentioned, the Division is working with Representative McCann on HB 13-1328 that would de-couple the state and local licensing approval processes. If the Division is successful in getting this legislation passed, it will permit the Division to move forward with issuing conditional licenses, pending local authority approval. All of these measures will permit the Division to eliminate the MMED licensing backlog and allow the Division to focus on implementation of A64.
  
10. Because of the effort we began soon after I came on board, work is already well underway. Let me assure you, we did not wait for the State Audit for us to act. We've

been doing that for some time now. We've taken a top-to-bottom look, rethinking every decision, and adding necessary oversight into our business operations.

11. The Division is currently developing a comprehensive business and staffing plan for the implementation of Amendment 64. This includes the identification of critical action items, timelines and resources needed for effective implementation. Additionally, the Department has assembled an Amendment 64 Implementation Team comprised of key Divisions within the Department to ensure proper support and resources are allocated for successful implementation. Some of the critical tasks that have been incorporated into this plan include:

- Fee Setting for both MMED and Amendment 64
- Fiscal Resource Analysis
- Implementation of Inventory Tracking System
- Promulgation of Amendment 64 Regulations
- Revision of MMED Regulations
- Augmentation of Licensing System for Amendment 64 and MMED
- Implementation of OSA Audit Recommendations
- Policy and Procedure Development
- Development of Infrastructure
- Licensing Strategies
- Enforcement Strategies
- Law Enforcement Interaction Strategies
- Local Licensing Authority Interaction Strategies
- Identification of Constitutional and Statutory Mandates