COLORADO
Department of Revenue
Enforcement Division - Marijuana
455 Sherman Street, Suite 390
Denver, CO 80203

June 16, 2015

SENT VIA E-MAIL to: jeff@gardlawfirm.com

Jeffrey S. Gard, Esq.
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2541 Spruce Street
Boulder CO 80302

RE: Response to Request for Position Statement

Dear Mr. Gard:

This letter is in response to your Petition for a Statement of Position pursuant to Rules M 104(A), 1 CCR 212-1 and R 104(A), 1-CCR 212-2, received on May 19, 2015.

1. "Are business brokers who broker sales between marijuana business owners interested in selling their marijuana business and prospective buyers considered owners?"

   The MED relies upon a non-exhaustive list of elements when determining ownership, detailed in Rules M 204, 1 CCR-212-1 and R 204, 1 CCR 212-2. A traditional arms-length brokerage relationship without the presence of any of the factors noted in M 204 and R 204 may not trigger concerns about license ownership, although the circumstances of every transfer of ownership are reviewed on a case by case basis. An additional factor that bears special consideration is whether the valuation of any retail marijuana establishment or medical marijuana business includes any marijuana or marijuana products.

2. "Does the answer to question one change if the broker takes a percentage of the final purchase price rather than a flat fee?"

   The response to Question 1 is also applicable to Question 2. Pursuant to Rules M 204 and R 204 and sections 12-43.3-313 and 12-43.4-312, C.R.S., direct and indirect financial interests in a retail marijuana business or medical marijuana establishment's license require disclosure to the Division, and may constitute ownership. Whether a broker's fee based on a percentage of the purchase price constitutes a financial interest that qualifies as ownership is analyzed on a case-by-case pursuant to factors considered when evaluating ownership of a license, detailed in Rules M 204, 1 CCR-212-1 and R 204, 1 CCR 212-2.

3. "Do the answers to either question one or question two change if depending on which party (prospective seller or prospective buyer) pays the broker's fee?'

   See response to Questions 1 and 2.

Thank you for your inquiry. If you have additional information or questions, please contact Jim Burack, MED's Chief of Investigations, at jim.burack@state.co.us.

Sincerely,

W. Lewis Koski

W. Lewis Koski, Director