

STATE OF COLORADO

DEPARTMENT OF REVENUE
Medical Marijuana Enforcement Division
455 Sherman Street Suite 390
Denver CO 80203



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July 30, 2012

Sean McAllister
McAllister, Darnell & Associates, P.C.
36 Steele Street, Suite #200
Denver, CO 80206

Re: Request for Position Statement – “120 Day Rule”

Dear Mr. McAllister:

This is in response to the June 19, 2012 order from the medical marijuana state licensing authority remanding the matters addressed in your correspondence, dated April 25, 2012, to the Medical Marijuana Division (MMED) for response. This response addresses questions related to the “120 day rule” only. The remainder of the questions presented in your April 25th petition will follow in a separate letter.

On behalf of your law firm, McAllister, Darnell & Associates, P.C., and pursuant to Regulation 1.310, 1 CCR 212-1, you’ve presented the following questions for a statement of position.

Five separate questions related to the following medical marijuana rule:

Rule 1.200, 1 CCR 212-1. Registration of a Primary Center. A Center licensed pursuant to section 12-43.3-402, C.R.S., shall not allow a patient to register the Center as a Primary Center if the patient has previously designated another Center as its Primary Center at anytime during the past one-hundred twenty (120) days. Should a patient desire to designate a new Primary Center after the one-hundred twenty (120) days timeframe, the patient must advise the new Primary Center of the number of plants being cultivated at its former Primary Center and the new Primary Center must validate that any existing plants at the former Primary Center have been assigned to new patients at that Center or that all plants previously assigned to the patient have matured and been cultivated and harvested. The new Primary Center shall also maintain written authorization from the patient and any relative plant count waivers to support the number of plants designated for that patient and shall report the assignment by a patient of its Primary Center to MMED within seventy-two (72) hours.

Question #1- In the case that a patient comes to a center with a red card, with no prior MMC listed, and designates the MMC as its primary center, can the MMC start growing right then?

Question #2- In the case that a patient's prior center closed or shut down [can the] MMC start growing right then?

Questions #3-In the case that a patient's prior center closed or shut down due to a jurisdictional ban or other reason, does the patient still have to wait 120 days to designate the new center?

Question #4 – If a patient comes in only with an application and physician recommendation and designates the center at that time, can the center start growing then?

Question #5 – [If] a patient has already listed another MMC as a primary center [and] the new MMC has confirmed that it has been 120 days and the old MMC has absorbed the plants into the other patient's plant counts or destroyed them, can the new MMC start growing upon confirmation with the old MMC right away?

Background

Section 25-1.5-106(2)(e), C.R.S. defines a Registry Identification Card, often referred to as a “red card” in industry vernacular, as the nontransferable confidential registry identification card issued by the state health agency to patients and primary caregivers. Regulation 2.B., 5 CCR 1003-2, prescribes the requirements for a registry identification card, as issued by the state health department, to include the name and address or the applicant's primary caregiver or medical marijuana center, *if* either one is designated by the patient at the time of application.

Section 25-1.5-106(8)(f), C.R.S. describes a patient's disclosure requirements as it relates to the source of medical marijuana that the patient elects (cultivate their own, designation of a caregiver, or designation of a medical marijuana center) at the time a patient applies for inclusion in the patient registry.

Section 12-43.3-104(8), C.R.S. defines a Medical Marijuana Center as a person licensed pursuant to article 43.3 to operate a business as described in §12-43.3-402, C.R.S. that sells medical marijuana to registered patients and primary caregivers as defined in section 14 of article XVIII of the state constitution.

Section 12-43.3-104(12), C.R.S. defines an Optional Premises Cultivation operation as a person licensed to operate pursuant to §12-43.3-403, C.R.S., which goes on to describe the license privileges as the growing and cultivating of medical marijuana at an additional Colorado-licensed premises contiguous or not contiguous with the licensed premises of the person's

medical marijuana center license or the person's medical marijuana-infused products manufacturing license.

The privilege of growing or cultivating medical marijuana plants is not a privilege specifically granted to a medical marijuana center licensee. Such privileges instead belong to the optional-premises-cultivation-licensed operation(s) that share common ownership with center licensees. (see §Section 12-43.3-402(3) and (4), C.R.S.; §12-43.3-403, C.R.S.; §12-43.3-901(5), C.R.S.)

Section 12-43.3-901(4)(e), C.R.S. makes it unlawful for a person licensed to sell medical marijuana pursuant to the article to possess more than six medical marijuana plants and two ounces of medical marijuana for each patient who has registered the center as his or her primary center pursuant to §25-1.5-106(8)(f), C.R.S. unless the patient's physician authorizes an amount in excess of the statutory limit and the center has written documentation from the physician verifying the exception.

Division Response

Question #1- In the case that a patient comes to a center with a red card, with no prior MMC listed, and designates the MMC as its primary center, can the MMC start growing right then?

Yes, with the following qualifiers. If a medical marijuana patient presents a Registry Identification Card ("red card"), as defined in §25-1.5-106(2)(e), C.R.S., to a medical marijuana center ("MMC") for the purpose of designating that center as its primary center, and the registry identification card does not contain the name of a primary caregiver or a different MMC (as the designated primary center), then the MMC accepting presentment of such identification card may authorize *its commonly-owned optional premises cultivation operation* to commence cultivation of up to 6 plants pursuant to the restrictions in §12-43.3-901(4)(e). Additionally, the optional premises cultivation operation associated with said MMC may cultivate a plant count in excess of the statutory plant limit for the patient only with a medical physician's written authorization.

Question #2- In the case that a patient's prior center closed or shut down [can the] MMC start growing right then?

An MMC is prohibited by Rule 1.200 from allowing a patient to register that center as a primary center if there is evidence that the patient has previously designated another center as his or her primary center at anytime during the previous one-hundred twenty (120) days. It is the Division's position that the rule is not open to exceptions that would authorize a variance from the 120-day waiting period, such as the closing of a medical marijuana business. Since the primary center designation is prohibited in this instance, the center's commonly-owned optional premises cultivation operation is prohibited from commencing cultivation of new plants associated with said patient.

Questions #3-In the case that a patient's prior center closed or shut down due to a jurisdictional ban or other reason, does the patient still have to wait 120 days to designate the new center?

An MMC is prohibited by Rule 1.200 from allowing a patient to register that center as a primary center if there is evidence that the patient has previously designated another center as his or her primary center at anytime during the previous one-hundred twenty (120) days. It is the Division's position that the rule is not open to exceptions that would authorize a variance from the 120-day waiting period, such as the closing of a medical marijuana business due to a local jurisdictional ban of the sale of medical marijuana. Since the primary center designation is prohibited in this instance, the center's commonly-owned optional premises cultivation operation is prohibited from commencing cultivation of new plants associated with said patient.

Question #4 – If a patient comes in only with an application and physician recommendation and designates the center at that time, can the center start growing then?

In accordance with the discussion that follows, the primary center designation is prohibited in this instance and, therefore, the center's commonly-owned optional premises cultivation operation is prohibited from commencing cultivation of new plants associated with said patient.

Section 12-43.3-901(4)(e), C.R.S. makes it unlawful for a person licensed to sell medical marijuana pursuant to the article to possess more than six medical marijuana plants and two ounces of medical marijuana for each patient who has registered the center as his or her primary center pursuant to 25-1.5-106(8)(f), unless the patient's physician authorizes an amount in excess of the statutory limit and the center has written documentation from the physician verifying the exception.

It is the Division's position that a MMC licensee must secure a patient's registry card, and not simply a patient's application, before the MMC's commonly-owned optional premises cultivation operation can commence plant cultivation for that patient. Section 12-43.3-901(4)(e), C.R.S., assumes a patient has a valid *patient registry card* as defined in §25-1.5-106(2)(e), C.R.S.

Section 12-43.3-901(4)(d)(I), C.R.S., prohibits a medical marijuana center from selling medical marijuana to any person not able to produce a valid patient registry card unless a new patient presents a copy of the completed registry application with evidence of submission to the Department of Public Health and Environment *within the preceding 35 days*, as validated by a certified mail return receipt, and the employee assisting the patient has contacted the Department of Public Health and Environment and, as a result, has determined the application has not been denied. However, once the registry application paperwork is over 35 days old, the patient must have a patient registry card in order to legally purchase from *any* medical marijuana center. See § 12-43.3-901(4)(d)(I), C.R.S. While a center may legally *sell* medical marijuana to a patient whose application paperwork is less than 35 days old, a center cannot

Sean McAllister
July 30, 2012
Page 5

legally *grow* for a patient whose application paperwork is less than 35 days old. Without exception, if such a patient could not produce a valid patient registry card by day 36, no center's commonly-owned optional premises cultivation operation would be able to legally grow or destroy any of that patient's plants. Such plants would be outside the scope of the Colorado Medical Marijuana Code, *i.e.*, they would be illegal plants not associated with any patient. Consequently, the Division believes the Colorado Medical Marijuana Code does not allow a licensee to cultivate plants for a patient that does not have a valid patient registry card.

Question #5 – [If] a patient has already listed another MMC as a primary center [and] the new MMC has confirmed that it has been 120 days and the old MMC has absorbed the plants into the other patient's plant counts or destroyed them, can the new MMC start growing upon confirmation with the old MMC right away?

Should a patient desire to designate a new primary center after the 120-day waiting period, the new primary center must validate that any existing plants at the former primary center, or its related optional premises cultivation, have been assigned to new patients at that center or that all plants previously assigned to the patient have matured and been cultivated and harvested. Since the primary center designation is authorized in this instance, the center's commonly-owned optional premises cultivation operation may commence cultivation of new plants associated with said patient upon confirmation.

If you should disagree with the position statements provided herein, you may have the right to appeal by seeking a Declaratory Order from the state licensing authority. An appeal is governed by the provisions of Rule 1.310, and must be made within thirty (30) days from the date of this position statement.

Sincerely,



Laura K. Harris

Director

Medical Marijuana Enforcement Division