

STATE OF COLORADO

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



John J. Hickenlooper
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Director

Laura K. Harris
Division Director

April 6, 2012

Laura Haynes
Hoban and Feola, L.L.C.
422 East Vermijo, Suite 208
Colorado Springs, CO 80903

Re: Request for Statement of Position (Delbert Sgaggio, Petitioner)

Dear Ms. Haynes:

This is in response to your letter, dated March 7, 2012, which I received on March 8, 2012, wherein you request on behalf of your client, Delbert Sgaggio, a statement of position pursuant to Regulation 1.310, 1 CCR 212-1.

Pursuant to Rule 1.310 "any person...may petition the MMED [Medical Marijuana Enforcement Division] for a statement of position concerning the applicability to the petitioner of any provision of the [Medical Marijuana] Code, or any regulation of the state licensing authority." Be advised that the rule does not authorize or obligate the MMED to provide legal analysis or opinion above and beyond the applicability of the provisions of the Code or related regulations.

Your petition cites Code sections 12-43.3-104(8), C.R.S., 12-43.3-104(3), C.R.S., and 12-43.3-307(XIV), C.R.S. (correct citation is 12-43.3-307(1)(k)) as relevant to the questions you've presented for position statement.

The verbatim questions presented in your letter are in italics and the MMED response follows each.

Does the law prohibit a medical marijuana business owner or licensee from growing medical marijuana as a patient for his or her own personal use?

Within the licensed premises, or proposed licensed premises for those applicants currently allowed to operate pursuant to C.R.S. 12-43.3-103, the MMED finds no statutory or regulatory authority to prohibit an OPC licensee/applicant from growing medical marijuana for a business owner's personal patient use, the sale of which would be fulfilled through the OPC's commonly-owned medical marijuana center. The MMED qualifies that statement by emphasizing that the licensee/applicant must have valid patient records for any business-owner patient, as is otherwise required for any patient.

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Does the law prohibit an owner or licensee from possessing medical marijuana as a patient for his or her own personal use?

The question presented for position statement lacks specificity, in that you have not cited the applicable statutory section of the Medical Marijuana Code or related regulations that would be relevant to this question. Moreover, the question is overly broad and may be beyond the MMED's scope as it relates to a position statement.

Is there a prohibition against an owner or licensee from serving as a caregiver and/or patient in his or her residence or other location?

As long as the residence or location contemplated for the caregiver cultivation is not licensed premises, as defined in section 12-43.3-104(3), C.R.S., and caregiver activities were not comingled with licensed activities, the division would not propose a license sanction or license denial to the state licensing authority because the owner was operating a separate and distinct caregiver operation. The MMED concurs with your analysis that the caregiver prohibition referenced in the definition of "medical marijuana center", section 12-43.3-104(8), C.R.S., refers to the prohibition of caregiver activity within, or related to, the MMC's licensed premises and operations.

If you should disagree with this 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,

/s/

Laura K. Harris
Director
Medical Marijuana Enforcement Division