

IN THE
COURT OF APPEALS OF MARYLAND

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No. 98

Bessie M. Decker, Clerk
Court of Appeals
of Maryland

JANE AND JOHN DOE, *et al.*,

Appellants,

v.

ALTERNATIVE MEDICINE MARYLAND, LLC, *et al.*,

Appellees.

*On Writ of Certiorari to the Court of Special Appeals
(The Honorable Barry G. Williams)*

BRIEF OF APPELLANTS

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OTHER CITING REFERENCES:

A. Rochvarg, PRINCIPLES AND PRACTICE OF MARYLAND ADMINISTRATIVE LAW (2011)	44, 45
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BRIEF OF APPELLANTS

Jane and John Doe, Curio Wellness, LLC, Doctor's Orders Maryland, LLC, Green Leaf Medical, LLC, Kind Therapeutics, USA, LLC, SunMed Growers, LLC, Maryland Wholesale Medical Cannabis Trade Association, and, the Coalition for Patient Medicinal Access, LLC, by the undersigned counsel, state:

STATEMENT OF THE CASE

Appellants (“Intervenors”)¹ are Stage 1 awardees of grower pre-licenses under the terms and conditions of the Maryland Medical Cannabis Act, Health General Art. §13-

¹ “When no prior appellate decision has been rendered, the party first appealing the decision of the trial court shall be designated the appellant and the adverse party shall be designated the appellee.” Rule 8-111(a)(1). “In the interest of clarity, the parties are encouraged to

3301, *et seq.* (the “Act”), and patients in desperate need of cannabis therapy. They appeal from the erroneous denial of several motions to intervene, and to dissolve or modify a TRO entered without an opportunity to be heard in this action seeking to invalidate their awards based on erroneous allegations that the Commission did not consider certain statutory factors.²

A. Overview of Protected Interests

Upon receipt of their Stage 1 awards, Intervenors obtained vested rights and protectable interests. The State, in making the Stage 1 awards to grower Intervenors entered into a statutory contract of performance. The Act imposed specific terms and conditions upon growers and required performance to be completed within a year of the date of the award. Once satisfaction of those conditions is verified by the Natalie M. LaPrade Maryland Medical Cannabis Commission’s (“Commission”) inspection, grower Intervenors have every expectation that the Commission will issue the licenses, a fact confirmed by the Commission and governing statutes. *See* §F. The growers played by the rules and met every condition set forth by the Act for final licensure.

Here, the licensure process is unique as to vesting of property and protectable rights.

Unlike traditional means of State contracting wherein a successful applicant has no

use the designations used in the trial court, the actual names of the parties, or descriptive terms such as ‘employer,’ ‘insured,’ ‘seller,’ ‘husband,’ and ‘wife’ in papers filed with the Court and in oral argument.” Rule 8-111(b).

² The refusal to dissolve the TRO was appealable at the time the appeal was noted. *Schisler v. State*, 394 Md. 519, 535-36 (2006). The TRO has since expired. Denial of the motions to intervene is appealable. *See e.g., Maryland Life and Health Ins. Guar. Ass’n v. Perrott*, 301 Md. 78 (1984).

obligations until *after* final award, the Act and regulatory framework established costly and mandatory performance requirements *before* final award. That is, upon award and performance of those precedent requirements, grower Intervenor were promised a license. Consideration was thus exchanged. The understanding is clear from COMAR, Commissioner's deposition testimony, the Commission's Court filings, and common sense. *See* §F.

Even if grower Intervenor had not obtained vested property rights upon selection – and they did – they expended hundreds of millions of dollars complying with the terms and conditions of the Act and Regulations in reasonable reliance of licensure upon completion of the conditions set forth therein. No reasonable person would spend millions, build buildings and hire employees absent such a clear expectation. Whether vested or not – and they are vested – grower Intervenor have *protectable* interests supporting intervention. And, patient Intervenor have *protectable* civil rights to medicinal treatments established by law.

Intervenor and the State do not have identical interests at stake in this litigation. The Commission is a government entity interested in implementing public health policy, while grower Intervenor are market participants. Jane and John Doe's interests lie in their civil right to this critically-important and promised medical treatment. *See* §I.A.2, below.

Yet, here, Intervenor's rights are threatened without an opportunity to be heard. Appellee, Alternative Medicine Maryland, LLC ("AMM"), is a disappointed license applicant that sued the Commission. In its Complaint, AMM requests review of an interlocutory administrative agency decision, under the Declaratory Judgment Act and

circuit court's alleged inherent power. In doing so, AMM asks the Court to terminate Intervenor's rights and protectable interests while AMM simultaneously seeks to exclude Intervenor from being heard.

On several occasions, Intervenor moved to intervene as defendants. There is no allegation that any of the Intervenor have done anything wrong. Intervenor sought leave to defend their rights and to assert, among other things, that AMM's action is barred by laches. AMM waited *608 days* from the promulgation of the Regulation it now challenges before filing its motion for a TRO.

AMM, opposed the intervention requests, and the circuit court denied them *seriatim*. AMM has put forward no evidence that it objected to - or even sought clarification of - the challenged award criteria during the pre-award review process and, instead, took full benefit of a dispensary award under the same criteria it now uses to deprive others. Now, approximately four years after enactment of the Act and - *at the 11th hour* - after awards were issued, hundreds of millions of dollars expended, and patients have waited for medicinal treatments, AMM asks for a "do over."

B. Procedural History

AMM's Complaint was filed on October 31, 2016 (Dkt. 1/0), and shortly thereafter was accompanied by a discovery request. (Dkt. 20/0)³ On December 12, 2016, the Commission moved to dismiss or for summary judgment raising, *inter alia*, want of necessary parties, *i.e.*, the Commission asserted that many of the Stage 1 grower awardees

³ AMM's Complaint is based in part on an alleged failure by the Commission to actively seek racial and ethnic diversity.

had not been joined as defendants. (Dkt. 21/0) On December 30th, AMM filed its opposition to the Commission's motion.⁴ (Dkt. 21/1) Shortly thereafter, on January 9, 2017, AMM propounded additional discovery. (Dkt. 34/0) AMM has since taken five depositions. (E 1002)

Meanwhile, on December 30, 2016, Intervenors filed a motion to intervene as defendants. Pursuant to Rule 2-214, that motion was accompanied by a proposed motion to dismiss. Intervenors suggested that this action for judicial review of an agency decision was not, in fact, jurisdictionally subject to a declaration or review under inherent power, because AMM's claims fell squarely under the administrative mandamus rule. Rule 15-701. Under that Rule and the doctrine of laches, AMM's action was time-barred. Further, in all events, Intervenors suggested that AMM was seeking judicial review of an agency action, and any review should be on the administrative record under the substantial evidence standard, without discovery.

Intervenors' motion to intervene was filed in this action and cross-filed in a companion case, *GTI Maryland, LLC v. Maryland Medical Cannabis Comm'n.*, No. 24-C-16-005134, together with a motion to consolidate.⁵ Both cases had been specially assigned to the Hon. Barry G. Williams. AMM filed an opposition to intervention, and Intervenors replied on January 11, 2017. (Dkt. 24/5)

⁴ AMM supplemented its opposition on February 17, 2017.

⁵ Intervenors also filed a supplemental Line on February 21, 2017, with supporting affidavits and without objection by AMM. (Dkt. 45/0).

On January 25, 2017, Holistic Industries, LLC (“Holistic”), another grower awardee, also moved to intervene. (Dkt. 38/0) Holistic has separate counsel. AMM filed its opposition to that motion on February 9, 2017.

The circuit court heard argument on intervention by Intervenors, but not by Holistic,⁶ on February 21, 2017. It issued an oral ruling denying both motions to intervene. (E 296-302, 312-13) That ruling was followed later that day by two written orders denying intervention, each constituting an appealable judgment. (E 36-38) The circuit court also held that Intervenors and Holistic’s motions to dismiss (based in part on administrative mandamus and laches) were thereby rendered moot. (E 203, 313)⁷

On the same day, the circuit court also heard the Commission’s argument that Intervenors were necessary parties (and other Commission arguments). It rejected the Commission’s motion to dismiss or for summary judgment, including the argument that AMM failed to join necessary parties.

On March 15, 2017, Intervenors properly noted an appeal from the order denying intervention. (E 268) Holistic’s appeal was filed the next day. (E 272) Intervenors filed an amended notice of appeal on March 22, 2017. There has been, and is, no question that

⁶ Holistic had a right to be heard before denial of its motion to intervene. Rule 2-311(f) (“[T]he court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.”).

⁷ The circuit court erred. The proposed motions were not moot. They were simply not deemed filed when intervention was denied, and it was error to deny them. Further, to the extent to which the motions were denied, a hearing was mandatory, Rule 2-311(f), but was not provided. For the same reasons, the circuit court also erroneously held that proposed motions to consolidate this case and the companion case were moot. (E 199, 312)

all appeals were timely noted. No appealable order having been issued against the Commission at that time, it did not appeal the denial of its necessary parties motion.

In Intervenors' absence, AMM proceeded with discovery. The Commission objected to discovery based on the deliberative process privilege and other grounds, all of which the circuit court overruled. The Commission appealed those decisions, and two separate appeals are pending in the Court of Special Appeals. The Commission sought a stay pending appeal. That request was denied. With no stay, the Commission produced documents and submitted to five depositions. Intervenors could not participate.

On May 15, 2017, approximately 196 days after AMM filed this suit, and with all requests to intervene denied, AMM filed a "Motion for Emergency Temporary Restraining Order and Request for Order to Show Cause Why a Preliminary Injunction Should Not Be Granted." (Dkt. 72/0) In its "emergency" motion, AMM sought to restrain and enjoin the entire inspection and licensure program for medical cannabis growers and AMM challenged the grower Intervenors' awards. The Commission filed an opposition and a supplemental opposition to AMM's TRO motion. (Dkt. 72/1, 72/2)

The circuit court held a TRO hearing on May 25, 2017. (E 1017-69) It issued a TRO at the hearing, restraining all further grower licensure. (E 667)⁸ Intervenors were prohibited from participating in the May 25th hearing; their requests for intervention having been denied on February 21st. With no evidence from the absent grower awardees as to their damages, the circuit court set a TRO bond of only \$100.00, which was posted the

⁸ ForwardGro received a license on May 24th.

following day. (Dkt. 82/0) The circuit court also set a preliminary injunction hearing for June 2, 2017, at 10 o'clock, a.m.

On Tuesday, May 30th, the first business day following the Memorial Day weekend, Intervenor filed an emergency motion to dissolve or modify the TRO, renewed their intervention motion, made a second motion to intervene based on new facts, requested consolidation with the companion case based on new facts, sought a stay pending appeal, and asked permission to oppose AMM's requested preliminary injunction. (Dkt. 85/0) In that filing and a supplement, Intervenor filed approximately fifty affidavits of growers, processors, dispensaries, patients, and others, evidencing their protectable interests and the harms that would be caused by any injunctive relief. Intervenor also moved to continue the June 2, 2017, preliminary injunction hearing (E 686), and moved to shorten the time to respond to their motions. (E 678)

The following day, Temescal Wellness of Maryland, LLC ("Temescal") and Holistic, filed motions similar in substance to Intervenor. (E 957-96, 103-1116) Both were supported by affidavits presenting facts unique to those entities.

Meanwhile, another grower and license awardee, ForwardGro, had been directed by a May 25, 2017, email from the circuit court to participate on a very limited basis in the June 2nd preliminary injunction hearing. (E 1008)⁹ On May 30th, ForwardGro filed an

⁹ The circuit court's May 25th email stated "the Court, at the TRO hearing, invited counsel for only ForwardGro, LLC, to briefly argue at the Preliminary Injunction Hearing scheduled for June 2, 2017 at 10:00am [sic] in Courtroom 528E, only on the issue of if the Preliminary Injunction is granted whether or not the license issued to ForwardGro, LLC should be suspended." (E 1008)

opposition to the circuit court's consideration of an expanded injunction to take away its awarded license. (E 1070-1116) In another related filing, ForwardGro stated that it deemed the circuit court's May 25th email to make it a party.

All of the parties moving to dissolve or modify the TRO – Intervenors, Holistic, and Temescal – requested a hearing. On May 31, 2017, the circuit court denied Intervenors' motions, without the hearing required by Rules 2-311(f) and 15-504(f). Intervenors filed a notice of appeal the following day. (E 1009) The circuit court did not rule on Holistic or Temescal's requests, even though they were in substance substantially similar, if not identical, to Intervenors' motions.

The circuit court issued an order denying ForwardGro party status. That order reiterated that ForwardGro had been denied intervention, and stated that ForwardGro was "invited [to attend the preliminary injunction hearing] to argue solely on the issue of whether or not the license issued to [it] should be suspended," if an injunction issued. ForwardGro – although denied party status - was allotted twenty-five minutes to show why its license should not be taken away. (E 40)

With their requests to intervene, postpone, stay, and consolidate, and their requests for a meaningful opportunity to be heard denied, Intervenors filed an Emergency Bypass Petition for Writ of Certiorari and Motion to Stay Circuit Court Action. The Commission, ForwardGro, Holistic, and Temescal joined or supported those requests. This Court ordered a stay on June 2, 2017, and subsequently issued a writ of certiorari. With the exception of issues that may be unique to ForwardGro on the basis of its issued license,

ForwardGro, Holistic, and Temescal join in this brief in full and will so note by separate filings.¹⁰

QUESTIONS PRESENTED

1. Are grower Intervenors entitled to participate as Defendants in a lawsuit where: (a) their Stage 1 awards imposed immediate and costly duties, which they have performed, (b) Plaintiff AMM has expressly asked to invalidate the growers' vested and/or protectable "Stage 1 cannabis grower awards," (c) their interests differ from the Commission's, and (d) the requested injunction would destroy their businesses, force them to lay off employees, cause substantial economic losses, and create chaos in an important public health program?
2. Are the minor children Intervenors entitled to participate as Defendants in a lawsuit where the Plaintiff's requested relief would delay urgently-needed medical treatment and impose needless pain and suffering on them?
3. Should this Court *sua sponte* dismiss the circuit court case based on laches where the undisputed facts show AMM's undue delay and resulting prejudice?
4. If remanded, should the Court direct the circuit court to initially consider the potentially dispositive or limiting issues of administrative mandamus, time bar, laches, and scope of judicial review of this interlocutory administrative agency action?

SUMMARY OF ARGUMENT

The courthouse doors have been improperly closed to Intervenors, depriving them of the right to be heard. Stage 1 awardees have expended hundreds of millions of dollars to fulfill the conditions precedent to final licensure set forth by the Act and COMAR. Their interests are vested and protectable, and their right to be heard is evident.

At its core, this appeal tests whether Intervenors, who played by (and reasonably relied on) the licensing rules, may defend themselves from an entity that failed to follow

¹⁰ Unless otherwise noted, the term "Intervenors" includes ForwardGro, Holistic, and Temescal. Rule 8-502(a)(7).

the rules and knowingly sat on its alleged rights, waiting *608 days* from promulgation of the challenged Regulations to move for a TRO. The circuit court's order prohibiting Intervenors' involvement violates Intervenors' due process, statutory, and procedural rights, and notions of fundamental fairness.

Intervenors consist of three groups: Stage 1 awardees of cannabis grower licenses (sometimes referred to as grower Intervenors); a licensee (ForwardGro); and, two minor children (Jane and John Doe) who need, and can benefit from, cannabis therapy. AMM's action would unjustifiably inflict pain and suffering on Jane and John Doe, interfere with grower Intervenors' vested and protectable rights, destroy the investments of wholly innocent people, and disrupt a public health program that has been four years in the making.

The undisputed timeline shows that AMM's position is devoid of equities. AMM knew every fact it needed to take action in March and September 2015, and it was obligated to do so. *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 584 (2014). While its lobbyist asked about other matters in July 2015, AMM posed no question and submitted no objection to the process with its November 2015 license application or, indeed, at any time. Instead, it waited to file suit until after it was not selected as a grower on August 15, 2016. Then, while growers built buildings, and incurred financial obligations, AMM remained silent. It did not sue until October 31, 2016. Then AMM laid in the weeds for approximately seven more months before it moved for a TRO in May 2017. AMM should be barred by laches.

AMM unquestionably seeks review of an administrative agency's decision, but it has failed to comply with the administrative mandamus rule that provides the sole

jurisdictional predicate for judicial review. It is also barred by laches and improperly seeks discovery to present alleged facts that are outside of the administrative record.

AMM seeks to enjoin all inspections of Stage 1 awardees of grower licenses, enjoin all grower licensure, and revoke or suspend ForwardGro's issued license, while simultaneously excluding the awardees, licensee, and patients from the litigation that threatens to deprive them immediately and permanently of their rights. AMM would throw the medical cannabis program into chaos and de-rail medical cannabis production, processing, and distribution for months or years. Innocent patients would be denied treatment. Innocent employees would be laid off. Innocent investors would lose millions. Meanwhile, parties whose rights would be trampled have been excluded from all proceedings.

Intervenors' interests are clear and concrete. Jane and John Doe are profoundly disabled minors. They suffer from epileptic seizures that can be ameliorated by cannabis therapy. Growers received Stage 1 awards of cannabis grower licenses on August 15, 2016. COMAR 10.62.08.06.E mandated that awardees be operational by August 15, 2017, or risk forfeiture. Because of that Regulation, growers have spent hundreds of millions of dollars purchasing or leasing real property, obtaining zoning approval, constructing facilities, purchasing specialized equipment, and hiring employees - all in reliance on their awards. One already has received a grower license. Another has passed inspection, and license issuance is a ministerial formality. Others are in line for inspection and proffer that they

will qualify. Due to the obligations imposed by the COMAR provision, the growers' rights vested on August 15, 2016, and have been perfected ever since.¹¹

Intervenors sought to raise substantive issues, such as the action is: time-barred administrative mandamus; barred by laches; or, alternatively, limited to on-the-record review of an administrative agency decision under the substantial evidence standard. In addition to being time-barred, AMM lacks standing. Based on information and belief, AMM was ranked 60th or below in the application process and could not conceivably benefit from any relief that could be ordered. Intervenors have not been allowed to present any such arguments.

Further, AMM flies under false flags. It has misled the circuit court at least twice. *First*, AMM represented that it sought no relief that would impact the grower awardees. Then, AMM did an about face and expressly sought to deny growers' rights via a TRO and preliminary injunction. *Second*, AMM resisted consolidation by telling the circuit court that this case was not sufficiently related to a companion case. Then, on May 10, 2017, AMM made statements contradicting its representations.

Perhaps most telling, AMM accepted a dispensary award under the Act, with no complaint of lack of racial diversity in *that* award, which was conducted under the precise criteria that AMM now complains of in connection with the growers' awards. That is,

¹¹ Growers had a property right in their award. "When governmental institutions regulate... occupations in the public interest through the licensing process, their definitions of rights in a license... may give rise to competition rights and constraints that define property interests." *Iheama v. Mahoning Cty. Mental Health Bd.*, 115 F.Supp.2d 866, 871 (N.D. Oh. 2000).

AMM hypocritically accepts the benefits of its dispensary award while seeking to disrupt and enjoin others for AMM's further benefit of a grower license.

The Commission does not adequately represent the Intervenors' interests. This is not a criticism of the Office of the Attorney General, but rather a recognition that the State and Intervenors have different interests. The *Commission* has expressed that *same* understanding to this Court in its bypass filings, and the Commission considers the growers to be indispensable parties. The reason is straightforward. The Commission's interest is in protecting a public health policy and administrative procedures. As market participants, the grower Intervenors' interests are in protecting their awards and considerable investments. And, patient Intervenors are concerned with their medical health and welfare. While there may be similarities, those interests are very different.

Yet, Intervenors were denied their opportunity to be heard. The circuit court reasoned at the May 25, 2017, TRO hearing: "Notwithstanding the Defendant's argument concerning getting product to proposed patients in a *timely* manner[,] [*t*]his Court, again, is not involved with the timing of getting product to the proposed patients" (E 1055 (Emphasis added)). Intervenors offered multiple affidavits to rebut the court's reasoning and would have offered live testimony as to their unique interests and harms, but were denied the opportunity.

For reasons set forth herein, this Court should reverse the orders denying intervention. And, because AMM's laches are so clear on undisputed facts, the Court should reverse *sua sponte* and dismiss the case with prejudice. If not, any remand order should enunciate the Intervenors' vested rights and protectable interests, and, direct the

circuit court to first address Intervenors' position that: (a) this action is a time-barred administrative mandamus claim; (b) the Declaratory Judgment Act and inherent power of the circuit court do not provide a mechanism for judicial review of this agency action; (c) the action is barred by laches; and, (d) if not, it must be on-the-record judicial review of agency action under the substantial evidence test, with no discovery. Each of these defenses was raised by Intervenors on December 30, 2016, and, if accepted (as they should be), would terminate or streamline disposition of AMM's defective action.

STATEMENT OF FACTS

COMAR mandated that, upon award on August 15, 2016, growers begin work to fulfill mandatory – and costly – regulatory conditions. Assuming the Intervenors comply with COMAR, the Commission *must* issue them final Stage 2 grower's licenses. Thus, growers have clear vested, protectable rights and interests, which cannot be deprived without due process of law. Similarly, patients who are seeking doctors' qualifications for medicinal cannabis have protectable interests in their health and welfare.

A. Justice Delayed: Legislative History of Medical Cannabis

In 2013, Maryland enacted House Bill ("HB") 1101, authorizing academic medical centers to establish medical cannabis programs. However, for a number of reasons (*e.g.*, federal law; jeopardizing federal grants; *etc.*) academic medical centers were unwilling to participate in the cultivation and sale of medical cannabis.

As a result, in 2014, the Legislature approved SB 923 and HB 881 to modify the 2013 law. The legislation, among other things, authorized licensed growers (up to fifteen) as well as licensed dispensaries to operate in the State.

As the Commission worked throughout 2014 to establish the license application and regulatory processes, the Commission and others encouraged the legislature to modify the 2014 legislation during the 2015 session. Therefore, in 2015, modifications to the program were instituted through the introduction and passage of HB 490. Among the important changes to the program were the substantive additions to the authorized and licensed participants in the medical cannabis program such as “processors,” “processor agents” and “independent testing laboratories.”

In 2016, while the Commission was addressing license applications, there were no substantive changes during the legislative session related to license awards. To expand access, legislation was approved (HB 104) to expand the professions capable of becoming certified providers of medical cannabis beyond that of physicians.

In October 2016, AMM initiated this lawsuit alleging that the Commission did not follow language in the legislation that it “actively seek to achieve racial... diversity...” *See* §C, below. As a result, bills were introduced during the 2017 session. Among other things, HB 1443 would have required the State’s “certification agency” (the Maryland Department of Transportation) to conduct a disparity study. The bill passed in the House, was amended in the Senate, but was not enacted.

B. The Commission’s Two-Stage Process and “RESI Ranking”

The Act established an independent Commission. HG §§13-3302(a, b); 13-3303. “The purpose of the Commission is to develop policies, procedures, guidelines, and regulations to implement programs to make medical cannabis available to qualifying

patients in a safe and effective manner.” HG §13-3302(c). The Commission established a two-stage application and licensure process.

1. Statutory Framework and Limit of the Number of Grower Licenses

Section 13-3306 of the Act created a grower license: “The Commission shall license medical cannabis growers that meet all requirements established by the Commission...”¹² Growers provide cannabis to processors, dispensaries, qualifying patients and caregivers, and testing laboratories. *Id.*

Presently, the Commission may license no more than fifteen medical cannabis growers. HG §13-3306(a)(2)(i). “The Commission shall establish an application review process for granting medical cannabis grower licenses in which applications are reviewed, evaluated, and ranked *based on criteria established by the Commission.*” HG § 13-3306 (a)(2)(iii) (Emphasis added). A license is valid for four years and renewable for two. HG §13-3306(a)(6); COMAR 10.62.08.10.A.

The Commission was authorized to adopt implementing regulations, HG §13-3316, and it did. COMAR Title 10, Subtitle 62. The grower regulations are in Chapter .08.

COMAR 10.62.08.02 - .04 provides for a detailed application for the grower license and a background check. “The burden of proving an applicant's qualifications rests on the applicant.” COMAR 10.62.08.05.A.

The Commission intends to award the licenses to the best applications that most efficiently and effectively ensure public safety and safe access to medical cannabis. . . . The Commission shall provide guidelines and detailed instructions for submitting the application form for the Commission's

¹² Other provisions created processor and dispensary licenses. *E.g.*, HG §§13-3307; 33-3309. Section 13-3311 provided for registered private independent testing laboratories.

consideration....

COMAR 10.62.08.05(G, H).

2. Stage 1 Process and RESI Ranking

COMAR 10.62.08.05.I provided that the Commission or an independent contractor “shall review for pre-approval for a license the submitted applications based on the following weighted criteria....” A list followed. This pre-approval or pre-award became known as a “Stage 1 Award.” See COMAR 10.62.08.06 (“Pre-Approval of Application”). COMAR 10.62.08.06 states: “The Commission may rescind pre-approval of a grower license if the grower is not operational within 1 year of pre-approval.” The Commission retained Towson State University’s RESI Institute as the independent contractor to perform the rated ranking.¹³

3. Stage 2 Process and Licensure

Stage 2, “Issuance of License,” is defined in COMAR 10.62.08.07. COMAR mandated that the awardee pass an inspection showing that all operations conform to specifications in its application, submit an audited financial statement, have legal control of its premises, comply with local zoning, and have a structure that conformed to its application. A successful inspection requires licensure. Grower Intervenors’ affidavits show that they are at the end of, or have successfully completed, this process. (E 705-93, 895-951)

¹³ See, e.g., Commission’s June 5, 2017, certiorari filing in this Court at 4.

C. The Croson Issue

HG §13-3306(a)(9)(i) provides that the Commission shall “[a]ctively seek to achieve racial, ethnic, and geographic diversity when licensing medical cannabis growers....” When HB 881 and SB 923 were before the General Assembly, the Attorney General sent an April 11, 2014, Bill Review letter to the Governor. It stated:

Finally, both bills require the Commission to “actively seek to achieve racial, ethnic, and geographic diversity when licensing” medical marijuana growers and dispensaries. We advise that these provisions be implemented consistent with the provisions of the United States Constitution as described in *Richmond v. J.A. Croson Co.*, 48 U.S. 469 (1989) and *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (2013).¹⁴

It is undisputed and judicially noticeable that the General Assembly did not conduct a “disparity study” before enacting the provision.

On March 13, 2015, the Attorney General’s office wrote to Delegate Christopher West, relying on the Supreme Court’s *Croson* decision, stating that the statutory command to actively seek racial and ethnic diversity was, as set forth in the prior bill review letter, unconstitutional and severed. (E 447-49) The Attorney General wrote:

Constitutional limits, however, would prevent the Commission from conducting race- or ethnicity conscious licensing in the absence of a disparity study showing past discrimination in similar programs. I am aware of no study that would cover grower or dispensary licenses, or even licensing in general.

No one has asserted in this litigation that the Attorney General’s analysis was flawed.

¹⁴ A copy of the Bill Review letter is in the appendix and is judicially noticeable. Rule 5-201. (App. 6)

Proposed draft regulations were published in the June 26, 2015, Maryland Register. On September 14, 2015, COMAR 16.62.08.05 was promulgated. As noted above, it contained a list of weighted criteria for RESI to consider. In accord with the Attorney General's legal advice and the Constitution, race and ethnicity were *removed*¹⁵ as factors to be considered.

D. The Application Process

The Commission advertised for applications on September 28, 2015. A revised form correcting a mathematical error was issued on October 7, 2015. AMM's Complaint alleges that the application did not ask for race or ethnicity. (E 53) Approximately 145 applications for grower licenses were submitted on November 6, 2015, the application deadline. AMM does not allege that it lodged any objection or made any complaint about the process in its application. It is safe to assume that, if AMM had objected, that allegation would be front and center.¹⁶

The RESI evaluation process took approximately six months and cost the Commission approximately \$2 million. It resulted in a ranked list of applicants, and, based on information and belief, AMM was ranked 60th or below, out of 145 applicants.

Stage 1 awards of grower licenses were made by the Commission on August 15, 2016, after the lengthy and rigorous selection process. There were no dissents. On December 9, 2016, the Commission reiterated that: "*Each pre-awardee has 365 days from*

¹⁵ Earlier draft regulations referred to race and ethnicity as a factor.

¹⁶ In the procurement context, a failure to object is a waiver. *Palantir Techs. Inc. v. U.S.*, 128 Fed. Cl. 21, 40 (2016); COMAR 21.10.02.03A.

date of pre-approval to implement their operations.”¹⁷ As set forth in the affidavits, with the clock now ticking, the growers commenced work in earnest.

E. Current Status of the Medical Cannabis Program and Grower Licensure

The medical cannabis program is in the final stages of implementation, and growers and patients are ready for production, processing, and dispensing. By March 2017, 6,559 patients, 266 physicians, and 222 caregivers had registered for medical cannabis, and 164 pre-approvals had been issued to growers, processors and dispensaries. (E 639) A grower license was issued to ForwardGro after it performed and passed the Commission’s inspection. (E 1008) Curio has since passed inspection and awaits licensure.¹⁸ The affidavits of each grower Intervenor provide undisputed evidence that they have expended millions of dollars in Stage 2 compliance, while AMM sat silently. Each is inspected, ready, or almost ready, for inspection. (E 705-93, 865-951) Each affirms that it will meet the August 15, 2017, regulatory deadline for completion and inspection. *Id.*

The grower awardees are not alone in being imminently poised to provide medicinal cannabis. Processors and dispensaries have been working at full speed, in the expectation the grower licensees will provide them with medical cannabis. *Id.*¹⁹

¹⁷ See <http://mmcc.maryland.gov/Documents/New%20Timeline%20Release.pdf> [Emphasis added]

¹⁸ Curio passed after affidavits were filed. Counsel proffers this undisputed fact. Rule 5-201.

¹⁹ Additionally, Green Analytics has affirmed that it is at final laboratory buildout to perform analytical tests on cannabis products. (E 771) Green Health Docs has opened its doors to serve patients. (E 789)

F. Satisfactory Stage 2 Performance Will Result in Licensure

Satisfactory inspection by the Commission will result in licensure: “The Commission *shall* license medical cannabis growers that meet all requirements established by the Commission to operate in the State....” HG § 13-3306 (Emphasis added).

The Commission has testified that, once a Stage 1 awardee performs its Stage 2 obligations and duties, the Commission *will* award the license. *AMM*’s counsel asked Commissioner Robshaw in deposition: “[M]y understanding [is] that the process is as follows. There was [sic] provisional [*i.e.*, Stage 1] approvals, right, and then after provisional approval a license *will* be issued after certain requirements are met, is that correct?” Commissioner Robshaw answered “Correct.” (E 550) (Emphasis added). COMAR 10.62.08.07 and the Commission’s actions vis-à-vis ForwardGro confirm this conclusion. Further, it is confirmed in the Commission’s June 5, 2017 filing in this Court at 4. The Commission wrote:

In stage two, the Commission will perform due diligence, including background and financial investigations and inspections of facilities and premises, and will ultimately award licenses to those pre-approved applicants that satisfy the due diligence criteria. COMAR 10.62.08.07.

G. “First-to-Market” Rights and the June 2018 Moratorium

The Act provides a valuable “first-to-market” right for Stage 1 awardees. In fact, even *AMM* touts its value. (E 59-60, 729) Under Health Gen’l Art. §13-3306(a)(2), the Commission may currently issue only fifteen grower licenses. The statute also provides that “beginning June 1, 2018, the Commission may issue the number of licenses necessary to meet the demand for medical cannabis by qualifying patients and caregivers issued

identification cards under this subtitle in an affordable, accessible, secure, and efficient manner.”

Thus, between licensure and June 1, 2018, the first fifteen licensees have a first-to-market right. That was a considerable benefit on which the growers have relied. Any delay deprives the growers of that right, in whole or in part. Even AMM acknowledges its value.

H. Who Are Patient Intervenors?

Intervenors Jane and John Doe are minors who suffer from epilepsy and other serious medical conditions and have genuine needs for cannabis therapy:

They have frequent [epileptic] seizures that are painful and frightening. They are minors. Jane Doe suffers from other conditions. A treating physician has stated that use of medical cannabis will likely alleviate their symptoms. . . . Each day that goes by without access to medical cannabis increases the suffering that they endure. (E 263)

Jane and John Doe are real people. They are also representatives of thousands of others.

Accord (E 710, 933, 866, 868, *passim*)

I. Who Are Grower Intervenors?

Grower Intervenors include Curio, Doctor’s Orders, Green Leaf, Kind Therapeutics, SunMed, a Trade Association, and, a Coalition. They are ready (or, in other instances, almost ready) to cultivate cannabis. ForwardGro is a licensee and has begun to cultivate cannabis.

Curio, a Stage 1 awardee, has recently passed inspection. Because its Stage 1 award could be forfeited if it is not ready to produce on August 15, 2017, COMAR 16.62.08.06.E, upon its Stage 1 award, it promptly began work. (E 722) Growing medical grade cannabis is highly technical. A facility must be built, employees hired, expensive and unique

equipment purchased, formulations created and tested, and other steps taken. Curio expended more than \$7 million to acquire land, build a state-of-the-art, hygienic facility, obtain highly specialized architectural and engineering services, and meet all regulatory requirements. (E 723)

Each of the other grower Intervenors is a Stage 1 awardee in similar circumstances. Green Leaf is concluding the Stage 2 process, and has completed the majority of its construction. (E 743) SunMed has hired employees and expects to harvest and sell its first crop in November 2017. (E 778) Kind Therapeutics has spent millions, is building a 100,000 sq. ft. facility, and hired forty people. (E 918) Doctors Orders is under construction and retaining employees. (E 727) Temescal and Holistic have submitted affidavits to the same effect. (E 968)²⁰

J. What is AMM and Is it Qualified for an Award?

In stark contrast to Movants, AMM has not played by the rules. It has not made a showing that it is qualified to receive a grower license or that it has standing/injury.

Given the lack of discovery, little is known of AMM, and AMM hides its RESI ranking. It appears that AMM never was, and is not, in line for an award regardless of the outcome of this lawsuit. Further, it has failed to meet its burden to show that it is qualified for an award by failing to disclose its grower license application or financial records proving adequate capitalization. It is not even known whether it still retains an interest in land on which to build a facility. Even its status as a minority business enterprise is

²⁰ Maryland Wholesale Medical Cannabis Trade Association and the Coalition for Patient Medicinal Access, LLC, are trade associations formed to advocate for growers and patients.

unproven. All of these, and other questions, need to be answered, but without the participation of the Intervenors they have not been asked.

Had the Intervenors been allowed to participate, they would have pursued whether AMM is qualified to claim injury and/or standing to challenge its rejection. The absence of the Intervenors from the case has resulted in no discovery on these issues and has rendered the record on this important subject woefully inadequate. While AMM contends that it would suffer irreparable injury if an injunction were not granted in its favor, AMM has thus far not been required to put forth facts that would be subject to testing in an adversary proceeding, to support its contention.

AMM, however, did receive a Stage 1 *dispensary* award. Significantly, AMM took full benefit of that dispensary award under the same criteria it now challenges for growers. The issues of race and ethnicity were addressed there precisely as they were in the grower award process. However, AMM has not sued to set aside the dispensary process for alleged failure to “actively seek” racial and ethnic diversity. Instead, it retains the benefit.

K. What Will Happen if AMM Delays the Cannabis Program?

AMM seeks a start over. AMM’s request for injunctive relief impacts growers and everyone downstream, and its timing was deliberately aimed at disruption. As the Mather affidavit shows, 6,559 patients, 266 physicians, and 222 caregivers have registered for medical cannabis, and 164 pre-approvals have been issued to growers, processors and dispensaries. (E 639) The impact of delay on patients would be immediate, real, and cruel. It would shatter hope. *See* (E 263) Green Health Docs affirms that: “Delaying the opening of dispensaries where our patients can get access to this medicine is unfair and immoral to

these suffering patients. [T]his action... negatively impacts THOUSANDS of suffering patients.” (E 789) The affidavit of Dawn-Marie Merrill, a nurse who has been treating patients for twenty years, is to the same effect. (E 950) The denial of medical benefits, and resultant loss of essential medical services, constitutes an irreparable harm to these individuals. *Edmonds v. Levine*, 417 F. Supp. 2d 1323, 1342 (S.D. Fla. 2006).

In this, as in other contexts, justice delayed is justice denied. *Stanford v. Dist. Title Ins. Co.*, 260 Md. 550, 554 (1971). Here, treatment delayed is treatment denied. Patients have waited four years while AMM has laid in wait since the middle of 2015. It is far too late in the day to tell them, “be patient, we’re working on it.” AMM’s actions are callous and unconscionable.

The impact on growers would be devastating. Grower Intervenors have filed affidavits showing their “burn rate,” *i.e.*, how much they will lose for each month of delay. Representative of only a few of the business entities, Curio will expend approximately \$200,000.00 per month (E 724), Maryland Compassionate Care and Wellness, LLC, approximately \$175,000.00 per month (E 750), Freestate Wellness, LLC, approximately \$150,000.00 per month (E 736), Green Leaf, approximately \$95,000.00 per month (E 744), and SunMed, approximately \$80,000.00 per month (E 779). Similarly, Kind Therapeutics has spent millions to build a 100,000 square foot facility, and has forty employees. (E 918) It will not survive an injunction.

The impact of an injunction on innocent employees would be adverse and substantial. Grower Intervenors have hired employees, some of whom have moved from

out-of-State and purchased residences. (E 705-93, 865-951) They will be laid off if AMM prevails. *Id.*

Likewise, downstream entities will be irreparably damaged. Chesapeake Alternatives, LLC, a processor, and Chesacanna, Inc., will lose substantial sums if AMM enjoins grower licenses. (E 895, 898) Maryland Earthworks, Inc., a small start-up, affirmed: “We will not be able to simply stop working toward dispensary opening should there be a delay.” (E 922) Similarly, Maryland Wellness Access LLC affirmed that it will be devastated. (E 927) Lyndsey Odachowski of Positive Energy, LLC, affirmed: “Financially, I cannot afford to wait another 6-12 months.” (E 934)

L. AMM’s Long History of Delay and Deception

AMM has knowingly sat in ambush. The Attorney General’s April 11, 2014, bill review letter flagged the racial and ethnic diversity issue (App 7), if any, that AMM complains of, and his March 13, 2015, advice (E 623) reiterated it. On June 26, 2015, the Commission published proposed Regulations. 42 Md.Reg. 13 (App 8). Likely due to the advice of the Attorney General, race and ethnicity were *absent* from the weighted factors in Subsection .05.

Beginning July 23, 2015, AMM’s attorney of record in this case registered as a lobbyist for AMM. (App 4) On July 29, 2015, he submitted comments on the proposed regulations. (App 1) Noticeably absent was any complaint about the removal of race and ethnicity as factors.

The September 14, 2015, regulations made the change concrete, removing race and ethnicity as selection criteria. The *Crososn* letter was further implemented by the absence

of race and ethnicity in the October 7, 2015, application form. AMM, however, did not object when it submitted that form on November 6, 2015. Further, AMM did not object or demand a disparity study during the approximately nine-and-a-half month, \$2 million RESI evaluation process.

AMM did not receive an award on August 15, 2016. However, it still did nothing. It waited until October 31, 2016, to sue. All that time, AMM knew that the growers were beginning to acquire land, build facilities, purchase equipment, and hire personnel. It knew that patients were in need.

But AMM then again waited until May 15, 2017, to file an “emergency” motion for TRO and preliminary injunction. That foreclosed mitigation by Intervenors.

AMM waited from the Attorney General’s March 13, 2015, letter to May 15, 2017, to file a motion for TRO. It waited approximately 608 days from the September 14, 2015, regulations that removed race and ethnicity as criteria, until May 15, 2017, to move for a TRO challenging the Regulations. It waited silently from the October 7, 2015, application that it submitted on November 6, 2015, until October 31, 2016, to sue. Even after the August 15, 2016, award, AMM did not sue until October 31, 2016.

AMM has told this Court what it seeks:

It is [AMM’s] position that the *entire* [grower] licensing process, including but not limited to the granting of pre-approvals and the issuance of a final license to ForwardGro, LLC, was conducted in derogation of the law and in an unconstitutional, arbitrary and capricious manner, such that *all* medical cannabis *pre-approvals*, and any *licenses* stemming therefrom, are categorically invalid. [Emphasis added]²¹

²¹ AMM’s June 2, 2017, Opposition to Bypass Certiorari at 4; (E 1003)

AMM has also told the circuit court that patients like John and Jane Doe are of no moment. In the TRO hearing on May 25, 2017, AMM told the circuit court that patients' interests bear *no weight* and "they should mean *little*, if anything, in your analysis, Your Honor." (E 1032) (Emphasis added); *accord* (E 182-83 ¶¶16, 20)(AMM arguing that there is no need to expedite medical relief).

STANDARD OF REVIEW

The circuit court's denial of this motion to intervene as of right "is reviewed non-deferentially for legal correctness." *Maryland-Nat. Capital Park & Planning Comm'n v. Town of Washington Grove*, 408 Md. 37, 65 (2009). Denial of permissive intervention is reviewed for abuse of discretion. *Id.*

ARGUMENT

I. INTERVENORS SHOULD HAVE BEEN PERMITTED TO INTERVENE BECAUSE THEY TIMELY SHOWED THAT THEIR VESTED AND/OR PROTECTABLE INTERESTS WERE NOT ADEQUATELY PROTECTED BY ANY OTHER PARTY

Stage 1 awards and licensure are legally protected interests in the unique context of COMAR 10.62.08.06.E. A vested right is one that "is an immediate right of present enjoyment or a present fixed right of future enjoyment." *Langston v. Riffe*, 359 Md. 396, 401 (2000) (citations omitted). It is impossible to colorably assert, as AMM attempts here, that a *disappointed* license applicant that has incurred *no* costs has an interest in this action, while grower *awardees* who COMAR *compelled* to *spend* millions and the *patients* for whom the Act was passed, and who seek treatment, do not have any interest in the same action.

Intervention is “a procedure by which an outsider with an interest in a lawsuit may come in as a party though the outsider has not been named as a party by the existing litigants.” *Tydings & Rosenberg, LLP v. Zorzit*, 422 Md. 582, 588 (2011) (citation and quotations omitted); R. Bourne, *et al.*, MODERN MARYLAND PRACTICE AND CIVIL PROCEDURE (2d ed. 2016), §4.7(a) (hereinafter “Bourne, __”); P. Niemeyer, *et al.*, MARYLAND RULES COMMENTARY (Lexis 4th ed.), §2-214.04.

Md. Rule 2–214 contains four requirements a person must satisfy in order to intervene as of right: 1) the application was timely;²² 2) the person claims an interest *relating to* the property or *transaction* that is the subject of the action; 3) the person is so situated that the disposition of the action, as a *practical* matter, *may* impair or impede that person’s ability to protect that interest; and 4) the person’s interest is not adequately represented by existing parties to the suit.

Washington Grove, 408 Md. at 69–70 (emphasis added). Every requirement was met.²³

A. Intervenors Should Have Been Permitted to Intervene as of Right

The two-stage licensure process under the Act is unique as to vesting of property and protectable rights. After a Stage 1 award, the awardee was required by COMAR 10.62.08.06.E to commence construction and be operational in a year. When an awardee does so in accordance with its application and meets other specified regulatory criteria, the awardee receives its license. The Stage 1 award thus vests the awardees with valuable rights.

²² It is clear that the motion to intervene was timely. AMM did not argue otherwise in its motion papers, and the circuit court held that no argument on that issue was needed. (E 291, 333) Timeliness is not before the Court.

²³ Both Rule 2-214(a)(1 and 2) intervention of right, and Rule 2-214(b) permissive intervention were raised in the circuit court and all are raised in this appeal.

The State, in making the Stage 1 awards to grower Intervenor entered into a statutory contract of performance. The Act imposed specific terms and conditions upon grower Intervenor, required performance to be completed within a year of the date of the award, and once those conditions are timely and subsequently verified by Commission inspection, the grower Intervenor have every expectation that the Commission would issue the licenses, as it has said it will. See §F, above. That is, consideration was exchanged and, upon performance of the conditions precedent, grower Intervenor were promised a license. COMAR 10.62.08.07.

Indeed, unlike the traditional means of State contracting wherein a successful applicant has no obligations until *after* final award here the regulatory framework established costly and mandatory performance requirements *before* final award. In consideration, it also provided that if the awardee timely performed, the awardee would receive final licensure, thereby vesting a property interest in the Stage 1 awardees and creating a statutory contract under the Act.

1. Intervenor Have Valuable Interests Relating to the Transaction that is the Subject of AMM's Action, and Intervenor Are So Situated that Disposition of the Action in AMM's Favor Will, as a Practical Matter, Impair and Impede Their Ability to Protect Those Interests

Even if Intervenor's interests were not deemed vested and/or protectable, although they are, they would certainly be interests "relating to" the "transaction that is the subject of this action." *Washington Grove*, 408 Md. at 69–70. The Intervenor have been awarded Stage 1 approvals; they have made large investments in anticipation of licensure; they have signed leases and other contracts obligating themselves to millions of dollars; and, they

have hired employees in reasonable anticipation of licensure. As such, they have met the “interest” requirement for intervention.²⁴

By its express terms, the intervention rule is one of practicality. *Zorzit*, 422 Md. at 590. It “does not require that the petitioner claim an interest in the property that is the subject of the suit, but only an interest ‘relating to’ that property....” *Zorzit*, 422 Md. at 590–91 (citation omitted) (divorce fee claim) (Emphasis added).

Rule 2-214 permits intervention when there is potential impairment to the intervenor’s interest. An intervenor has an “interest” if the intervenor *may be affected* by the court’s resolution. *Bourne*, §4.7(c)(2). As this Court stated in *Washington Grove*, 408 Md. at 99, a proposed intervenor has an interest related to the action if the “disposition of the action would at least potentially impair the applicant’s ability to protect its interest.” If an applicant shows that it “might” be disadvantaged by the disposition of the action, it has a right to intervene. *Bourne*, §4.7(c)(3), quoting *Bd. of Trs. v. Mayor and City Council of Balt. City*, 317 Md. 72, 89 n. 19 (1989), *cert. denied*, 493 U.S. 1093 (1990).

The Rule’s history makes this clear. Rule 2-214 replaced former Rule 208a which provided for intervention when the movant had an interest in the property or would be

²⁴ See *A Helping Hand, LLC v. Baltimore Cty.*, MD, 515 F.3d 356, 371-72 (4th Cir. 2008) (methadone clinic had property interest in operation of business, which was threatened by collateral efforts to change zoning laws); *cf. Reese v. Dep’t of Health & Mental Hygiene*, 177 Md. App. 102, 154 (2007) (quoting *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 578 (1972)) (mentally ill adult had property interest in living in State facility even though no admission had been granted to her because she had “more than a unilateral expectation” of the services and “a legitimate claim of entitlement to” them.); *Mallette v. Arlington Cty. Employees’ Supplemental Ret. Sys. II*, 91 F.3d 630, 636 (4th Cir. 1996) (property interest in ERISA benefits because individuals provided past services and contributions and reasonably expected the resulting benefits).

bound by a judgment in the action. Bourne, §4.7(c)(3). The new Rule deleted that requirement and made other changes.²⁵ It was intended to create a practical test, not one of res judicata. *See id.* Bourne concludes that it is “clear” that an intervenor need show only that it “might” be disadvantaged by a disposition of the action. *Id.* (quoting *Bd. of Trs.* 317 Md. at 89 n. 19).

Where the “outcome of the lawsuit might cause the [intervenor] to ‘suffer [] some kind of special damage... differing in character and kind from that suffered by the general public,” intervenor has a Rule 2-214(a)(2) interest in lawsuit. *Duckworth v. Deane*, 393 Md. 524, 540 (2006) (clerk of court lacked interest in gay marriage issue). Where a proposed intervenors’ interest is not *identical* to that of existing parties, this Court has stated that intervention should *ordinarily* be granted, unless it is clear that it is adequately represented. *Maryland Radiological Soc., Inc. v. Health Servs. Cost Review Comm'n*, 285 Md. 383, 390 (1979). As the Commission confirmed, it cannot and does not adequately represent Intervenors’ interests in this case. *See* § 2, below.

a. Movants Obtained Vested and/or Protectable Property Rights and Interests On August 15, 2016

It is beyond disingenuous for AMM to assert that grower awardees, who have *qualified* or are qualifying for licenses and expended *enormous sums* of money, have no

²⁵ The intervention rule was promulgated in 1984, 11 Md.Reg. S-1 (1984). By letter dated August 1, 1983, the Standing Committee on Rules of Practice and Procedure recommended that subsection (a)(1) be amended from “when a statute confers an unconditional right to intervene” to “when the person has an unconditional right to intervene as a matter of law.” That language was adopted by the Court and remains unchanged. The Rule was again amended, effective in 2013, to allow a proposed intervenor to file a motion instead of a pleading, as was done here. 174th Report of Rules Committee (2012), 5, 220.

interest to be protected while AMM, which was *rejected* and constructed *nothing*, seeks injunctive relief because its “lost” interest in a grower’s license is worth millions of dollars and the first two years of operation are additionally valuable because of the first-to-market rights. (*E.g.*, E 729) AMM cannot have it both ways. Its position is unsustainable and it is beyond doubt that the Intervenors have protectable interests in this lawsuit.

Intervenors’ rights vested on August 15, 2016. A review of the applicable Regulations demonstrates why. Simply stated, the two-stage process is that Stage 1 awardees must do what they promised to do and, upon Stage 2 performance and inspection, they are entitled to, and will be awarded, a license. This is in the nature of a contractual agreement with the State. Grower Intervenors have, in fact performed and are, or almost are, fully operational. (E 705-93, 865-951)

As reflected in the regulations, once a grower Intervenor is fully operational and has built its facility in accordance with approved plans, submitted a security plan, passes a criminal background check, submits audited financial statements, and passes its inspection on or before August 15, 2017, a license *must be* issued. *See* §F. Stated otherwise, once the Intervenors fulfill their obligations in Stage 2, the Commission has no discretion to deny them a license, *i.e.*, the issuance of the license to them is a merely ministerial act, which the Commission has no discretion to deny. *Cf.*, *Evans v. Burruss*, 401 Md. 586, 605 (2007) (“issuance of building permits in respect to applications that fully comply with applicable ordinances and regulations of a particular subdivision is a ministerial act”). It is indisputable, therefore, that grower Intervenors have a protectable property interest to

defend in these proceedings. *See, e.g., also, Scott v. Greenville County*, 716 F. 2d 1409, 1419-21 (4th Cir. 1983).

b. Intervenors' Have Direct and Unique Rights and Interests Related to the Transaction That Will Be Impaired if Relief is Granted to AMM

In addition, growers' rights would be impaired as to the "transaction" at issue. Growers expended funds to apply, followed every rule, and all received a Stage 1 award. Then, as *mandated* by COMAR and the Commission, they immediately commenced acquiring property, zoning, constructing buildings, obtaining U&O permits, hiring employees, and purchasing equipment. (E 705-93, 865-951) They did so in order to avoid forfeiture under COMAR 16.62.08.06.E's one-year provision. ForwardGro obtained a license. Others are now, or soon will be, license-ready.

As shown by their affidavits, the growers' "burn rates" if enjoined would be unsustainable. They would have to lay off innocent employees and close their doors. That, as a "practical matter," would impair or impede their interests. As a practical matter, they would be impacted by any injunction just as surely as the Commission would be bound. If there were any doubt, and there should not be, a cursory review of the TRO (E 667) and the circuit court's request to hear from ForwardGro (E 671) should dispel it. In fact, that impairment is what AMM expressly intends.

AMM's requested injunction would be contrary to the legislative intent. It would deprive Intervenors, Jane and John Doe, of what the General Assembly so clearly intended to provide them – prompt treatment to alleviate pain and suffering. They would be impaired or impeded in protecting their health.

Intervenors have standing. AMM threatens Intervenors with harms that differ from those that the general public would suffer. Fortunately, most of us do not need medical cannabis. And, most of the public has not invested in cannabis facilities. These unique harms confer standing and fully support intervention under Rule 2-214(a)(2). *Prof'l Staff Nurses Ass'n v. Dimensions Health Corp.*, 110 Md. App. 270, 281–82 (1996), *aff'd*, 346 Md. 132 (1997) (holding health center had sufficient interest to intervene in suit that would affect its ability to respond to threatened strike).²⁶

c. AMM Misdirected the Circuit Court on the Interest Issue

AMM misdirected the circuit court in its intervention analysis, leading to an incorrect conclusion. In the early days of the case, AMM told the circuit court that AMM's claim would have *no impact* on Intervenors. If correct,²⁷ that might have created doubt as to an intervenable interest. Then, after Intervenors were excluded (E 33), AMM mounted a frontal assault on the grower Intervenors' pre-awards and ForwardGro's license. In short, AMM did what it represented it would not do.

The facts appear on the record. In its December 30, 2016, opposition to the State's necessary parties motion, AMM wrote that "there is *no* risk that the *disposition* of this case will 'impair or impede' the pre-approved organizations'" (E 90) (Emphasis added) In

²⁶ Intervention under Rule 2-214(a)(1) is also proper. Rule 2-211(a) and the Declaratory Judgment Act, CJ §3-405(a), require joinder of Intervenors. As such, they may intervene as a matter of right under the statute and Rule. A declaration cannot be permitted to prejudice a person that is not a party. *Bender v. Sec., Md. Dept. of Pers.*, 290 Md. 345, 350 (1981)(necessary parties). See § C below.

²⁷ Intervenors unsuccessfully attempted to rebut that incorrect assumption.

¶¶10-11 of its January 5, 2017, Opposition to Intervention (E 181), AMM told the circuit court:

- “[N]othing in the process will foreseeably change to the detriment of the pre-approved growers.”
- “The pre-approved growers will neither assume legal obligations nor lose legal rights.”
- “None of their property interests in a current pre-approval or future license will be irrevocably governed by the judgment in this case.”
- “There is no indication that they [intervenors] will be worst [sic] off....”
- “[T]he only party bound by the judgment in this case is the Commission”.²⁸

AMM repeated this in its February 9, 2017, filing. (R 775)

That was not accurate. Shortly after AMM successfully excluded Intervenors, it changed its position, and directly attacked the growers. AMM was permitted to do so by the circuit court. That raises red flags. On June 1, 2017, AMM filed a Bench Memorandum stating:

It is Plaintiff's position that the entire licensing process, including but not limited to the issuance of pre-approvals and the final license issued to ForwardGro was conducted in derogation of the law and was conducted in an arbitrary, capricious, and/or unconstitutional manner and that therefore, *all preapprovals are invalid.*

(E 1003) (Emphasis added)). AMM made a parallel statement in its June 2, 2017, filing in this Court.

Further, in opposing intervention, AMM made the unsupported - and wholly inaccurate - bald assertion that "no potential growers have sought to take the ultimate step

²⁸ Whether an intervenor will be bound is no longer the test.

of turning their pre-approvals into Stage 2 licenses....” (E 182) As the affidavits filed herein demonstrate, that is entirely inaccurate. (E 705-93, 865-951)

2. Intervenors’ Interests Are Not Adequately Represented

Nothing contained herein is critical of the Office of the Attorney General, because the adequate representation prong of the Rule ensures that an absentee gets *its* day in court. Bourne, §4.7(c)(4)(a). An intervention motion “implies a preference of the absentee to represent his or her own interests.” *Id.*; accord *Martin v. Wilks*, 490 U.S. 755, 762 (1989) (“deep-rooted historic tradition that everyone should have his own day in court.”).

“It is sufficient that the representation may be inadequate.” *Washington Grove*, 408 Md. at 102. “[O]nly a minimal showing of inadequacy is required.” Bourne, §4.7(c)(4)(a). A positive showing is not. *Id.*; *Citizens Coordinating Comm. on Friendship Heights, Inc. v. TKU Assoc.*, 276 Md. 705, 714 (1976); *Washington Grove*, 408 Md. at 102. The Rule should be construed liberally in favor of intervention. *Id.*

The Court has established a three-part test, only one of which applies here. “In *Md. Radiological Soc’y*, we adopted the ‘interest-analysis’ test for determining whether the lack of adequate representation requirement has been met.” *Washington Grove*, 408 Md. at 102. It is a “cascading” test. *Id.* An applicant’s interest may be adverse, similar, or identical to that of existing parties. *Maryland Radiological*, 285 Md. at 390–91. “In determining an adequacy of representation issue under Rule 208a [the predecessor to Rule 2-214], one’s attention must *necessarily* be directed to a comparison of the interest asserted by the intervention applicant with that of each existing party.” *Id.* (Emphasis added).

Here, the similarity²⁹ of interest test is at issue, and the standard is well-established. “[I]f the applicant's interest is *similar* but *not* identical to that of an existing party, ‘a discriminating judgment is required on the circumstances of the particular case, but he *ordinarily* should be *allowed* to intervene unless it is *clear* that the party will provide adequate representation for the absentee.’” *Id.* (citations omitted) (Emphasis added). Here, the adequacy of representation is far from clear. *See Guardians v. Hoover Montana Trappers Ass’n*, No. CV 16-65-M-DWM, 2016 WL 7388316, at *2 (D. Mont. Dec. 20, 2016) (“[T]he government's representation of the public interest may not be ‘identical to the individual parochial interest’ of a particular group just because ‘both entities occupy the same posture in the litigation.’”).

Where a successful action by plaintiff “would lead to differing consequences” for the intervenors, the interests are not identical. *Stewart v. Tuli*, 82 Md. App. 726, 731–32 (1990). In *Stewart*, the court allowed the Stewarts (subsequent purchasers) of a property to intervene in the dispute between the Novaks (the vendors) and the Tulis (a prior failed purchaser) stating:

It is reasonable to assume that the Novaks, as vendors of real property, seek only to realize the highest profit that circumstances permit. The Stewarts, on the other hand, seek a specific piece of property. Thus, while at present both the Novaks and Stewarts seek to have the Tuli Contract declared null and void, and thus do not have adverse interests, they do not necessarily have the same ultimate objective.

Id.

²⁹ Obviously, Intervenor and AMM are and remain “adverse.” The text refers to the interests of the Intervenor and the Commission.

Here, as a starting point, in its bypass filing in this Court on June 2, 2017, the Commission wrote: “As the State Defendants have argued below, the petitioners who are recipients of pre-approvals are indispensable parties to the proceedings below, and the State Defendants do not represent the interests of the petitioners.” The Commission stated that Intervenor is “uniquely qualified” to establish prejudice, citing, *inter alia*, *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 584 (2014).

The reason is clear. The Commission’s interest is in the administration and fulfillment of an important public health program. That is substantially different than growers’ interest. Growers are market participants whose interests lie in the cultivation and sale of medicinal cannabis. Their interests are in their licenses and business operations. As shown by their affidavits, they stand to suffer substantial economic losses if the licensing process is halted. (E 705-93, 865-951) The Commission’s interests are also vastly different than the patients’ interests. John and Jane Doe’s interests lie in their civil right to this critically-important and promised medical treatment.

In fact, *AMM* has admitted that the Commission’s interests are different than growers. *AMM* wrote that the Commission and its officers “are not market participants, so they do not stand to lose economically in the event that the licensing process is halted and/or re-initiated in accordance with Maryland law.” (E 416) The State has squarely confirmed that assertion, noting that it has a policy interest. The Commission told the Court that the “State[’s] interest lies in implementing a well-regulated medical cannabis program to provide patients safe access to treatment.” (E 655)

AMM has opened the door.³⁰ Based on AMM and the Commission's pleadings, Movants' unique economic interest is not represented at all, much less adequately. In fact, the Movants requested that the Commission present some of these facts at the TRO hearing. (E 813) The Commission did not do so.

Based on the facts, AMM's admissions, and the Commission's statements, Intervenors and the Commission do not have identical interests. Intervention should have been permitted. While similar in goal, the interests differ. Under this Court's precedent, a discriminating judgment should be made, and ordinarily intervention should be permitted.

B. Alternatively, Permissive Intervention Should Have Been Granted

"Permissive intervention... may be granted to a person who has a claim or defense that raises a question of law or fact that is common with those in the pending action. The underlying ground of the motion is to promote judicial economy in the litigation process. More practical considerations, however, often play a role. The intervenor may fear, for example, that in his or her absence the court will rule the 'wrong' way on an issue that the intervening party may have to litigate later if intervention is not granted." MARYLAND RULE COMMENTARY §2-214.04. The test is whether Intervenors present common questions of law and fact. Bourne, §4.7(d). Here they do.

Intervenors contend that their Stage 1 awards were proper. AMM contends that they were not. That, and many others, present common issues of law and fact.

³⁰ Intervenors urge that the door was never closed.

C. If this Were Properly a Declaratory Action, and It Is Not, Then Intervenors Are Indispensable Parties

AMM invokes the Declaratory Judgment Act as the basis for jurisdiction. It is incorrect. *See* §III, below. Both Cts. & Jud. Proc. §3-405(a)(1) and Rule 2-211(b) confer indispensable party status on Intervenors in such an action. *Kennedy Temporary v. Comptroller*, 57 Md. App. 22, 40-41 (1984), held that an awardee is a necessary party in a bid protest challenging a procurement. That is equally applicable here. *Accord Two Canal St. Inv'rs, Inc. v. New Orleans Bldg. Corp.*, 202 So. 3d 1003, 1011 (La.App. 4 Cir. 2016)(successful bidder for public lease was indispensable party and entitled to intervene in action by unsuccessful bidder); *Jim Ludtka Sporting Goods, Inc. v. City of Buffalo Sch. Dist.*, 48 A.D.3d 1103, 1103–04, 850 N.Y.S.2d 319, 320–21 (4th Dep't, 2008) (successful bidder in contract with public schools was entitled to intervene because “as there is no question that the relief sought, *i.e.*, nullification of its contract with respondents, would inequitably affect its rights”); *RAM Eng'g & Const., Inc. v. Univ. of Louisville*, 127 S.W.3d 579, 582–83 (Ky. 2003) (holding that successful contractor on university stadium construction project should have been allowed to intervene in action by unsuccessful bidder because “it is but fit and proper that the interested contractor have his day in court.”) (citation omitted); *Brown v. State, Dep't of Manpower Affairs*, 426 A.2d 880, 887 (Me. 1981) (dispute of office space rental; “Of course, as the person whose contractual rights against the Department might be affected by this litigation, Schmidt was an indispensable party and should have been joined as a defendant in the plaintiff's petition.”). *Cf Blaine Equip. Co. v. State*, 138 P.3d 820, 822–23 (Nev. 2006) (holding that court should have *sua*

sponte added successful bidder in state purchasing contract dispute). *See also Bender*, 290 Md. at 350 (State employees who could lose their jobs or salaries were indispensable parties in declaratory action against State asserting that jobs were unlawfully created).

II. THIS COURT HAS APPLIED LACHES SUA SPONTE AND HERE, ON INDISPUTABLE AND UNDISPUTED FACTS, AMM WAITED FAR TOO LONG TO SUE

As noted in the Intervenor's Opposition to Motion to Maintain Status Quo and Request for Summary Reversal *Sua Sponte* at 11 n. 16, this Court has *sua sponte* raised and applied the laches doctrine.³¹ Here, there is no factual dispute about the bill review letter, when the Act was passed, the Attorney General's March 13, 2015, *Croson* letter, the September 14, 2015, COMAR provision, the October 2015, application form, the absence of any objection by AMM in its November 2015 application, the date of the August 15, 2016, Stage 1 award, the date suit was filed on October 31, 2016, the delay in moving for a TRO until May 15, 2017, and the detrimental reliance of growers, processors, dispensaries, patients and others in the interim. AMM's suit is barred by laches. *E.g., Ross v. State Bd. of Elections*, 387 Md. 649 (2005).³²

³¹ This Court has exercised the power of summary disposition *sua sponte*. *Canavan v. Maryland State Board of Elections*, 430 Md. 533 (2013) (summary affirmance *sua sponte* on laches and untimeliness); *Phaison v. Maryland*, 360 Md. 482 (2000); *Okon v. Maryland*, 346 Md. 249 (1997) (summary reversal); *Ross v. Maryland*, 348 Md. 484 (1998) (same); *see Peck v. DiMarto*, 362 Md. 660 (2001) (summarily vacating decision).

³² If AMM had rights, it waived them by delay. Many rights may be waived by inaction. *E.g.*, Rule 2-325 (waiver of right to jury trial); Rule 2-322 - 323(e) (waiver by failure to plead); Rule 5-103(a)(1) (waiver by failure to object). Intervenor's should be permitted to present those and other defenses.

III. IF THE ACTION IS NOT DISMISSED *SUA SPONTE*, ON REMAND, THE CIRCUIT COURT SHOULD BE DIRECTED TO INITIALLY DETERMINE ISSUES OF ADMINISTRATIVE MANDAMUS, LACHES, AND SCOPE OF JUDICIAL REVIEW OF THE AGENCY DECISION

AMM challenges the Stage 1 licensing award, an interlocutory decision of an administrative agency. AMM is therefore seeking judicial review of an agency action. The administrative decision was made after a \$2 million, weighted ranking process by RESI, a contractor retained by the Commission. That is a quasi-judicial administrative action for administrative mandamus. Rule 7-401(a).³³ All parties agree that the Act provides no statutory right of review. AMM incorrectly invokes the Declaratory Judgment Act and the circuit court's inherent power as its jurisdictional predicates. *Dugan v. Prince George's Cty.*, 216 Md. App. 650, 659, *cert. denied*, 439 Md. 329 (2014).

AMM has taken five depositions. (E 1002) Commissioner Robshaw has been deposed in both this case and the GTI case. The Commission's deliberative process appeals are pending in both cases.

On December 30, 2016, Intervenors submitted a proposed motion to dismiss AMM's Complaint in its entirety. (E 126) *First*, Intervenors argued that this is in fact a time-barred request for administrative mandamus, because there is no statutory right of review, the administrative decision was quasi-judicial, the administrative mandamus rule displaced the Declaratory Judgment Act and court's inherent power (on which AMM relies

³³ Among others, Intervenors cited *Talbot Cty. v. Miles Point Prop, LLC*, 415 Md. 372 (2010), *Carriage Hill Cabin John, Inc. v. Md. Health Res. Planning Com'n*, 125 Md. App. 183 (1999), COMAR 10.62.08.07, Rules 7-202-203, 7-401, and A. Rochvarg, *PRINCIPLES AND PRACTICE OF MARYLAND ADMINISTRATIVE LAW* (2011).

exclusively), and the action was not commenced within the time required by the administrative mandamus Rule. Intervenors argued that it would be incongruous for AMM to have greater rights to judicial review, where (as here) no statute conferred that right, then AMM would have if there was a statutory right of review.

Second, Intervenors raised laches. (E 127) *See* discussion above. AMM sat in the weeds and sprung its ambush at the most devastating moment, when final inspections and licensures were imminent. A party cannot delay in challenging such a State action. *State Ctr.*, 438 Md. at 451, *passim*.

Alternatively, and *third*, Intervenors assert that this should be on-the-record judicial review of an agency action under the substantial evidence test, with a presumption of correctness. “The Commission shall set standards for licensure as a medical cannabis grower to ensure public safety and safe access to medical cannabis....” HG §13-3306(a)(3). There is an extensive agency record that is not before the circuit court. Instead, timely, costly, contentious and wasteful discovery is being taken, with two interlocutory appeals as of right having been taken, and motions to stay denied. That is not permitted on the record before the circuit court. *E.g., PSC v. Patuxent Valley Conserv. League*, 300 Md. 200 (1984); *Montg. Co. v. Stevens*, 337 Md. 471 (1985). “In a series of cases, Maryland courts have held that absent exceptional circumstances, agency officials cannot be compelled to give testimony explaining their decision making process.” Rochvarg, *MARYLAND ADMINISTRATIVE LAW* at 173 (citing cases).

Those defenses are potentially dispositive or, at a minimum, would conserve scarce resources; however, as of June 23, 2017, none of those defenses have been decided by the circuit court.

IV. WHILE NOT NOW BEFORE THIS COURT, THE COMMISSION HAS FULFILLED ITS STATUTORY MANDATE

No one has disputed the Attorney General's *Croson* letter, which held that the racial and ethnic diversity clause was unconstitutional and severed. In fact, the Commission received legal advice from the Attorney General that, under the conditions presented, it should not consider racial and ethnic diversity. (E 565)³⁴ AMM would have this Court believe that the Commission did nothing to achieve racial and ethnic diversity. That is not correct. Initially, it is noteworthy that efforts to achieve racial and ethnic diversity are not a one-time process: "On June 1 of each year, each licensee shall submit a report in a manner determined by the Commission regarding the licensee's minority owners and employees." COMAR 10.62.08.11.

SB 1197 (E 818) shows that there were "ongoing" Commission efforts and Commissioner Robshaw testified that the Commission sought MDOT's advice and was told not to conduct a study in an "upstart" industry. (E 563-64) Robshaw stated that MDOT personnel are the "specialists in this field. It's certainly not my specialty." (E 564) The Commission relied on the Attorney General's correct letter. In short, while one may agree

³⁴ A number of decisions hold that post-enactment disparity studies are irrelevant. *E.g.*, *Associated General Contractors v. Drabik*, 214 F.3d 730 (6th Cir.2000), *cert. denied*, 531 U.S. 1148 (2001). There is a split of authority, with some decisions permitting post-enactment studies. Antoine Marshall, *Pathways for Procurement: Operating Minority Business Programs After Rothe*, 6 S. Region Black L. Students Ass'n L.J. 1 (2012).

or disagree with the administrative agency's ultimate decision, it is supported by substantial evidence in the record and not arbitrary or capricious.

Nor is AMM's portrayal accurate. The Commission's preliminary industry ownership demographics show 35% racial and ethnic diversity participation, and 57% minority participation including females. The employee demographics are 58% racial and ethnic diversity participation and 75% minority participation including females. Among growers, 15.3% are owned by racial and ethnic minorities, and 35.8% are owned by minorities including females.³⁵

V. CONCLUSION

Growers have been vigilant in compliance with the Maryland Code and the regulations established by the Commission for the issuance of a license. They have or are performing mandatory duties imposed by COMAR and have vested rights in their awards and licensure. Due process, the Declaratory Judgment Act, and several procedural rules all support the conclusion that Intervenors are entitled to a seat at the table. Intervention should be ordered *nunc pro tunc* December 30, 2016 (Dkt. 24/0) and, if any discovery is appropriate, Intervenors should have full rights to discovery as of that date.

Wherefore, Appellants request that this Court reverse the order denying intervention, hold that Intervenors have vested and protectable rights in their Stage 1 awards and ForwardGro's license, order that all Appellants are granted the right to intervene as of December 30, 2016, with all rights and privileges attendant thereto, and

³⁵ These statistics are posted on the MMCC web site and are judicially noticeable. Rule 5-201. <http://mmcc.maryland.gov/Pages/current-diversity-statistics.aspx>

direct the circuit court on remand to initially address the issues of administrative mandamus, laches, and the scope of judicial review of an agency decision; or, alternatively, *sua sponte* raise the issue of laches, reverse the decision of the circuit court, and direct entry of a final judgment against Alternative Medicine Maryland, LLC; and, for costs and such other and further relief as may be necessary and appropriate.

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June 23, 2017

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 23rd day of June, 2017, two copies of the within Brief of Appellants was served via email and first-class mail, postage prepaid, on:

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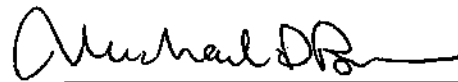
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**CERTIFICATION OF WORD COUNT
AND COMPLIANCE WITH RULE 8-112**

1. This brief contains 12,709 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.



Michael D. Berman

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§ 3-405. Parties; role of Attorney General

(a) Person who has or claims interest as party. --

(1) If declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party.

(2) Except in a class action, the declaration may not prejudice the rights of any person not a party to the proceeding.

(b) Municipality or county as a party. -- In any proceeding which involves the validity of a municipal or county ordinance or franchise, the municipality or county shall be made a party and is entitled to be heard.

(c) Role of Attorney General. -- If the statute, municipal or county ordinance, or franchise is alleged to be unconstitutional, the Attorney General need not be made a party but, immediately after suit has been filed, shall be served with a copy of the proceedings by certified mail. He is entitled to be heard, submit his views in writing within a time deemed reasonable by the court, or seek intervention pursuant to the Maryland Rules.

Md. HEALTH-GENERAL Code Ann. § 13-3301 (2017)

§ 13-3301. Definitions.

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Caregiver. -- "Caregiver" means:

(1) A person who has agreed to assist with a qualifying patient's medical use of cannabis; and

(2) For a qualifying patient under the age of 18 years, a parent or legal guardian.

(c) Certifying provider. -- "Certifying provider" means an individual who:

(1) (i) 1. Has an active, unrestricted license to practice medicine that was issued by the State Board of Physicians under Title 14 of the Health Occupations Article; and

2. Is in good standing with the State Board of Physicians;

(ii) 1. Has an active, unrestricted license to practice dentistry that was issued by the State Board of Dental Examiners under Title 4 of the Health Occupations Article; and

2. Is in good standing with the State Board of Dental Examiners;

(iii) 1. Has an active, unrestricted license to practice podiatry that was issued by the State Board of Podiatric Medical Examiners under Title 16 of the Health Occupations Article; and

2. Is in good standing with the State Board of Podiatric Medical Examiners; or

(iv) 1. Has an active, unrestricted license to practice registered nursing and has an active, unrestricted certification to practice as a nurse practitioner or a nurse midwife that were issued by the State Board of Nursing under Title 8 of the Health Occupations Article; and

2. Is in good standing with the State Board of Nursing;

(2) Has a State controlled dangerous substances registration; and

(3) Is registered with the Commission to make cannabis available to patients for medical use in accordance with regulations adopted by the Commission.

(d) Commission. -- "Commission" means the Natalie M. LaPrade Medical Cannabis Commission established under this subtitle.

(e) Dispensary. -- "Dispensary" means an entity licensed under this subtitle that acquires, possesses, processes, transfers, transports, sells, distributes, dispenses, or administers cannabis, products containing cannabis, related supplies, related products containing cannabis including food, tinctures, aerosols, oils, or ointments, or educational materials for use by a qualifying patient or caregiver.

(f) Dispensary agent. -- "Dispensary agent" means an owner, a member, an employee, a volunteer, an officer, or a director of a dispensary.

(g) Fund. -- "Fund" means the Natalie M. LaPrade Medical Cannabis Commission Fund established under § 13-3303 of this subtitle.

(h) Grower. -- "Grower" means an entity licensed under this subtitle that:

- (1) (i) Cultivates, manufactures, processes, packages, or dispenses medical cannabis; or
- (ii) Processes medical cannabis products; and

(2) Is authorized by the Commission to provide cannabis to a qualifying patient, caregiver, processor, dispensary, or independent testing laboratory.

(i) Independent testing laboratory. -- "Independent testing laboratory" means a facility, an entity, or a site that offers or performs tests related to the inspection and testing of cannabis and products containing cannabis.

(j) Medical cannabis grower agent. -- "Medical cannabis grower agent" means an owner, an employee, a volunteer, an officer, or a director of a grower.

(k) Processor. -- "Processor" means an entity that:

- (1) Transforms medical cannabis into another product or extract; and
- (2) Packages and labels medical cannabis.

(l) Processor agent. -- "Processor agent" means an owner, a member, an employee, a volunteer, an officer, or a director of a processor.

(m) Qualifying patient. -- "Qualifying patient" means an individual who:

(1) Has been provided with a written certification by a certifying provider in accordance with a bona fide provider-patient relationship; and

(2) If under the age of 18 years, has a caregiver.

(n) Written certification. -- "Written certification" means a certification that:

(1) Is issued by a certifying provider to a qualifying patient with whom the provider has a bona fide provider-patient relationship; and

(2) Includes a written statement certifying that, in the provider's professional opinion, after having completed an assessment of the patient's medical history and current medical condition, the patient has a condition:

(i) That meets the inclusion criteria and does not meet the exclusion criteria of the certifying provider's application; and

(ii) For which the potential benefits of the medical use of cannabis would likely outweigh the health risks for the patient; and

(3) May include a written statement certifying that, in the provider's professional opinion, a 30-day supply of medical cannabis would be inadequate to meet the medical needs of the qualifying patient.

Md. HEALTH-GENERAL Code Ann. § 13-3302 (2017)

§ 13-3302. Commission established; purpose and duties.

(a) In general. -- There is a Natalie M. LaPrade Medical Cannabis Commission.

(b) Status. -- The Commission is an independent commission that functions within the Department.

(c) Purpose. -- The purpose of the Commission is to develop policies, procedures, guidelines, and regulations to implement programs to make medical cannabis available to qualifying patients in a safe and effective manner.

(d) Development of identification cards. --

(1) The Commission shall develop identification cards for qualifying patients and caregivers.

(2) (i) The Department shall adopt regulations that establish the requirements for identification cards provided by the Commission.

(ii) The regulations adopted under subparagraph (i) of this paragraph shall include:

1. The information to be included on an identification card;

2. The method through which the Commission will distribute identification cards;
and

3. The method through which the Commission will track identification cards.

(e) Web site. -- The Commission shall develop and maintain a Web site that:

(1) Provides information on how an individual can obtain medical cannabis in the State;
and

(2) Provides contact information for licensed dispensaries.

Md. HEALTH-GENERAL Code Ann. § 13-3303 (2017)

§ 13-3303. Membership.

(a) In general. -- The Commission consists of the following 16 members:

(1) The Secretary of Health and Mental Hygiene, or the Secretary's designee; and

(2) The following 15 members, appointed by the Governor:

(i) Two members of the public who support the use of cannabis for medical purposes and who are or were patients who found relief from the use of medical cannabis;

(ii) One member of the public designated by the Maryland Chapter of the National Council on Alcoholism and Drug Dependence;

(iii) Three physicians licensed in the State;

(iv) One nurse licensed in the State who has experience in hospice care, nominated by a State research institution or trade association;

(v) One pharmacist licensed in the State, nominated by a State research institution or trade association;

(vi) One scientist who has experience in the science of cannabis, nominated by a State research institution;

(vii) One representative of the Maryland State's Attorneys' Association;

(viii) One representative of law enforcement;

(ix) An attorney who is knowledgeable about medical cannabis laws in the United States;

(x) An individual with experience in horticulture, recommended by the Department of Agriculture;

(xi) One representative of the University of Maryland Extension; and

(xii) One representative of the Office of the Comptroller.

(b) Term. --

(1) The term of a member is 4 years.

(2) The terms of the members are staggered as required by the terms provided for members on October 1, 2013.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member may not serve more than three consecutive full terms.

(5) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(c) Chair. -- The Governor shall designate the chair from among the members of the Commission.

(d) Quorum. -- A majority of the full authorized membership of the Commission is a quorum.

(e) Compensation; reimbursement for expenses. -- A member of the Commission:

(1) May not receive compensation as a member of the Commission; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) Staff. -- The Commission may employ a staff, including contractual staff, in accordance with the State budget.

(g) Fees. -- The Commission may set reasonable fees to cover the costs of operating the Commission.

(h) Natalie M. LaPrade Medical Cannabis Commission Fund. --

(1) There is a Natalie M. LaPrade Medical Cannabis Commission Fund.

(2) The Commission shall administer the Fund.

(3) The Fund is a special continuing, nonlapsing fund that is not subject to § 7-302 of the State Finance and Procurement Article.

(4) The State Treasurer shall hold the Fund separately, and the Comptroller shall account for the Fund.

(5) The Fund shall be invested and reinvested in the same manner as other State funds, and any investment earnings shall be retained to the credit of the Fund.

(6) The Fund shall be subject to an audit by the Office of Legislative Audits as provided for in § 2-1220 of the State Government Article.

(7) The Comptroller shall pay out money from the Fund as directed by the Commission.

(8) The Fund consists of:

(i) Any money appropriated in the State budget to the Fund;

(ii) Any other money from any other source accepted for the benefit of the Fund, in accordance with any conditions adopted by the Commission for the acceptance of donations or gifts to the Fund; and

(iii) Any fees collected by the Commission under this subtitle.

(9) No part of the Fund may revert or be credited to:

(i) The General Fund of the State; or

(ii) Any other special fund of the State.

(10) Expenditures from the Fund may be made only in accordance with the State budget.

§ 13-3306. Licensing medical cannabis growers.

(a) In general. --

(1) The Commission shall license medical cannabis growers that meet all requirements established by the Commission to operate in the State to provide cannabis to:

(i) Processors licensed by the Commission under this subtitle;

(ii) Dispensaries licensed by the Commission under this subtitle;

(iii) Qualifying patients and caregivers; and

(iv) Independent testing laboratories registered with the Commission under this subtitle.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, the Commission may license no more than 15 medical cannabis growers.

(ii) Beginning June 1, 2018, the Commission may issue the number of licenses necessary to meet the demand for medical cannabis by qualifying patients and caregivers issued identification cards under this subtitle in an affordable, accessible, secure, and efficient manner.

(iii) The Commission shall establish an application review process for granting medical cannabis grower licenses in which applications are reviewed, evaluated, and ranked based on criteria established by the Commission.

(iv) The Commission may not issue more than one medical cannabis grower license to each applicant.

(v) A grower shall pay an application fee in an amount to be determined by the Commission consistent with this subtitle.

(3) The Commission shall set standards for licensure as a medical cannabis grower to ensure public safety and safe access to medical cannabis, which may include a requirement for the posting of security.

(4) Each medical cannabis grower agent shall:

(i) Be registered with the Commission before the agent may volunteer or work for a licensed grower; and

(ii) Obtain a State and national criminal history records check in accordance with § 13-3312 of this subtitle.

(5) (i) A licensed grower shall apply to the Commission for a registration card for each grower agent by submitting the name, address, and date of birth of the agent.

(ii) 1. Within 1 business day after a grower agent ceases to be associated with a grower, the grower shall:

A. Notify the Commission; and

B. Return the grower agent's registration card to the Commission.

2. On receipt of a notice described in subsubparagraph 1A of this subparagraph, the Commission shall:

A. Immediately revoke the registration card of the grower agent; and

B. If the registration card was not returned to the Commission, notify the Department of State Police.

(iii) The Commission may not register a person who has been convicted of a felony drug offense as a grower agent.

(6) (i) A medical cannabis grower license is valid for 4 years on initial licensure.

(ii) A medical cannabis grower license is valid for 2 years on renewal.

(7) An application to operate as a medical cannabis grower may be submitted in paper or electronic form.

(8) (i) The Commission shall encourage licensing medical cannabis growers that grow strains of cannabis, including strains with high cannabidiol content, with demonstrated success in alleviating symptoms of specific diseases or conditions.

(ii) The Commission shall encourage licensing medical cannabis growers that prepare medical cannabis in a range of routes of administration.

(9) (i) The Commission shall:

1. Actively seek to achieve racial, ethnic, and geographic diversity when licensing medical cannabis growers; and

2. Encourage applicants who qualify as a minority business enterprise, as defined in § 14-301 of the State Finance and Procurement Article.

(ii) Beginning June 1, 2016, a grower licensed under this subtitle to operate as a medical cannabis grower shall report annually to the Commission on the minority owners and employees of the grower.

(10) An entity seeking licensure as a medical cannabis grower shall meet local zoning and planning requirements.

(b) Permitted recipients from licensed growers. -- An entity licensed to grow medical cannabis under this section may provide cannabis only to:

(1) Processors licensed by the Commission under this subtitle;

(2) Dispensaries licensed by the Commission under this subtitle;

(3) Qualified patients;

(4) Caregivers; and

(5) Independent testing laboratories registered with the Commission under this subtitle.

(c) Distribution from licensed grower's facility. --

(1) An entity licensed to grow cannabis under this section may dispense cannabis from a facility of a grower licensed as a dispensary.

(2) A qualifying patient or caregiver may obtain medical cannabis from a facility of a grower licensed as a dispensary.

(3) An entity licensed to grow medical cannabis under this section may grow and process medical cannabis on the same premises.

(d) Licensed growers to ensure safety precautions. -- An entity licensed to grow medical cannabis under this section shall ensure that safety precautions established by the Commission are followed by any facility operated by the grower.

(e) Requirements for security and manufacturing process. -- The Commission shall establish requirements for security and the manufacturing process that a grower must meet to obtain a license under this section, including a requirement for a product-tracking system.

(f) Inspections. -- The Commission may inspect a grower licensed under this section to ensure compliance with this subtitle.

(g) Penalties; rescission of licenses. -- The Commission may impose penalties or rescind the license of a grower that does not meet the standards for licensure set by the Commission.

Md. HEALTH-GENERAL Code Ann. § 13-3307 (2017)

§ 13-3307. Licensed dispensaries.

(a) License required. -- A dispensary shall be licensed by the Commission.

(b) Fee and application. -- To be licensed as a dispensary, an applicant shall submit to the Commission:

(1) An application fee in an amount to be determined by the Commission consistent with this subtitle; and

(2) An application that includes:

(i) The legal name and physical address of the proposed dispensary;

(ii) The name, address, and date of birth of each principal officer and each director, none of whom may have served as a principal officer or director for a dispensary that has had its license revoked; and

(iii) Operating procedures that the dispensary will use, consistent with Commission regulations for oversight, including storage of cannabis and products containing cannabis only in enclosed and locked facilities.

(c) Application review; diversity. -- The Commission shall:

(1) Establish an application review process for granting dispensary licenses in which applications are reviewed, evaluated, and ranked based on criteria established by the Commission; and

(2) Actively seek to achieve racial, ethnic, and geographic diversity when licensing dispensaries.

(d) Term of license and of renewal. --

(1) A dispensary license is valid for 4 years on initial licensure.

(2) A dispensary license is valid for 2 years on renewal.

(e) Exemption from penalties or arrest under State law. -- A dispensary licensed under this section or a dispensary agent registered under § 13-3308 of this subtitle may not be penalized or arrested under State law for acquiring, possessing, processing, transferring, transporting, selling, distributing, or dispensing cannabis, products containing cannabis, related supplies, or educational materials for use by a qualifying patient or a caregiver.

(f) Requirements for security and product handling procedures; product tracking. -- The Commission shall establish requirements for security and product handling procedures that a dispensary must meet to obtain a license under this section, including a requirement for a product-tracking system.

(g) Inspections. -- The Commission may inspect a dispensary licensed under this section to ensure compliance with this subtitle.

(h) Penalties; rescission of license. -- The Commission may impose penalties or rescind the license of a dispensary that does not meet the standards for licensure set by the Commission.

(i) Reports. --

(1) Each dispensary licensed under this section shall submit to the Commission a quarterly report.

(2) The quarterly report shall include:

(i) The number of patients served;

(ii) The county of residence of each patient served;

(iii) The medical condition for which medical cannabis was recommended;

(iv) The type and amount of medical cannabis dispensed; and

(v) If available, a summary of clinical outcomes, including adverse events and any cases of suspected diversion.

(3) The quarterly report may not include any personal information that identifies a patient.

Md. HEALTH-GENERAL Code Ann. § 13-3309 (2017)

§ 13-3309. Processors.

- (a) License required. -- A processor shall be licensed by the Commission.
- (b) Required submissions. -- To be licensed as a processor, an applicant shall submit to the Commission:
 - (1) An application fee in an amount to be determined by the Commission in accordance with this subtitle; and
 - (2) An application that includes:
 - (i) The legal name and physical address of the proposed processor;
 - (ii) The name, address, and date of birth of each principal officer and director, none of whom may have served as a principal officer or director for a licensee under this subtitle that has had its license revoked; and
 - (iii) Operating procedures that the processor will use, consistent with Commission regulations for oversight, including storage of cannabis, extracts, and products containing cannabis only in enclosed and locked facilities.
- (c) Application review process. -- The Commission shall establish an application review process for granting processor licenses in which applications are reviewed, evaluated, and ranked based on criteria established by the Commission.
- (d) Term of license and renewal. --
 - (1) A processor license is valid for 4 years on initial licensure.
 - (2) A processor license is valid for 2 years on renewal.
- (e) Exemption from penalty or arrest. -- A processor licensed under this section or a processor agent registered under § 13-3310 of this subtitle may not be penalized or arrested under State law for acquiring, possessing, processing, transferring, transporting, selling, distributing, or dispensing cannabis, products containing cannabis, related supplies, or educational materials for use by a licensee under this subtitle or a qualifying patient or a caregiver.

(f) Requirements for security and product handling procedures; product tracking. -- The Commission shall establish requirements for security and product handling procedures that a processor must meet to obtain a license under this section, including a requirement for a product-tracking system.

(g) Inspections. -- The Commission may inspect a processor licensed under this section to ensure compliance with this subtitle.

(h) Penalties; rescission of license. -- The Commission may impose penalties or rescind the license of a processor that does not meet the standards for licensure set by the Commission.

Md. HEALTH-GENERAL Code Ann. § 13-3311 (2017)

§ 13-3311. Independent testing laboratory.

(a) Registration by Commission. -- The Commission shall register at least one private independent testing laboratory to test cannabis and products containing cannabis that are to be sold in the State.

(b) Requirements. -- To be registered as an independent testing laboratory, a laboratory shall:

(1) Meet the application requirements established by the Commission;

(2) Pay any applicable fee required by the Commission; and

(3) Meet the standards and requirements for accreditation, inspection, and testing established by the Commission.

(c) Regulations. -- The Commission shall adopt regulations that establish:

(1) The standards and requirements to be met by an independent laboratory to obtain a registration;

(2) The standards of care to be followed by an independent testing laboratory;

(3) The initial and renewal terms for an independent laboratory registration and the renewal procedure; and

(4) The bases and processes for denial, revocation, and suspension of a registration of an independent testing laboratory.

(d) Inspections. -- The Commission may inspect an independent testing laboratory registered under this section to ensure compliance with this subtitle.

Md. HEALTH-GENERAL Code Ann. § 13-3316 (2017)

§ 13-3316. Regulations.

On or before September 15, 2014, the Commission shall adopt regulations to implement the provisions of this subtitle.

Md. Rule 2-211 (2017)

Rule 2-211. Required joinder of parties

(a) Persons to be joined. Except as otherwise provided by law, a person who is subject to service of process shall be joined as a party in the action if in the person's absence

(1) complete relief cannot be accorded among those already parties, or

(2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.

The court shall order that the person be made a party if not joined as required by this section. If the person should join as a plaintiff but refuses to do so, the person shall be made either a defendant or, in a proper case, an involuntary plaintiff.

(b) Reasons for nonjoinder. A pleading asserting a claim for relief shall state the name, if known to the pleader, of a person meeting the criteria of (1) or (2) of section (a) of this Rule who is not joined and the reason the person is not joined.

(c) Effect of inability to join. If a person meeting the criteria of (1) or (2) of section (a) of this Rule cannot be made a party, the court shall determine whether the action should proceed among the parties before it or whether the action should be dismissed. Factors to be considered by the court include: to what extent a judgment rendered in the person's absence might be prejudicial to that person or those already parties; to what extent the prejudice can be lessened or avoided by protective provisions in the judgment or other measures; whether a judgment rendered in the person's absence will be adequate; and finally, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(d) Exception. This Rule is subject to the provisions of Rule 2-231.

Md. Rule 2-214 (2017)

Rule 2-214. Intervention

(a) Of right. Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.

(b) Permissive.

(1) Generally. Upon timely motion a person may be permitted to intervene in an action when the person's claim or defense has a question of law or fact in common with the action.

(2) Governmental interest. Upon timely motion the federal government, the State, a political subdivision of the State, or any officer or agency of any of them may be permitted to intervene in an action when the validity of a constitutional provision, charter provision, statute, ordinance, regulation, executive order, requirement, or agreement affecting the moving party is drawn in question in the action, or when a party to an action relies for ground of claim or defense on such constitutional provision, charter provision, statute, ordinance, regulation, executive order, requirement, or agreement.

(3) Considerations. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall file and serve a motion to intervene. The motion shall state the grounds therefor and shall be accompanied by a copy of the proposed pleading, motion, or response setting forth the claim or defense for which intervention is sought. An order granting intervention shall designate the intervenor as a plaintiff or a defendant. Thereupon, the intervenor shall promptly file the pleading, motion, or response and serve it upon all parties.

Md. Rule 2-311 (2017)

Rule 2-311. Motions

(a) Generally. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, and shall set forth the relief or order sought.

(b) Response. Except as otherwise provided in this section, a party against whom a motion is directed shall file any response within 15 days after being served with the motion, or within the time allowed for a party's original pleading pursuant to Rule 2-321(a), whichever is later. Unless the court orders otherwise, no response need be filed to a motion filed pursuant to Rule 1-204, 2-532, 2-533, or 2-534. If a party fails to file a response required by this section, the court may proceed to rule on the motion.

Md. Rule 2-322 (2017)

Rule 2-322. Preliminary motions

(a) **Mandatory.** The following defenses shall be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the person, (2) improper venue, (3) insufficiency of process, and (4) insufficiency of service of process. If not so made and the answer is filed, these defenses are waived.

(b) **Permissive.** The following defenses may be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the subject matter, (2) failure to state a claim upon which relief can be granted, (3) failure to join a party under Rule 2-211, (4) discharge in bankruptcy, and (5) governmental immunity. If not so made, these defenses and objections may be made in the answer, or in any other appropriate manner after answer is filed.

(c) **Disposition.** A motion under sections (a) and (b) of this Rule shall be determined before trial, except that a court may defer the determination of the defense of failure to state a claim upon which relief can be granted until the trial. In disposing of the motion, the court may dismiss the action or grant such lesser or different relief as may be appropriate. If the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend. The amended complaint shall be filed within 30 days after entry of the order or within such other time as the court may fix. If leave to amend is granted and the plaintiff fails to file an amended complaint within the time prescribed, the court, on motion, may enter an order dismissing the action. If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501.

(d) **Motion for more definite statement.** If a pleading to which an answer is permitted is so vague or ambiguous that a party cannot reasonably frame an answer, the party may move for a more definite statement before answering. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 15 days after entry of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(e) **Motion to strike.** On motion made by a party before responding to a pleading or, if no responsive pleading is required by these rules, on motion made by a party within 15 days

after the service of the pleading or on the court's own initiative at any time, the court may order any insufficient defense or any improper, immaterial, impertinent, or scandalous matter stricken from any pleading or may order any pleading that is late or otherwise not in compliance with these rules stricken in its entirety.

(f) Consolidation of defenses in motion. A party who makes a motion under this Rule may join with it any other motions then available to the party. No defense or objection raised pursuant to this Rule is waived by being joined with one or more other such defenses or objections in a motion under this Rule. If a party makes a motion under this Rule but omits any defense or objection then available to the party that this Rule permits to be raised by motion, the party shall not thereafter make a motion based on the defenses or objections so omitted except as provided in Rule 2-324.

Md. Rule 2-323 (2017)

Rule 2-323. Answer

(a) Content. A claim for relief is brought to issue by filing an answer. Every defense of law or fact to a claim for relief in a complaint, counterclaim, cross-claim, or third-party claim shall be asserted in an answer, except as provided by Rule 2-322. If a pleading setting forth a claim for relief does not require a responsive pleading, the adverse party may assert at the trial any defense of law or fact to that claim for relief. The answer shall be stated in short and plain terms and shall contain the following: (1) the defenses permitted by Rule 2-322 (b) that have not been raised by motion, (2) answers to the averments of the claim for relief pursuant to section (c) or (d) of this Rule, and (3) the defenses enumerated in sections (f) and (g) of this Rule.

(b) Preliminary determination. The defenses of lack of jurisdiction over the subject matter, failure to state a claim upon which relief can be granted, failure to join a party under Rule 2-211, and governmental immunity shall be determined before trial on application of any party, except that the court may defer the determination of the defense of failure to state a claim upon which relief can be granted until the trial.

(c) Specific admissions or denials. Except as permitted by section (d) of this Rule, a party shall admit or deny the averments upon which the adverse party relies. A party without knowledge or information sufficient to form a belief as to the truth of an averment shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. A party may deny designated averments or paragraphs or may generally deny all the averments except averments or paragraphs that are specifically admitted.

(d) General denials in specified causes. When the action in any count is for breach of contract, debt, or tort and the claim for relief is for money only, a party may answer that count by a general denial of liability.

(e) Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted unless denied in the responsive pleading or covered by a general denial. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. When appropriate, a party may claim the inability to admit, deny, or explain an averment on the ground that to do so would tend to incriminate the party, and such statement shall not amount to an admission of the averment.

(f) Negative defenses. Whether proceeding under section (c) or section (d) of this Rule,

when a party desires to raise an issue as to (1) the legal existence of a party, including a partnership or a corporation, (2) the capacity of a party to sue or be sued, (3) the authority of a party to sue or be sued in a representative capacity, (4) the averment of the execution of a written instrument, or (5) the averment of the ownership of a motor vehicle, the party shall do so by negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge. If not raised by negative averment, these matters are admitted for the purpose of the pending action. Notwithstanding an admission under this section, the court may require proof of any of these matters upon such terms and conditions, including continuance and allocation of costs, as the court deems proper.

(g) Affirmative defenses. Whether proceeding under section (c) or section (d) of this Rule, a party shall set forth by separate defenses: (1) accord and satisfaction, (2) merger of a claim by arbitration into an award, (3) assumption of risk, (4) collateral estoppel as a defense to a claim, (5) contributory negligence, (6) duress, (7) estoppel, (8) fraud, (9) illegality, (10) laches, (11) payment, (12) release, (13) res judicata, (14) statute of frauds, (15) statute of limitations, (16) ultra vires, (17) usury, (18) waiver, (19) privilege, and (20) total or partial charitable immunity.

In addition, a party may include by separate defense any other matter constituting an avoidance or affirmative defense on legal or equitable grounds. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there had been a proper designation, if justice so requires.

(h) Defendant's information report. The defendant shall file with the answer an information report substantially in the form included with the summons if (1) the plaintiff has failed to file an information report required by Rule 2-111(a), (2) the defendant disagrees with anything contained in an information report filed by the plaintiff, (3) the defendant disagrees with a differentiated case management track previously selected by the court, or (4) the defendant has filed or expects to file a counterclaim, cross-claim, or third-party claim. If the defendant fails to file a required information report with the answer, the court may proceed without the defendant's information to assign the action to any track within the court's differentiated case management system or may continue the action on any track previously assigned.

Md. Rule 2-325 (2017)

Rule 2-325. Jury trial

(a) Demand. Any party may elect a trial by jury of any issue triable of right by a jury by filing a demand therefor in writing either as a separate paper or separately titled at the conclusion of a pleading and immediately preceding any required certificate of service.

(b) Waiver. The failure of a party to file the demand within 15 days after service of the last pleading filed by any party directed to the issue constitutes a waiver of trial by jury.

(c) Actions from district court. When an action is transferred from the District Court by reason of a demand for jury trial, a new demand is not required.

(d) Appeals from administrative agencies. In an appeal from the Workers' Compensation Commission or other administrative body when there is a right to trial by jury, the failure of any party to file the demand within 15 days after the time for answering the petition of appeal constitutes a waiver of trial by jury.

(e) Effect of election. When trial by jury has been elected by any party, the action, including all claims whether asserted by way of counterclaim, cross-claim or third-party claim, as to all parties, and as to all issues triable of right by a jury, shall be designated upon the docket as a jury trial.

(f) Withdrawal of election. An election for trial by jury may be withdrawn only with the consent of all parties not in default.

Md. Rule 5-103 (2017)

Rule 5-103. Rulings on evidence

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was requested by the court or required by rule; or

(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered. The court may direct the making of an offer in question and answer form.

(b) Explanation of ruling. The court may add to the ruling any statement that shows the character of the evidence, the form in which it was offered, and the objection made.

(c) Hearing of jury. Proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to a jury by any means, such as making statements or offers of proof or asking questions within the hearing of the jury.

Md. Rule 5-201 (2017)

Rule 5-201. Judicial notice of adjudicative facts

(a) Scope of Rule. This Rule governs only judicial notice of adjudicative facts. Sections (d), (e), and (g) of this Rule do not apply in the Court of Special Appeals or the Court of Appeals.

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. Upon timely request, a party is entitled to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury. The court shall instruct the jury to accept as conclusive any fact judicially noticed, except that in a criminal action, the court shall instruct the jury that it may, but is not required to, accept as conclusive any judicially noticed fact adverse to the accused.

Md. Rule 7-202 (2017)

Rule 7-202. Method of securing review

(a) By petition. A person seeking judicial review under this chapter shall file a petition for judicial review in a circuit court authorized to provide the review.

(b) Caption. The Petition shall be captioned as follows:

IN THE CIRCUIT COURT FOR

PETITION OF

[name and address]

*

*

*

FOR JUDICIAL REVIEW OF THE DECISION OF THE CIVIL ACTION

*

No.

[name and address of administrative agency

*

that made the decision]

*

*

*

IN THE CASE OF

*

[caption of agency proceeding,

*

including agency case number]

*

(c) Contents of Petition; Attachments.

(1) Contents. The petition shall:

(A) request judicial review;

(B) identify the order or action of which review is sought;

(C) state whether the petitioner was a party to the agency proceeding, and if the petitioner was not a party to the agency proceeding, state the basis of the petitioner's standing to seek judicial review; and

(D) if the review sought is of a decision of the Workers' Compensation Commission, state whether any issue is to be reviewed on the record before the Commission and, if it is, identify the issue.

No other allegations are necessary.

Committee note. -- The petition is in the nature of a notice, much like a notice of appeal. The grounds for judicial review, required by former Rule B2 e to be stated in the petition, are now to be set forth in the memorandum filed pursuant to Rule 7-207.

(2) Attachments-Review of Workers' Compensation Commission Decision. If review of a decision of the Workers' Compensation Commission is sought, the petitioner shall attach to the petition:

(A) a certificate that copies of the petition and attachments were served pursuant to subsection (d)(2) of this Rule, and

(B) if no issue is to be reviewed on the record before the Commission, copies of (i) the employee claim form and (ii) all of the Commission's orders in the petitioner's case.

(d) Copies; Filing; Notices.

(1) Notice to agency. Upon filing the petition, the petitioner shall deliver to the clerk a copy of the petition for the agency whose decision is sought to be reviewed. The clerk shall promptly mail a copy of the petition to the agency, informing the agency of the date the petition was filed and the civil action number assigned to the action for judicial review.

(2) Service by petitioner in workers' compensation cases. Upon filing a petition for judicial review of a decision of the Workers' Compensation Commission, the petitioner

shall serve a copy of the petition, together with all attachments, by first-class mail on the Commission and each other party of record in the proceeding before the Commission. If the petitioner is requesting judicial review of the Commission's decision regarding attorneys' fees, the petitioner also shall serve a copy of the petition and attachments by first-class mail on the Attorney General.

(3) Notice from agency to parties.

(A) Duty. Unless otherwise ordered by the court, the agency, upon receiving the copy of the petition from the clerk, shall give written notice promptly to all parties to the agency proceeding that:

(i) a petition for judicial review has been filed, the date of the filing, the name of the court, and the civil action number; and

(ii) a party who wishes to oppose the petition must file a response within 30 days after the date the agency's notice was sent unless the court shortens or extends the time.

(B) Method. The agency may give the notice by first class mail or, if the party has consented to receive notices from the agency electronically, by electronic means.

(e) Certificate of compliance. Within five days after mailing or electronic transmission, the agency shall file with the clerk a certificate of compliance with section (d) of this Rule, showing the date the agency's notice was mailed or electronically transmitted and the names and addresses of the persons to whom it was sent. Failure to file the certificate of compliance does not affect the validity of the agency's notice.

Md. Rule 7-203 (2017)

Rule 7-203. Time for filing action

(a) Generally. Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by other party. If one party files a timely petition, any other person may file a petition within ten days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

Md. Rule 7-401 (2017)

Rule 7-401. General provisions

(a) **Applicability.** The rules in this Chapter govern actions for judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law.

Cross references. -- For judicial review of an order or action of an administrative agency where judicial review is authorized by statute, see Title 7, Chapter 200 of these Rules.

(b) **Definition.** As used in this Chapter, "administrative agency" means any agency, board, department, district, commission, authority, Commissioner, official, or other unit of the State or of a political subdivision of the State.

Md. Rule 8-111 (2017)

Rule 8-111. Designation of parties; references

(a) Formal designation.

(1) No prior appellate decision. When no prior appellate decision has been rendered, the party first appealing the decision of the trial court shall be designated the appellant and the adverse party shall be designated the appellee. Unless the Court orders otherwise, the opposing parties to a subsequently filed appeal shall be designated the cross-appellant and cross-appellee.

(2) Prior appellate decision. In an appeal to the Court of Appeals from a decision by the Court of Special Appeals or by a circuit court exercising appellate jurisdiction, the party seeking review of the most recent decision shall be designated the petitioner and the adverse party shall be designated the respondent. Except as otherwise specifically provided or necessarily implied, the term "appellant" as used in the rules in this Title shall include a petitioner and the term "appellee" shall include a respondent.

(b) Alternative references. In the interest of clarity, the parties are encouraged to use the designations used in the trial court, the actual names of the parties, or descriptive terms such as "employer," "insured," "seller," "husband," and "wife" in papers filed with the Court and in oral argument.

(c) Victims and victims' representatives. Although not a party to a criminal or juvenile proceeding, a victim of a crime or a delinquent act or a victim's representative may: (1) file an application for leave to appeal to the Court of Special Appeals from an interlocutory or a final order under Code, Criminal Procedure Article, § 11-103 and Rule 8-204; or (2) participate in the same manner as a party regarding the rights of the victim or victim's representative.

Md. Rule 8-502 (2017)

Rule 8-502. Filing of briefs

(a) Duty to file; time. Unless otherwise ordered by the appellate court:

(1) Appellant's brief. No later than the date specified in the notice sent by the appellate clerk pursuant to Rule 8-412 (c), an appellant other than a cross-appellant shall file a brief conforming to the requirements of Rule 8-503.

(2) Appellee's brief. Within 30 days after the filing of the appellant's brief, the appellee shall file a brief conforming to the requirements of Rule 8-503.

(3) Appellant's reply brief. The appellant may file a reply brief not later than the earlier of 20 days after the filing of the appellee's brief or ten days before the date of scheduled argument.

(4) Cross-appellant's brief. An appellee who is also a cross-appellant shall include in the brief filed pursuant to subsection (2) of this section the issues and arguments on the cross-appeal as well as the response to the brief of the appellant, and shall not file a separate cross-appellant's brief.

(5) Cross-appellee's brief. Within 30 days after the filing of that brief, the appellant/cross-appellee shall file a brief in response to the issues and argument raised on the cross-appeal and shall include any reply to the appellee's response that the appellant wishes to file.

(6) Cross-appellant's reply brief. The appellee/cross-appellant may file a reply to the cross-appellee's response within 20 days after the filing of the cross-appellee's brief, but in any event not later than ten days before the date of scheduled argument.

(7) Multiple appellants or appellees. In an appeal involving more than one appellant or appellee, including actions consolidated for purposes of the appeal, any number of appellants or appellees may join in a single brief.

(8) Court of Special Appeals review of discharge for unconstitutionality of law. No briefs need be filed in a review by the Court of Special Appeals under Code, Courts Article, § 3-706.

(b) Extension of time. The time for filing a brief may be extended by (1) stipulation of

counsel filed with the clerk so long as the appellant's brief and the appellee's brief are filed at least 30 days, and any reply brief is filed at least ten days, before the scheduled argument, or (2) order of the appellate court entered on its own initiative or on motion filed pursuant to Rule 1-204.

(c) Filing and service. In an appeal to the Court of Special Appeals, 15 copies of each brief and 10 copies of each record extract shall be filed, unless otherwise ordered by the court. Incarcerated or institutionalized parties who are self-represented shall file nine copies of each brief and nine copies of each record extract. In the Court of Appeals, 20 copies of each brief and record extract shall be filed, unless otherwise ordered by the court. Two copies of each brief and record extract shall be served on each party pursuant to Rule 1-321.

(d) Default. If an appellant fails to file a brief within the time prescribed by this Rule, the appeal may be dismissed pursuant to Rule 8-602 (a) (7). An appellee who fails to file a brief within the time prescribed by this Rule may not present argument except with permission of the Court.

Md. Rule 15-504 (2017)

Rule 15-504. Temporary restraining order

- (a) Standard for granting. A temporary restraining order may be granted only if it clearly appears from specific facts shown by affidavit or other statement under oath that immediate, substantial, and irreparable harm will result to the person seeking the order before a full adversary hearing can be held on the propriety of a preliminary or final injunction.
- (b) Without notice. A temporary restraining order may be granted without written or oral notice only if the applicant or the applicant's attorney certifies to the court in writing, and the court finds, that specified efforts commensurate with the circumstances have been made to give notice. Before ruling, the judge may communicate informally with other parties and any other person against whom the order is sought or their attorneys.
- (c) Contents and duration. In addition to complying with Rule 15-502 (e), the order shall (1) contain the date and hour of issuance; (2) define the harm that the court finds will result if the temporary restraining order does not issue; (3) state the basis for the court's finding that the harm will be irreparable; (4) state that a party or any person affected by the order may apply for a modification or dissolution of the order on two days' notice, or such shorter notice as the court may prescribe, to the party who obtained the order; and (5) set forth an expiration date, which shall be not later than ten days after issuance for a resident and not later than 35 days after issuance for a nonresident. The order shall be promptly filed with the clerk. On motion filed pursuant to Rule 1-204, the court by order may extend the expiration date for no more than one additional like period, unless the person against whom the order is directed consents to an extension for a longer period. The order shall state the reasons for the extension.
- (d) Service; binding effect. A temporary restraining order shall be served promptly on the person to whom it is directed, but it shall be binding on that person upon receipt of actual notice of it by any means.
- (e) Denial. If the court denies a temporary restraining order, the clerk shall note the denial by docket entry in accordance with Rule 2-601 (b).
- (f) Modification or dissolution. A party or person affected by the order may apply for modification or dissolution of the order on two days' notice to the party who obtained the temporary restraining order, or on such shorter notice as the court may prescribe. The court shall proceed to hear and determine the application at the earliest possible time. The

party who obtained the temporary restraining order has the burden of showing that it should be continued.

Md. Rule 15-701 (2017)

Rule 15-701. Mandamus

(a) Applicability. This Rule applies to actions for writs of mandamus other than administrative mandamus pursuant to Title 7, Chapter 400 of these Rules or mandamus in aid of appellate jurisdiction.

(b) Commencement of action. An action for a writ of mandamus shall be commenced by the filing of a complaint, the form and contents of which shall comply with Rules 2-303 through 2-305. The plaintiff shall have the right to claim and prove damages, but a demand for general relief shall not be permitted.

(c) Defendant's response. The defendant may respond to the complaint as provided in Rule 2-322 or Rule 2-323. An answer shall fully and specifically set forth all defenses upon which the defendant intends to rely.

(d) Amendment. Amendment of pleadings shall be in accordance with Rule 2-341.

(e) Writ of mandamus.

(1) Contents and compliance. The writ shall be peremptory in form and shall require the defendant to perform immediately the duty sought to be enforced, unless for good cause shown the court extends the time for compliance. The writ need not recite the reasons for its issuance.

(2) Certificate of compliance. Immediately after compliance, the defendant shall file a certificate stating that all the acts commanded by the writ have been fully performed.

(3) Enforcement. Upon application by the plaintiff, the court may proceed under Rule 2-648 against a party who disobeys the writ.

(f) Adequate remedy at law. The existence of an adequate remedy in damages does not preclude the issuance of the writ unless the defendant establishes that property exists from which damages can be recovered or files a sufficient bond to cover all damages and costs.

COMAR 10.62.08.02 (2017)

.02 Application for a Medical Cannabis Grower License.

A. An applicant shall submit an application for a license.

B. An application shall be:

- (1) Completed on a form developed by the Commission; and
- (2) Submitted to the Commission for consideration.

C. In addition to the application form, the applicant shall submit the following documents to be included as addenda to the application form:

- (1) A list identifying the applicants potential medical cannabis grower agents;
- (2) A list identifying each individual investor with 5 percent or more of investment known at the time of application;
- (3) A detailed business plan including an organizational chart;
- (4) Documentation and source of adequate capitalization;
- (5) If the applicant is a corporation or business entity, a copy of the articles of incorporation and authorization to do business in Maryland;
- (6) A record of tax payments in all jurisdictions in which an applicant has operated as a business for the 5 years before the filing of the application;
- (7) A description of the proposed premises, including a preliminary site plan;
- (8) A security plan;
- (9) Details of the applicants experience, knowledge, and training in commercial horticultural or agronomic production;
- (10) The medical cannabis varieties proposed to be grown with proposed cannabinoid profiles;
- (11) A plan for quality control;

(12) A plan for inventorying, safekeeping and tracking:

(a) Medical cannabis from "seed to sale," and

(b) Waste plant material prior to destruction; and

(13) A disposal plan for medical cannabis waste.

D. A grower planning to operate as a dispensary of medical cannabis shall submit a dispensary application.

E. The application shall be accompanied by the stage 1 application fee specified in COMAR 10.62.35.

F. A party applying for a license shall have an interest in only one grower license application.

G. An applicant shall amend an application within 3 business days to include the name and documentation of a request to forward the criminal history record information to the Commission of:

(1) A new individual investor of an interest of 5 percent or more; or

(2) Another manager or director of the entity, even after a license is issued.

COMAR 10.62.08.05 (2017)

.05 Application Review.

- A. The burden of proving an applicants qualifications rests on the applicant.
- B. The Commission may deny an application that contains a misstatement, omission, misrepresentation, or untruth.
- C. An application shall be complete in every material detail.
- D. The Commission may request any additional information the Commission determines is necessary to process and fully investigate an application.
- E. The applicant shall provide requested additional information by the close of business of the 14th business day after the request has been received by the applicant.
- F. If the applicant does not provide the requested information within 14 business days, the Commission may consider the application to be suspended.
- G. The Commission intends to award the licenses to the best applications that most efficiently and effectively ensure public safety and safe access to medical cannabis.
- H. The Commission shall provide guidelines and detailed instructions for submitting the application form for the Commissions consideration.
- I. The Commission, or a Commission independent contractor, shall review for a pre-approval for a license the submitted applications as described in Regulations .02B and .05E of this chapter. The applications shall be ranked based on the following weighted criteria:
 - (1) Operational factors will be afforded 20 percent weight, including:
 - (a) A detailed operational plan for the cultivation of medical cannabis; and
 - (b) Summaries of policies and procedures for:
 - (i) Cultivation;
 - (ii) Growth;
 - (iii) Processing; and

(iv) Packaging;

(2) Safety and Security factors will be afforded 20 percent weight, including:

(a) Detailed plan or information describing the security features and procedures;

(b) Detailed plan describing how the grower will prevent diversion; and

(c) Detailed plan describing safety procedures;

(3) Commercial horticultural or agricultural factors will be afforded 15 percent weight, including, experience, knowledge and training in:

(a) Horticultural production; or

(b) Agricultural production;

(4) Production control factors will be afforded 15 percent weight, including:

(a) A detailed quality control plan;

(b) A detailed inventory control plan; and

(c) A detailed medical cannabis waste disposal plan;

(5) Business and economic factors will be afforded 15 percent weight, including:

(a) A business plan demonstrating a likelihood of success, a sufficient business ability and experience on the part of the applicant, and providing for appropriate employee working conditions, benefits and training;

(b) Demonstration of adequate capitalization;

(c) A detailed plan evidencing how the grower will enforce the alcohol and drug free workplace policy

(6) Additional factors that will be afforded 15 percent weight, including:

(a) Demonstrated Maryland residency among the owners and investors;

(b) Evidence that applicant is not in arrears regarding any tax obligation in Maryland and other jurisdictions;

(c) A detailed plan evidencing how the grower will distribute to dispensaries and processors; and,

(d) A list of proposed medical cannabis varieties proposed to be grown with proposed cannabinoid profiles, including:

(i) Varieties with high cannabidiol content; and

(ii) Whether the strain has any demonstrated success in alleviating symptoms of specific diseases or conditions.

J. For scoring purposes, the Commission may take into account the geographic location of the growing operation to ensure there is geographic diversity in the award of licenses.

COMAR 10.62.08.06 (2017)

.06 Pre-Approval of Application.

A. Limitation on Number of Licenses.

(1) The Commission may issue pre-approval of up to 15 licenses:

(a) Until May 31, 2018, in accordance with Health General Article, § 13-3306(a)(2), Annotated Code of Maryland; and

(b) In consideration of the ranking of the applications in accordance with Regulation .05 of this chapter.

(2) Beginning June 1, 2018, the Commission may issue the number of pre-approvals of a license necessary to meet the demand for medical cannabis by qualifying patients in an affordable, accessible, secure and efficient manner.

B. If there are more qualified applications than the number of licenses available and there is a numerical tie for the last license to be issued, the license shall be determined by public lottery.

C. The Commission may deny issuing a pre-approval of a license if, for any individual identified in the application specified in Regulation .02B(1) of this chapter:

(1) The criminal history record information or any other evidence that demonstrates an absence of good moral character; or

(2) The payment of taxes due in any jurisdiction is in arrears.

D. Within 10 business days of the Commission's decision, the Commission shall notify an applicant who has been pre-approved for a license.

E. The Commission may rescind pre-approval of a grower license if the grower is not operational within 1 year of pre-approval.

COMAR 10.62.08.07 (2017)

.07 Issuance of License.

A. After an applicant has been issued a pre-approval for a license under this chapter the applicant shall submit to the Commission, as part of its application:

- (1) An audited financial statement for the applicant and any proposed grower agents; and
- (2) Payment of the stage 2 application fee specified in COMAR 10.62.35

B. The Commission may issue a license either to grow medical cannabis or to grow medical cannabis and distribute it to qualifying patients and caregivers on a determination that:

- (1) All inspections are passed and all of the applicants operations conform to the specifications of the application as pre-approved pursuant to Regulation .06 of this chapter;
- (2) The proposed premises:
 - (a) Are under the legal control of the applicant;
 - (b) Comply with all zoning and planning requirements; and
 - (c) Conform to the specifications of the application as pre-approved pursuant to Regulation .06 of this chapter; and
- (3) The first years license fee specified in COMAR 10.62.35 has been paid.

COMAR 10.62.08.10 (2017)

.10 Renewal of License.

A. A licensee is eligible to apply to renew a license every 2 years.

B. Ninety days before the expiration of a license, the Commission shall notify the licensee of the:

- (1) Date on which the license expires;
- (2) Process and the fee required to renew the license; and
- (3) Consequences of a failure to renew the license.

C. At least 30 business days before a license expires a licensee shall submit:

- (1) The renewal application as provided by the Commission;
- (2) Proof that fingerprints have been submitted to CJIS and the FBI for every grower agent and investor of an interest of 5 percent or more;
- (3) To full inspection of the operation, unless a full inspection was satisfactorily completed within 3 months before the date of the license expiration; and
- (4) Payment of the fee specified in COMAR 10.62.35.

D. The Commission shall renew a license that meets the requirements for renewal as stated in § C of this regulation.

E. If the Commission does not renew a license due to a failed inspection or an inadequate application for renewal, the licensee may apply for reinstatement by:

- (1) Submitting a plan to correct the deficiencies noted during an inspection; and
- (2) Amending the application for renewal.

F. The Commission may decline to renew a license if:

- (1) The plan to correct deficiencies identified in an inspection is deficient;
- (2) The amended application for renewal is deficient; or

(3) The licensee has repeatedly failed inspections.

G. A licensee who fails to apply for renewal of a license by the date specified by the Commission, or whose license was not renewed by the Commission:

(1) Shall cease operations at all premises; and

(2) May not provide medical cannabis to any entity or person.

H. A license may be reinstated upon:

(1) Payment of the reinstatement fee specified in COMAR 10.62.35; and

(2) Submission of a reinstatement application approved by the Commission.

COMAR 10.62.08.11 (2017)

.11 Annual Report on Minority Owners and Employees.

On June 1 of each year, each licensee shall submit a report in a manner determined by the Commission regarding the licensee's minority owners and employees.

COMAR 21.10.02.03 (2017)

.03 Time for Filing.

A. A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the closing date for receipt of initial proposals shall be filed before bid opening or the closing date for receipt of initial proposals. For procurement by competitive sealed proposals, alleged improprieties that did not exist in the initial solicitation but which are subsequently incorporated in the solicitation shall be filed not later than the next closing date for receipt of proposals following the incorporation.

B. In cases other than those covered in § A, protests shall be filed not later than 7 days after the basis for protest is known or should have been known, whichever is earlier.

C. The term "filed" as used in § A or § B means receipt by the procurement officer. Protesters are cautioned that protests should be transmitted or delivered in the manner that shall assure earliest receipt. A protest received by the procurement officer after the time limits prescribed in § A or § B may not be considered.

D. If a solicitation permits filing of a protest by electronic means, a protest is received when it is delivered to the location and within the time limits specified in the solicitation.

APPENDIX

John A. Pica, Jr., Esq. Comments (Proposed Regulations) App 000001

John A. Pica, Jr., Esq. Lobbying Registration –
Alternative Medicine Maryland, LLC..... App 000004

April 11, 2014, Bill Review Letter..... App 000006

Excerpt, Md. Register, Vol. 42, Issue 13 (June 26, 2015) App 000008



Mary Jo Mather -DHMH- <maryjo.mather@maryland.gov>

Fwd: Grower License; Processing at same location

1 message

Michele Phinney -DHMH- <michele.phinney@maryland.gov>

Thu, Jul 30, 2015 at 11:52 AM

To: JPica@mnr.com

Cc: Kristen Neville -DHMH- <kristen.neville@maryland.gov>, Lillian Suliga -DHMH- <lillian.suliga@maryland.gov>, Hannah Byron -DHMH- <hannah.byron@maryland.gov>, Allison Taylor -DHMH- <allison.taylor@maryland.gov>, Mary Jo Mather -DHMH- <maryjo.mather@maryland.gov>, "Brett E. Felter -DHMH-" <brett.felter@maryland.gov>

Good morning,

I have received your comments. By copy of this email, I am forwarding your comments to the Proposing Unit for their consideration and response.

Thank you for participating in the regulatory process..

Sincerely,

Michele Phinney

----- Forwarded message -----

From: John A. Pica, Jr. <JPica@mnr.com>

Date: Wed, Jul 29, 2015 at 2:50 PM

Subject: Grower License; Processing at same location

To: "michele.phinney@maryland.gov" <michele.phinney@maryland.gov>

Cc: Andrea Tarshus <atarshus@luthuligroup.com>

Ms. Phinney,

I looked at the Regulations closely and couldn't find any language that allows a processing license to be in a grow location. HB 490 amended the medical cannabis statute in the 2015 Legislative Session. Section 13-3306(c)(3), Health General provides the following:

(3) AN ENTITY LICENSED TO GROW MEDICAL CANNABIS UNDER THIS

SECTION MAY GROW AND PROCESS MEDICAL CANNABIS ON THE SAME PREMISES.

Licensed growers can have a dispensary. The code also requires that a dispensary facility be separate from a processing facility. I just wanted to bring this to your attention. You may want to add this language through the AELR Committee. I believe it can be done as long as it's not a substantive change. Since the law allows it, it would only be a clarifying amendment to the Regulations.

10.62.14 Licensed Grower Dispensary Facility

Authority: Health General Article, §§13-3301, 13-3302 13-3306(c), and 13-

3307, Annotated Code of Maryland

.01 Definitions.

APP 000001

GTI v MMCC
MMCC00000749

A. The following terms have the meanings indicated.

B. Terms Defined.

(1) "Dispensary license" means a license issued by the Commission to operate as a dispensary.

(2) "Licensed grower dispensary facility" means a facility where a licensed grower may dispense medical cannabis.

(3) "Licensee" means a licensed grower.

.02 Licensed Grower Dispensary Facility.

A. A licensee may dispense medical cannabis to qualifying patients and caregivers in conformity with COMAR 10.62.25 — 10.62.31 at a facility for which the licensee has obtained a license to dispense medical cannabis.

B. A licensed grower dispensary facility shall be constructed and operated in conformity to COMAR 10.62.27, relating to medical cannabis dispensary premises.

C. A licensee may hire employees or use volunteers at a licensed grower dispensary facility in conformity to COMAR 10.62.26.

Dispensary and Processing may not be done at the same location

02 Premises Generally.

A. The premises of a licensee shall be located within Maryland.

B. The premises of a licensed dispensary shall be separate from the premises of a licensed processor.

John A. Pica, Jr.

Royston, Mueller, McLean & Reid, LLP

Towson Office

102 West Pennsylvania, Sixth Floor

Towson, Maryland 21204

410-823-1800 office

APP 000002

GTI v MMCC
MMCC00000750

7/30/2015

Maryland.gov Mail - Fwd: Grower License; Processing at same location

410-446 4600 cell

410-583-7872 fax

Annapolis Office

14 State Circle

Annapolis, Maryland 21401

410-990-1250 office

410-446-4600 mobile

—
Michele A. Phinney
Director, Office of Regulation and Policy Coordination
Department of Health and Mental Hygiene
201 West Preston Street, Room 512
Baltimore, MD 21201
Phone: 410-767-6499
Fax: 410-767-6483
Email: michele.phinney@maryland.gov

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APP 000003

GTI v MMCC
MMCC00000751

PART A. GENERAL INFORMATION

What Type of registration are you seeking?

Legislative Action Lobbyist

Grass Roots Lobbyist

Executive Action Lobbyist

Non-exempt employer

Primary purpose of Organization

Is the employer or registrant (if there is no employer) organized and operated for the primary purpose of attempting to influence any legislation or executive action?

Yes No

Check Number: 44202

PART B. IDENTIFICATION OF REGISTRANT/REGULATED LOBBYIST

1. Identifying Information

a) Name of Registrant/Regulated Lobbyist: John A Pica, Jr.

b) Firm Name: Royston, Mueller, McLean & Reid

Permanent Address:

102 West Pennsylvania Avenue

Suite 600

Towson, MD 21204

c) Business telephone: 410-823-1800

Cell phone: 410-446-4600

Do you want your telephone number on the published lobbyist list?

Yes No

2. Identification Of Others Required To Register

a) Will any other person be required to register as a lobbyist on behalf of the person or the organization identified in Part B1 (a)?

Yes No

b) If the answer to a) is "Yes", identify each such person below and provide his/her name and address?

3. Identification Of Employer

a) Name of persons or organizations that compensates the registrant for activities requiring this registration.

Alternative Medicine Maryland, LLC

Permanent Address:

8899 Main Street

Williamsville, NY 14221

Business Telephone: 716-961-8218

Nature of business: Medical marijuana.

b) If, in the course of representing the employer identified in Part B.3(a), will you also be representing other entities for which the registrant is not required to file separate registrations?

Yes No

4. Registration Information

a) State the period (include both beginning and ending month, day, and year) for which this registration is effective:

July 23, 2015 to October 31, 2015

b) Identify the matters on which the registrant expects to act or employ someone to act during the registration period:

Other - Assist client in pursuing a medical marijuana grower's, dispensary and processor license

PART C. REGISTRANT'S CERTIFICATION

1. Certification of Training Compliance:

I hereby certify by checking one of the two options below that I am in compliance with the mandatory training requirements of §5-704.1 of the Public Ethics Law:

I am current in my training status. Date of most recent training:

I have not yet been a regulated lobbyist for 6 months but will complete training prior to that time, or if my initial registration is for a period less than 6 months, I will complete training before any subsequent registration.

2. Certification of Authorization to Lobby:

I am authorized to act on behalf of the employer/entity identified in Part B.3(a) (and Part B.3(b), if any) for the period set forth in Part B.4(a) and as to the matters set forth in Part B.4(b) herein unless this authority is terminated sooner. This authorization has been granted to me by (identity of official granting authorization):

Name and Title: Gregory F. Daniel, M.D.
Address: 5930 Newhouse Road East Amherst, NY 14228
Telephone: 715-580-7208 E-mail: jpica@rmmr.com

PART D. EXEMPTION STATUS OF EMPLOYER

An employer who compensates one or more regulated lobbyists is required to separately register as a lobbyist, UNLESS all expenditures requiring registration will be filed by one or more of the regulated lobbyists compensated by the employer. Please indicate status below (ONLY CHECK ONE)

- a) The employer claims the exemption from filing its own registration and activity reports because all expenditures requiring registration and reporting will be reported by this registrant.
- b) The employer does not claim an exemption from filing its own registration and activity report because the registrant will report only expenditures and compensation regard the filer's activity. If this option is selected, the employer must submit a separate registration for lobbying and the required reports.

I hereby make oath or affirm under the penalties of perjury that the contents of this registration are complete, true and correct to the best of my knowledge, information and belief and that I am authorized to engage in lobbying for the employer set forth above in Part B.3.

DOUGLAS E. GANSLER
ATTORNEY GENERAL

KATHERINE WINFREY
CHIEF DEPUTY ATTORNEY GENERAL

JOHN B. HOWARD, JR.
DEPUTY ATTORNEY GENERAL



J. Malley
HR 881
DAN FRIEDMAN
COUNSEL TO THE GENERAL ASSEMBLY

SANDRA BENSON BRANTLEY
JEREMY M. MCCOY
KATHRYN M. ROWE
ASSISTANT ATTORNEYS GENERAL

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 11, 2014

The Honorable Martin O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401

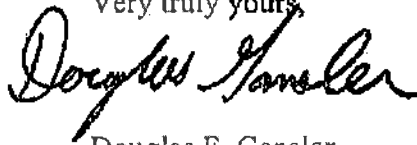
Dear Governor O'Malley:

We have reviewed the following bills and hereby approve them for
constitutionality and legal sufficiency:

HOUSE	SENATE
HB 113 ¹	SB 225 ¹
HB 313 ²	SB 266 ²
HB 341 ³	SB 479 ³
HB 641 ⁴	SB 503 ⁶
HB 695	SB 803 ⁴
<u>HB 881⁵</u>	SB 923 ⁵
HB 912	
HB 957	
HB 1366 ⁶	
HB 1399	

The Honorable Martin O'Malley
April 11, 2014
Page 2

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/DF/eb

cc: The Honorable John P. McDonough
Jeanne D. Hitchcock
Karl Aro

¹ HB 113 is identical to SB 225.

² HB 313 is identical to SB 266.

³ HB 341 is identical to SB 479.

⁴ HB 641 is identical to SB 803.

⁵ House Bill 881 and Senate Bill 923 are each entitled "Medical Marijuana – Natalie M. LaPrade Medical Marijuana Commission." There are two differences between the two bills. First, the title of House Bill 881 provides, at page 3, lines 13-17, that the bill is "prohibiting a medical marijuana grower agent from being employed by, and receiving any compensation or gifts from or having any financial interest in a certifying physician or a medical marijuana treatment center." The equivalent language has been removed from the title of Senate Bill 923. Page 3, lines 1-4. The language was deleted from the Senate Bill, and does not appear in the House Bill. Thus, the title difference is mere overbreadth and not a cause for concern. In addition, the list of persons who are not subject to arrest for activities related to medical marijuana includes at item (7), "a hospital or hospice program where a qualifying patient is receiving treatment," while House Bill 881 covers "a hospital or hospice program where a qualifying patient is receiving treatment or is a member of the medical staff." It is our view that it will be extremely rare and irrelevant that a qualifying patient will also be a member of the medical staff. Thus, we think that this is likely an error in the drafting and, as a result, we think the Senate Bill is to be preferred. Finally, both bills require the Commission to "actively seek to achieve racial, ethnic, and geographic diversity when licensing" medical marijuana growers and dispensaries. We advise that these provisions be implemented consistent with the provisions of the United States Constitution as described in *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) and *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (2013).

⁶ HB 1366 is identical to SB 503.

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delegates the matter to the Office of Administrative hearings, before an administrative law judge.

(2) The respondent may request an evidentiary hearing within 10 days after the Board issues the order of summary suspension.

(3) Unless otherwise agreed by the parties, a hearing shall be provided within 45 days after the respondent's request.

(4) An evidentiary hearing may be consolidated with a hearing on charges issued by the Board that include the facts that form the basis for the summary suspension.

(5) An evidentiary hearing shall be conducted under the contested case provisions of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(6) If the Board delegates the matter to the Office of Administrative Hearings, the administrative law judge shall issue a recommended decision to the Board with:

(a) Proposed or final findings of fact;

(b) Proposed or final conclusions of law;

(c) A proposed disposition; or

(d) Any combination of §G(6)(a), (b), or (c) of this regulation, pursuant to the Board's delegation of the matter to the Office of Administrative Hearings.

(7) If the hearing is one combined with charges, the administrative law judge's determination of the merits of the summary suspension shall be based only on the parts of the record available to the Board when the Board voted for summary suspension.

(8) The parties may file exemptions to the recommended decision, as provided in State Government Article, §10-316, Annotated Code of Maryland.

(9) An order issued by the Board after a post-deprivation evidentiary hearing is a final order of the Board and is a public record under State Government Article, §10-611, Annotated Code of Maryland.

VANT MITCHELL
Secretary of Health and Mental Hygiene

**Subtitle 62 NATALIE M. LAPRADE
MEDICAL CANNABIS COMMISSION**

Notice of Proposed Action
[15-156-P]

The Secretary of Health and Mental Hygiene proposes to:

- (1) Adopt new Regulation .01 under a new chapter, COMAR 10.62.01 Definitions;
- (2) Adopt new Regulations .01—.04 under a new chapter, COMAR 10.62.02 General Regulations;
- (3) Adopt new Regulations .01—.03 under a new chapter, COMAR 10.62.03 Certifying Physicians;
- (4) Adopt new Regulations .01—.06 under a new chapter, COMAR 10.62.04 Patient and Caregiver Registry;
- (5) Adopt new Regulations .01 and .02 under a new chapter, COMAR 10.62.05 Written Certifications;
- (6) Adopt new Regulations .01—.07 under a new chapter, COMAR 10.62.06 Patient and Caregiver Identification Cards;
- (7) Adopt new Regulations .01—.06 under a new chapter, COMAR 10.62.07 New Condition Approval Process;
- (8) Adopt new Regulations .01—.11 under a new chapter, COMAR 10.62.08 Medical Cannabis Grower License;
- (9) Adopt new Regulations .01—.09 under a new chapter, COMAR 10.62.09 Medical Cannabis Grower Agent;
- (10) Adopt new Regulations .01—.08 under a new chapter, COMAR 10.62.10 Medical Cannabis Grower Premises;

- (11) Adopt new Regulations .01—.04 under a new chapter, COMAR 10.62.11 Medical Cannabis Growing Controls;
- (12) Adopt new Regulations .01—.08 under a new chapter, COMAR 10.62.12 Inventory Control by Grower;
- (13) Adopt new Regulations .01 and .02 under a new chapter, COMAR 10.62.13 Medical Cannabis Shipment Packaging;
- (14) Adopt new Regulations .01 and .02 under a new chapter, COMAR 10.62.14 Licensed Grower Dispensary Facility;
- (15) Adopt new Regulations .01—.08 under a new chapter, COMAR 10.62.15 Medical Cannabis Grower Quality Control;
- (16) Adopt new Regulations .01—.05 under a new chapter, COMAR 10.62.16 Independent Testing Laboratory Registration;
- (17) Adopt new Regulations .01—.04 under a new chapter, COMAR 10.62.17 Complaints, Adverse Events, and Recall;
- (18) Adopt new Regulations .01—.06 under a new chapter, COMAR 10.62.18 Shipment of Products Between Licensees;
- (19) Adopt new Regulations .01—.09 under a new chapter, COMAR 10.62.19 Medical Cannabis Processor License;
- (20) Adopt new Regulations .01—.09 under a new chapter, COMAR 10.62.20 Medical Cannabis Processor Agent;
- (21) Adopt new Regulations .01—.07 under a new chapter, COMAR 10.62.21 Medical Cannabis Processor Premises;
- (22) Adopt new Regulations .01—.06 under a new chapter, COMAR 10.62.22 Medical Cannabis Processor Operations;
- (23) Adopt new Regulations .01—.07 under a new chapter, COMAR 10.62.23 Medical Cannabis Concentrates and Medical Cannabis-Infused Products;
- (24) Adopt new Regulation .01 under a new chapter, COMAR 10.62.24 Medical Cannabis Finished Products Packaging;
- (25) Adopt new Regulations .01—.10 under a new chapter, COMAR 10.62.25 Medical Cannabis Dispensary License;
- (26) Adopt new Regulations .01—.09 under a new chapter, COMAR 10.62.26 Registered Dispensary Agent;
- (27) Adopt new Regulations .01—.09 under a new chapter, COMAR 10.62.27 Licensed Dispensary Premises;
- (28) Adopt new Regulations .01—.05 under a new chapter, COMAR 10.62.28 Licensed Dispensary Operations;
- (29) Adopt new Regulations .01 and .02 under a new chapter, COMAR 10.62.29 Licensed Dispensary Packaging and Labeling for Distribution;
- (30) Adopt new Regulations .01—.09 under a new chapter, COMAR 10.62.30 Dispensing Medical Cannabis;
- (31) Adopt new Regulation .01 under a new chapter, COMAR 10.62.31 Licensed Dispensary Clinical Director;
- (32) Adopt new Regulations .01—.03 under a new chapter, COMAR 10.62.32 Records;
- (33) Adopt new Regulations .01—.08 under a new chapter, COMAR 10.62.33 Inspection;
- (34) Adopt new Regulations .01—.04 under a new chapter, COMAR 10.62.34 Discipline and Enforcement; and
- (35) Adopt new Regulation .01 under a new chapter, COMAR 10.62.35 Fee Schedule.

At this time, the Secretary of Health and Mental Hygiene withdrawing:

- (1) New Regulations .01 and .02 under a new chapter, COMAR 10.62.01 Definitions;
- (2) New Regulations .01—.03 under a new chapter, COMAR 10.62.02 General Regulations;
- (3) New Regulations .01—.07 under a new chapter, COMAR 10.62.03 Certifying Physicians;
- (4) New Regulations .01—.06 under a new chapter, COMAR 10.62.04 New Condition Approval Process;

- (5) New Regulations .01 — .04 under a new chapter, COMAR 0.62.05 Patient and Caregiver Registry and Identification Cards;
- (6) New Regulations .01 —.10 under a new chapter, COMAR 0.62.06 Medical Marijuana Grower License;
- (7) New Regulations .01 —.09 under a new chapter, COMAR 0.62.07 Medical Marijuana Grower Agents;
- (8) New Regulations .01 —.08 under a new chapter, COMAR 0.62.08 Medical Marijuana Grower Premises;
- (9) New Regulations .01 —.05 under a new chapter, COMAR 0.62.09 Medical Marijuana Growing Controls;
- (10) New Regulations .01 —.08 under a new chapter, COMAR 0.62.10 Quality Control by a Licensed Medical Marijuana Grower;
- (11) New Regulations .01 —.05 under a new chapter, COMAR 0.62.11 Complaints, Adverse Events, and Recall;
- (12) New Regulations .01 —.08 under a new chapter, COMAR 0.62.12 Inventory Control by Grower;
- (13) New Regulations .01 —.03 under a new chapter, COMAR 0.62.13 Dispensing of Medical Marijuana by a Licensed Grower;
- (14) New Regulations .01 —.08 under a new chapter, COMAR 0.62.14 Shipment of Products Containing Marijuana Between licensees;
- (15) New Regulations .01 —.11 under a new chapter, COMAR 0.62.15 Licensed Dispensary and Licensed Processing Dispensary;
- (16) New Regulations .01 —.08 under a new chapter, COMAR 0.62.16 Medical Marijuana Concentrates and Medical Marijuana-Infused Products;
- (17) New Regulation .01 under a new chapter, COMAR 0.62.17 Licensed Dispensary Clinical Director;
- (18) New Regulations .01 —.08 under a new chapter, COMAR 0.62.18 Registered Dispensary Agents;
- (19) New Regulations .01 —.09 under a new chapter, COMAR 0.62.19 Licensed Dispensary and Licensed Processing Dispensary Premises;
- (20) New Regulations .01 —.05 under a new chapter, COMAR 0.62.20 Licensed Dispensary and Licensed Processing Dispensary Operations;
- (21) New Regulations .01 and .02 under a new chapter, COMAR 0.62.21 Licensed Dispensary Packaging and Labeling and Distribution;
- (22) New Regulations .01 —.08 under a new chapter, COMAR 0.62.22 Dispensing Medical Marijuana;
- (23) New Regulations .01 —.03 under a new chapter, COMAR 0.62.23 Records;
- (24) New Regulations .01 —.08 under a new chapter, COMAR 0.62.24 Inspection;
- (25) New Regulations .01 —.03 under a new chapter, COMAR 0.62.25 Discipline and Enforcement;
- (26) New Regulations .01 —.13 under a new chapter, COMAR 0.62.26 Academic Medical Center Program Application Contents;
- (27) New Regulations .01 —.06 under a new chapter, COMAR 0.62.27 Academic Medical Center Program Application Procedure; and
- (28) New Regulation .01 under a new chapter, COMAR 0.62.28 Fee Schedule, as proposed in the 42:2 Md.R.214-244 (January 23, 2015).

This action was considered at a public meeting on April 22, 2015, notice of which was given by publication on the Commission's website at <http://mmc.maryland.gov/> pursuant to State Government Code, §10-506(c)(1), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to:

- (1) Define certain terms;
- (2) Establish standards for individuals to register as a qualifying patient to obtain medical cannabis;
- (3) Establish requirements for licensed physicians in the State to be registered to recommend medical cannabis;
- (4) Establish requirements for grower operations, dispensaries, and processors to be licensed by the Commission;
- (5) Establish requirements for grower agents, dispensary agents, and processor agents to be registered with the Commission;
- (6) Establish requirements for individuals to become caregivers to qualifying patients;
- (7) Establish application processes for applicants to be certifying physicians, qualifying patients or caregivers, licensed growers, licensed dispensaries, licensed processors, registered grower agents, registered, processor agents, or registered dispensary agents;
- (8) Establish structural, security, procedural, and staffing requirements for the premises of licensed dispensaries, licensed growers, and licensed processors;
- (9) Establish growing controls and quality controls for licensed growers;
- (10) Provide that a licensed grower dispensary, where medical cannabis shall be dispensed, shall be constructed and operated in accordance with regulations that apply to licensed dispensary premises;
- (11) Establish a process for approving qualifying patients who suffer from new conditions not specified in the statute;
- (12) Establish a procedure for transporting medical marijuana products between licensees;
- (13) Establish inventory control standards for licensed growers;
- (14) Authorize the Commission to inspect licensed growers, licensed dispensaries, licensed processors, and registered independent testing laboratories;
- (15) Establish controls for processing and labeling medical cannabis concentrates and medical cannabis-infused products;
- (16) Require that an independent testing laboratory shall register with the Commission and meet certain standards of care;
- (17) Set standards for licensed dispensary packaging and labeling;
- (18) Authorize the Commission to take certain disciplinary actions against certain licensees for certain offenses;
- (19) Establish a procedure to receive, organize, store, and respond to all complaints regarding medical cannabis and adverse events;
- (20) Authorize a licensed dispensary to have a clinical director on staff who is a licensed physician, nurse practitioner, or pharmacist;
- (21) Establish certain renewal procedures for certifying physicians, qualifying patients, licensed growers, licensed dispensaries, licensed processors, independent testing laboratories; and
- (22) Establish certain fees to fund the operations of the Commission.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. Because these regulations are implementing a new program and bringing a new industry to the State, the Commission cannot estimate the economic impact to the State, except to say that demand for certain services will increase, such as construction, security, architectural, legal, laboratory testing, and secure transport. The new industry will also increase jobs in the areas in which medical marijuana facilities choose to locate.

PROPOSED ACTION ON REGULATIONS

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II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E-)	\$2,500,000— \$3,000,000
B. On other State agencies:	(E-)	Indeterminate
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	Indeterminate
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Indeterminate

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. The Commission estimates that \$2,000,000—\$3,000,000 is needed to fund the operations of the Commission. The Commission based these figures on a number of items including indirect costs, salaries, IT costs, rent for office space, office supplies, shared services employees, telephone, postage, mileage reimbursement for Commissioners, investigators, and inspectors, the cost of inspections and investigations, laboratory costs for testing, consultants for vetting applications, costs for an Assistant Attorney General, Office of Administrative Hearings, travel and hotel stays for investigators and inspectors, printing costs, office equipment and maintenance, software maintenance, and training programs.

B. The Commission cannot estimate the costs to any other agencies at this time.

D. The Commission cannot estimate the cost to regulated industries because this a new program and industry in the State.

F. The Commission cannot estimate the impact to the public because it cannot predict the number of qualifying patients or caregivers who will apply for medical marijuana or the impact of the program generally on the public.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

As this will be a new and growing industry in the State, it is expected that there to be a positive impact for small businesses through the creation of jobs in the industry. As the program starts, there will be a cost to small businesses for licensing, security, construction, and other startup costs. The Commission cannot estimate the exact impact at this time.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and

Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dlhnh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through July 27, 2015. A public hearing has not been scheduled.

10.62.01 Definitions

Authority: Health General Article, §§13-3301—13-3303, Annotated Code of Maryland

.01 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Association" means employment or volunteer status at a licensed grower, licensed processor, or licensed dispensary.

(2) Batch.

(a) "Batch" means all of the plants of the same variety of medical cannabis that have been:

(i) Grown, harvested, and processed together; and

(ii) Exposed to substantially similar conditions throughout cultivation and processing.

(b) "Batch" includes all of the processed materials produced from those plants.

(3) "Hona fide physician-patient relationship" means a treatment or counseling relationship between a physician and a patient in which the physician has:

(a) Reviewed the patient's relevant medical records and completed an in person assessment of the patient's medical history and current medical condition;

(b) Created and maintained records of the patient's condition in accord with medically accepted standards; and

(c) A reasonable expectation that the physician will monitor the progress of the patient while using medical cannabis and take any medically indicated action:

(i) To provide follow-up care to the patient;

(ii) Regarding the efficacy of the use of medical cannabis as a treatment of the patient's severe or debilitating medical condition; and

(iii) Regarding any adverse event associated with the use of medical cannabis.

(4) Caregiver.

(a) "Caregiver" means an individual 21 years old or older designated by a patient who has agreed to assist with a qualifying patient's medical use of medical cannabis.

(b) "Caregiver" means, for a qualifying patient younger than 18 years old, a parent, or legal guardian.

(5) "Central Repository" means the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services.

(6) "Certifying physician" means a physician, as defined in Health Occupations Article, §14-101(i), Annotated Code of Maryland, who is registered by the Commission.

(7) "Commission" means the Natalie M. LaPrade Medical Cannabis Commission.

(8) "Criminal history record information" has the meaning provided by Criminal Procedure Article, §10-201(d)(3), Annotated Code of Maryland.

(9) "Dispensary agent" means an owner, a member, an employee, a volunteer, an officer or a director of a licensed dispensary.

(10) "Fund" means the Natalie M. LaPrade Medical Cannabis Commission Fund.

(11) "Independent testing laboratory" means a facility, entity, or site that offers or performs tests of medical cannabis and products containing medical cannabis:

(a) Accredited as operating to ISO standard 17025 by an accreditation body:

(i) Operating in accordance with the International Organization for Standardization (ISO) standard ISO/IEC 17011; and

(ii) That is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA); and

(iii) That is independent from all other persons involved in the Maryland cannabis industry; and

(b) Registered with the Commission.

(12) "Law enforcement agency" means a governmental police force, sheriff's office, security force, or law enforcement organization of the State, a county, or a municipal corporation that by statute, ordinance, or common law is authorized to enforce the general criminal laws of the State.

(13) "Licensed dispensary" means an entity licensed by the Commission that acquires, possesses, repackages, processes, transfers, transports, sells, distributes, or dispenses, products containing medical cannabis, related supplies, related products including tinctures, aerosols, oils, or ointments, or educational materials for use by a qualifying patient or caregiver.

(14) "Licensed grower" means an entity that cultivates, manufactures, packages or distributes medical cannabis to licensed processors, licensed dispensaries or registered independent testing laboratories.

(15) "Licensed premises" means the locations at which a licensed grower, licensed processor, or licensed dispensary operates.

(16) "Licensed processor" means an entity licensed by the Commission that:

(a) Transforms the medical cannabis into another product or extract; and

(b) Packages and labels medical cannabis.

(17) "Lot" means all of a medical cannabis finished product that is uniform, that is intended to meet specifications, and that is manufactured, packaged, or labeled together during a specified time period according to a single lot record.

(18) "Medical cannabis" means any product containing usable cannabis or medical cannabis finished product.

(19) "Medical cannabis concentrate" means a product derived from medical cannabis that is kief, hashish, bubble hash, oil, wax, or other product, produced by extracting cannabinoids from the plant through the use of:

(a) Solvents;

(b) Carbon dioxide; or

(c) Heat, screens, presses or steam distillation.

(20) "Medical cannabis finished product" means any product containing a medical cannabis concentrate or a medical cannabis-infused product packaged and labeled for release to a qualifying patient.

(21) Medical Cannabis-Infused Product.

(a) "Medical cannabis-infused product" means oil, wax, ointment, salve, tincture, capsule, suppository, dermal patch, cartridge or other product containing medical cannabis concentrate or usable cannabis that has been processed so that the dried leaves and flowers are integrated into other material.

(b) "Medical cannabis-infused product" does not include a food as that term is defined in Health-General Article, §21-101, Annotated Code of Maryland.

(22) "Medical cannabis grower agent" means an owner, an employee, a volunteer, an officer, or a director of a licensed grower.

(23) "Medical cannabis transport vehicle" means a vehicle owned, or leased by a licensee, for the purpose of transporting products containing cannabis that meets the criteria specified in Regulation .06 of this chapter.

(24) "Processing" means the manufacture of usable medical cannabis into a medical cannabis concentrate, or manufacture of a medical cannabis-infused product.

(25) "Qualifying patient" means an individual who:

(a) Lives in the State or, during that time an individual is present in the State, is physically present in the State for the purpose of receiving medical care from a medical facility in the State;

(b) Has been provided with a written certification by a certifying physician in accordance with a bona fide physician-patient relationship; and

(c) If younger than 18 years old, has a caregiver.

(26) "Registered dispensary agent" means a dispensary agent who is registered by the Commission in accordance with COMAR 10.62.26.

(27) "Registered grower agent" means a medical cannabis grower agent who is registered by the Commission in accordance with COMAR 10.62.09.

(28) "Registered processor agent" means a medical cannabis processor agent who is registered by the Commission in accordance with COMAR 10.62.20.

(29) "Serious adverse event" means an undesirable experience associated with the use of medical cannabis where the outcome was death, life-threatening, hospitalization, disability or permanent damage, congenital anomaly/birth defect; required intervention to prevent permanent impairment or damage, or any other important medical event.

(30) "Shipment identification number" means a unique identification number created by the shipping licensee to track a shipment of products containing cannabis.

(31) "Transportation agent" means:

(a) A registered grower agent, registered processor agent or a registered dispensary agent, authorized by the licensee to transport products containing medical cannabis, who meets the criteria specified in COMAR 10.62.18; or

(b) A licensed and bonded courier of a secure transportation company.

(32) "Variety" means the name of a cultivar or varietal of medical cannabis used by a licensed grower to consistently identify and control medical cannabis from batch to batch.

(33) Usable Cannabis.

(a) "Usable cannabis" means the dried leaves and flowers of the cannabis plant.

(b) "Usable cannabis" does not include seedlings, seeds, stems, stalks or roots of the plant or the weight of any non-cannabis ingredients combined with cannabis, such as ingredients added to prepare a topical administration.

(34) "Written certification" means a certification that is issued by a certifying physician for a qualifying patient with whom the physician has a bona fide physician-patient relationship.

(35) "30-day supply" means:

(a) 120 grams of usable cannabis unless the physician determines this amount would be inadequate to meet the medical needs of the qualifying patient; or

(b) In the case of a medical cannabis-infused product, 36 grams of Δ^9 -Tetrahydrocannabinol (THC) unless the physician determines this amount would be inadequate to meet the medical needs of the qualifying patient.

10.62.02 General Regulations

Authority: Health General Article, §§13-3301—13-3316, Annotated Code of Maryland

.01 Scope.

This subtitle governs operations of the Natalie M. LaPrade Medical Cannabis Commission.

.02 Donations.

A. The Commission may accept private donations to the Fund subject to the conditions established by the Commission.

B. Donations to the Fund may not be accepted from an individual or entity that:

- (1) Is licensed or approved by the Commission;
- (2) Is seeking licensure or approval by the Commission;
- (3) Has sought licensure or approval within the past 2 years, or
- (4) Is affiliated with an individual or entity described in §B(1)-(3) of this regulation.

C. An individual or entity that has made a donation to the Fund may not apply for licensure or approval by the Commission for a period of 2 years from the date of donation.

.03 HIPAA Compliance.

All Commission activities shall be conducted in compliance with HIPAA regulations.

.04 Encouragement of Applications.

A. The Commission shall broadly publicize that the Commission will be seeking:

- (1) The submission of applications for licenses to grow, process, and dispense medical cannabis; and
- (2) The submission of applications to register patients, physicians, and independent testing laboratories from all interested persons throughout the State.

B. The Commission shall encourage applications from applicants who qualify as minority business enterprises, as defined in State Finance and Procurement Article, §14-301, Annotated Code of Maryland.

C. The Commission shall work with a wide variety of public and private agencies, organizations and groups to publicize the application and registration processes and encourage all interested persons to contact the Commission for additional information or assistance.

10.62.03 Certifying Physicians

Authority: Health General Article, §§ 13-3301, 13-3302, and 13-3307, Annotated Code of Maryland

.01 Physician Application for Registration.

A. A physician seeking registration as a certifying physician shall submit an application provided by the Commission that includes:

- (1) The physician's:
 - (a) Full name;
 - (b) Social Security Number;
 - (c) Office addresses and phone numbers;
 - (d) Current email address;
 - (e) Maryland Board of Physicians license number; and
 - (f) Plan to assess patient outcomes, provide follow-up care, and to collect and analyze data;
- (2) An attestation that the:
 - (a) Physician's Maryland license to practice medicine is active, unrestricted, and in good standing;
 - (b) Physician is registered to prescribe controlled substances by the State; and

(c) A standard patient evaluation will be completed and include:

- (i) A history;
- (ii) A physical examination;
- (iii) A review of symptoms; and
- (iv) Any other pertinent medical information;
- (3) The medical conditions for which the physician may issue written certifications for medical cannabis;
- (4) The physician's other inclusion criteria; and
- (5) The reasons the physician may deny issuing a written certification of medical cannabis.

B. The Commission encourages physicians to apply to register as a certifying physician to treat patients who:

- (1) Have a chronic or debilitating disease or medical condition that results in the patient being admitted into hospice or receiving palliative care;
- (2) Have a chronic or debilitating disease or medical condition or are receiving treatment for a chronic or debilitating disease or medical condition that causes:

- (a) Cachexia;
- (b) Anorexia;
- (c) Wasting syndrome;
- (d) Severe or chronic pain;
- (e) Severe nausea;
- (f) Seizures; or
- (g) Severe or persistent muscle spasms;

(3) Have the following diseases and conditions:

- (a) Glaucoma; or
- (b) Post-traumatic stress disorder (PTSD).

C. A physician may be registered as a certifying physician to treat a patient who has a condition that is:

- (1) Severe;
- (2) For which other medical treatments have been ineffective; and
- (3) If the symptoms reasonably can be expected to be relieved by the medical use of cannabis.

D. A certifying physician may apply to amend the approval at any time.

E. The application shall be deemed approved unless the Commission notifies the applicant that the application has been denied.

.02 Compensation from a Licensed Grower, Licensed Processor or Licensed Dispensary.

A. A certifying physician may not receive compensation, including promotion, recommendation, advertising, subsidized rent, or anything of value, from a licensed grower, licensed processor, or a licensed dispensary unless the certifying physician submits an application to the Commission for approval for the compensation.

B. The application shall disclose:

- (1) The specific type of compensation and specific amount or value of compensation and the services for which the compensation will be paid; and
- (2) An attestation that the compensation does not violate the:

(a) Maryland Medical Practice Act, codified at Health Occupations Article, §14-101 et. seq., Annotated Code of Maryland; or

(b) Patient referral laws codified at Health Occupations Article, §1-301 et. seq., Annotated Code of Maryland.

C. The Commission shall deny an application for compensation if:

- (1) The compensation is based on any agreement or arrangement for the certifying physician to refer, direct, or recommend qualifying patients to the licensed grower, licensed processor, or licensed dispensary to obtain medical cannabis;

.06 Renewal of Identification Card.

A. A qualifying patient shall renew their identification card before it expires.

B. A caregiver shall renew their identification card before it expires.

.07 Misuse of Identification Card.

A. If an individual attempts to use a qualifying patient or caregiver identification card to whom it has not been issued, any registered dispensary agent to whom it is offered shall confiscate it and initiate the return of the card to the Commission within 5 business days.

B. If a person presents to a law enforcement officer an identification card of a qualifying patient or caregiver to whom it has not been issued, the law enforcement officer shall confiscate the identification card and initiate the return of the card to the Commission as soon as possible.

C. The Commission may notify the certifying physician and revoke the identification card of a qualifying patient or caregiver who allows another person to use an identification card which has been issued to the qualifying patient or caregiver.

10.62.07 New Condition Approval Process

Authority: Health General Article, §§13-3304(d) and (e), Annotated Code of Maryland

.01 Requirement of a Petition.

A person who wishes to suggest a medical condition, medical treatment, or disease for Commission consideration shall submit a petition to the Commission in a format determined by the Commission.

.02 Hearing.

At least once per year if needed, the Commission shall conduct a public hearing to evaluate any petition to consider other medical conditions, medical treatments, or diseases that may be treated by using medical cannabis and included in certifying physician applications.

.03 Petition Contents.

The Commission shall consider a petition that may include:

A. The severity of a condition or the treatments thereof;

B. The degree to which other medical treatments have been ineffective to alleviate pain, suffering, disability or the symptoms of the condition or the treatment thereof;

C. Evidence that supports a finding that the use of medical cannabis alleviates pain, suffering, disability or symptoms of the condition or the treatment thereof;

D. Any information or studies regarding any beneficial or adverse effects from the use of medical cannabis in patients with the medical condition, medical treatment, or disease that is the subject of the petition; and

E. Letters of support from physicians or other licensed health care professionals knowledgeable about the condition, treatment, or disease.

.04 Summary Denial.

The Commission may deny a petition, without submitting it for public comment if the petition:

A. Is facially unsubstantial; or

B. Pertains to a medical condition, medical treatment, or disease that has been previously considered and rejected by the Commission, unless scientific research not previously considered in a prior Commission review is included in the petition.

.05 Additional Evidence.

In addition to information provided in a petition, the Commission may:

A. Examine scientific, medical, or other evidence and research pertaining to the petition; and

B. Gather information in-person or in writing, from other persons knowledgeable about the medical conditions, medical treatments, or diseases being considered.

.06 Commission Determination.

A. Following the public hearing, the Commission shall consider the public comments and any additional information or expertise available to the Commission for each proposed severe medical condition, medical treatment or disease considered at the hearing.

B. The Commission may conclude that physicians will be encouraged to apply to register with the Commission to treat the medical condition, medical treatment, or disease upon a determination that:

(1) The medical condition, medical treatment, or disease is debilitating;

(2) The pain, suffering and disability of the medical condition, disease or medical treatment thereof can reasonably be expected to be relieved by medical cannabis; and

(3) Other medical treatments have been ineffective in providing relief.

10.62.08 Medical Cannabis Grower License

Authority: Health General Article, §§13-3301, 13-3302, 13-3306, and 13-3312, Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meaning indicated.

B. Terms Defined.

(1) "Audited financial statement" means an audited financial statement that is:

(a) Performed by a certified public accountant licensed or with practice privileges in Maryland pursuant to Business Occupations and Professions Article, Title 2, Annotated Code of Maryland;

(b) Prepared in accordance with the Professional Standards of the American Institute of Certified Public Accountants; and

(c) In the case of a publicly owned corporation, in conformity with the standards of the Public Company Oversight Board.

(2) "License" means a license issued by the Commission to operate as a grower.

(3) "Licensee" means a licensed grower.

.02 Application for a Medical Cannabis Grower License.

A. An applicant shall submit an application for a license.

B. An application shall be:

(1) Completed on a form developed by the Commission; and

(2) Submitted to the Commission for consideration.

C. In addition to the application form, the applicant shall submit the following documents to be included as addenda to the application form:

(1) A list identifying the applicant's potential medical cannabis grower agents;

(2) A list identifying each individual investor with 5 percent or more of investment known at the time of application;

(3) A detailed business plan including an organizational chart;

(4) Documentation and source of adequate capitalization;

(5) If the applicant is a corporation or business entity, a copy of the articles of incorporation and authorization to do business in Maryland;

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(6) A record of tax payments in all jurisdictions in which an applicant has operated as a business for the 5 years before the filing of the application;

(7) A description of the proposed premises, including a preliminary site plan;

(8) A security plan;

(9) Details of the applicant's experience, knowledge, and training in commercial horticultural or agronomic production;

(10) The medical cannabis varieties proposed to be grown with proposed cannabinoid profiles;

(11) A plan for quality control;

(12) A plan for inventorying, safekeeping and tracking:

(a) Medical cannabis from "seed to sale," and

(b) Waste plant material prior to destruction; and

(13) A disposal plan for medical cannabis waste.

D. A grower planning to operate as a dispensary of medical cannabis shall submit a dispensary application.

E. The application shall be accompanied by the stage 1 application fee specified in COMAR 10.62.35.

F. A party applying for a license shall have an interest in only one grower license application.

G. An applicant shall amend an application within 3 business days to include the name and documentation of a request to forward the criminal history record information to the Commission of:

(1) A new individual investor of an interest of 5 percent or more; or

(2) Another manager or director of the entity, even after a license is issued.

.03 Criminal History Record Check.

For each individual identified in the application specified in Regulation .02B(1) of this chapter, an applicant shall provide to the Director of the Central Repository:

A. Two sets of legible fingerprints taken in a format approved by the Director of CJIS and the Director of the FBI and the fee authorized under Criminal Procedure Article, §10-221(B)(7), Annotated Code of Maryland for access to State criminal history and records for each medical cannabis grower agent and investor identified in the application; and

B. A request that the individual's state and national criminal history record information be forwarded to the Commission.

.04 Consent for Investigation.

A. An individual who is required to provide personal and background information under this chapter shall provide a statement that irrevocably gives consent to the Commission and persons authorized by the Commission to:

(1) Verify all information provided in the application documents; and

(2) Conduct a background investigation of the individual.

B. An applicant shall waive any contractual, statutory, or common law obligation of confidentiality and authorize any government agency in any jurisdiction to release to and provide access to the Commission of any and all information the applicant has provided to any other jurisdiction while seeking a cannabis-related license in that other jurisdiction, as well as the information obtained by that other jurisdiction during the course of any investigation it may have conducted regarding the applicant.

C. An applicant shall release all financial institutions, fiduciaries, and other parties from any contractual, statutory or common law obligation of confidentiality to provide financial, personal and background information to the Commission relevant to the applicant's capacity to manage a licensed growing facility and the applicant's good moral character.

.05 Application Review.

A. The burden of proving an applicant's qualifications rests on the applicant.

B. The Commission may deny an application that contains a misstatement, omission, misrepresentation, or untruth.

C. An application shall be complete in every material detail.

D. The Commission may request any additional information the Commission determines is necessary to process and fully investigate an application.

E. The applicant shall provide requested additional information by the close of business of the 14th business day after the request has been received by the applicant.

F. If the applicant does not provide the requested information within 14 business days, the Commission may consider the application to be suspended.

G. The Commission intends to award the licenses to the best applications that most efficiently and effectively ensure public safety and safe access to medical cannabis.

H. The Commission shall provide guidelines and detailed instructions for submitting the application form for the Commission's consideration.

I. The Commission, or a Commission independent contractor, shall review for a pre-approval for a license the submitted applications as described in Regulations .02B and .05E of this chapter. The applications shall be ranked based on the following weighted criteria:

(1) Operational factors will be afforded 20 percent weight, including:

(a) A detailed operational plan for the cultivation of medical cannabis; and

(b) Summaries of policies and procedures for:

(i) Cultivation;

(ii) Growth;

(iii) Processing; and

(iv) Packaging;

(2) Safety and Security factors will be afforded 20 percent weight, including:

(a) Detailed plan or information describing the security features and procedures;

(b) Detailed plan describing how the grower will prevent diversion; and

(c) Detailed plan describing safety procedures;

(3) Commercial horticultural or agricultural factors will be afforded 15 percent weight, including, experience, knowledge and training in:

(a) Horticultural production; or

(b) Agricultural production;

(4) Production control factors will be afforded 15 percent weight, including:

(a) A detailed quality control plan;

(b) A detailed inventory control plan; and

(c) A detailed medical cannabis waste disposal plan;

(5) Business and economic factors will be afforded 15 percent weight, including:

(a) A business plan demonstrating a likelihood of success, a sufficient business ability and experience on the part of the applicant, and providing for appropriate employee working conditions, benefits and training;

(b) Demonstration of adequate capitalization;

(c) A detailed plan evidencing how the grower will enforce the alcohol and drug free workplace policy

(6) Additional factors that will be afforded 15 percent weight, including:

(a) Demonstrated Maryland residency among the owners and investors;

(b) Evidence that applicant is not in arrears regarding any tax obligation in Maryland and other jurisdictions;

(c) A detailed plan evidencing how the grower will distribute to dispensaries and processors; and,

(d) A list of proposed medical cannabis varieties proposed to be grown with proposed cannabinoid profiles, including:

- (i) Varieties with high cannabidiol content; and
- (ii) Whether the strain has any demonstrated success in alleviating symptoms of specific diseases or conditions.

J. For scoring purposes, the Commission may take into account the geographic location of the growing operation to ensure there is geographic diversity in the award of licenses.

.06 Pre-Approval of Application.

A. Limitation on Number of Licenses.

(1) The Commission may issue pre-approval of up to 15 licenses:

- (a) Until May 31, 2018, in accordance with Health General Article, §13-3306(a)(2), Annotated Code of Maryland; and
- (b) In consideration of the ranking of the applications in accordance with Regulation .05 of this chapter.

(2) Beginning June 1, 2018, the Commission may issue the number of pre-approvals of a license necessary to meet the demand for medical cannabis by qualifying patients in an affordable, accessible, secure and efficient manner.

B. If there are more qualified applications than the number of licenses available and there is a numerical tie for the last license to be issued, the license shall be determined by public lottery.

C. The Commission may deny issuing a pre-approval of a license if, for any individual identified in the application, specified in Regulation .02B(1) of this chapter:

- (1) The criminal history record information or any other evidence that demonstrates an absence of good moral character; or
- (2) The payment of taxes due in any jurisdiction is in arrears.

D. Within 10 business days of the Commission's decision, the Commission shall notify an applicant who has been pre-approved for a license.

E. The Commission may rescind pre-approval of a grower license if the grower is not operational within 1 year of pre-approval.

.07 Issuance of License.

A. After an applicant has been issued a pre-approval for a license under this chapter the applicant shall submit to the Commission, as part of its application:

- (1) An audited financial statement for the applicant and any proposed grower agents; and
- (2) Payment of the stage 2 application fee specified in COMAR 10.62.35

B. The Commission may issue a license either to grow medical cannabis or to grow medical cannabis and distribute it to qualifying patients and caregivers on a determination that:

- (1) All inspections are passed and all of the applicant's operations conform to the specifications of the application as pre-approved pursuant to Regulation .06 of this chapter;
- (2) The proposed premises:
 - (a) Are under the legal control of the applicant;
 - (b) Comply with all zoning and planning requirements; and
 - (c) Conform to the specifications of the application as pre-approved pursuant to Regulation .06 of this chapter; and
- (3) The first year's license fee specified in COMAR 10.62.35 has been paid.

.08 Change of Ownership of License.

A. No interest of 5 percent or more of a license issued pursuant to this chapter shall be assignable or transferable unless:

- (1) The Commission has received notice of the intent of the owner of the interest, or of the estate of the owner of the interest, to transfer or assign an interest in a license to another party;

(2) The transferee has had forwarded the criminal history record information and audited financial statement to the Commission of the transferee;

(3) The Commission does not object to the transfer or assignment within 45 days of its receipt of notice; and

(4) The transferee has paid the required fee specified in COMAR 10.62.35.

B. The Commission may deny transfer of an interest in a license for any proposed transferee if the:

- (1) Criminal history record information or the background investigation demonstrate an absence of good moral character; or
- (2) Payment of taxes due in any jurisdiction is in arrears.

.09 Change of Location.

A. A licensee may apply to change the location of the licensee's operation.

B. The licensee shall submit an application to the Commission along with the fee specified in COMAR 10.62.35.

C. A licensee may not begin cultivation or dispensing of medical cannabis at a new location until all inspections have been passed.

.10 Renewal of License.

A. A licensee is eligible to apply to renew a license every 2 years.

B. Ninety days before the expiration of a license, the Commission shall notify the licensee of the:

- (1) Date on which the license expires;
- (2) Process and the fee required to renew the license; and
- (3) Consequences of a failure to renew the license.

C. At least 30 business days before a license expires a licensee shall submit:

- (1) The renewal application as provided by the Commission;
- (2) Proof that fingerprints have been submitted to CJIS and the FBI for every grower agent and investor of an interest of 5 percent or more;

(3) To full inspection of the operation, unless a full inspection was satisfactorily completed within 3 months before the date of the license expiration; and

(4) Payment of the fee specified in COMAR 10.62.35.

D. The Commission shall renew a license that meets the requirements for renewal as stated in §C of this regulation.

E. If the Commission does not renew a license due to a failed inspection or an inadequate application for renewal, the licensee may apply for reinstatement by:

- (1) Submitting a plan to correct the deficiencies noted during an inspection; and
- (2) Amending the application for renewal.

F. The Commission may decline to renew a license if:

- (1) The plan to correct deficiencies identified in an inspection is deficient;
- (2) The amended application for renewal is deficient; or
- (3) The licensee has repeatedly failed inspections.

G. A licensee who fails to apply for renewal of a license by the date specified by the Commission, or whose license was not renewed by the Commission:

- (1) Shall cease operations at all premises; and
- (2) May not provide medical cannabis to any entity or person.

H. A license may be reinstated upon:

- (1) Payment of the reinstatement fee specified in COMAR 10.62.35; and
- (2) Submission of a reinstatement application approved by the Commission.

.11 Annual Report on Minority Owners and Employees.

On June 1 of each year, each licensee shall submit a report in a manner determined by the Commission regarding the licensee's minority owners and employees.

10.62.09 Medical Cannabis Grower Agent

Authority: Health General Article, §§13-3301, 13-3302, 13-3306, and 13-3312, Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meaning indicated.

B. Terms Defined.

(1) "License" means a license issued by the Commission to operate as a licensed grower.

(2) "Licensee" means a licensed grower.

.02 Grower Agent Generally.

A grower agent shall be 21 years old or older.

.03 Grower Agent Registration and Criminal History Record.

A. Each medical cannabis grower agent shall be registered with the Commission before the agent may volunteer or work for a licensed grower.

B. A licensed grower shall apply to register a grower agent by submitting to the Commission:

(1) The name, address, date of birth, and Social Security Number of a grower agent;

(2) Documentation of the submission of fingerprints of the grower agent to the Central Registry; and

(3) The request for the criminal history record information of the grower agent to be forwarded to the Commission.

C. A prospective grower agent may not be registered if the prospective grower agent has ever been convicted of a felony drug offense.

D. The Commission, after review of the criminal history record information, may disqualify any prospective grower agent from registration for an absence of good moral character.

.04 Registered Grower Agent Identification Cards.

A. The Commission shall issue to each registered grower agent a identification card which includes a photograph of the face of the registered grower agent taken no more than 6 months before the date of the application.

B. At all times every registered grower agent at a licensed premises shall visibly wear the identification card issued to the registered grower agent by the Commission.

C. The identification card shall be renewed every 2 years.

D. If a registered grower agent's identification card is lost, destroyed or stolen, within 24 hours of becoming aware of the loss, destruction or theft, the licensee shall:

(1) Report the loss, destruction or theft to the Commission;

(2) Apply for a replacement card; and

(3) Pay a replacement card fee specified in COMAR 10.62.35.

E. An identification card remains the property of the Commission and the Commission may order the return or seizure of an identification card if the registration is revoked or expires.

F. If a registered grower agent's identification card is lost, destroyed or stolen, a copy of notification to the Commission shall be evidence of registration until a new card is obtained from the Commission.

.05 Termination.

A. As soon as possible upon termination of a registered grower agent's association with a licensed grower, the licensed grower shall:

(1) Take custody of a terminated registered grower agent's identification card;

(2) Obtain any keys or other entry devices from a terminated registered grower agent; and

(3) Ensure a terminated registered grower agent can no longer gain access to the licensed premises.

B. Within 1 business day of a termination of a registered grower agent's association with a licensed grower, a licensed grower shall:

(1) Notify the Commission;

(a) Of a termination and the circumstances of a termination; and

(b) Whether a terminated registered grower agent has returned the agent's identification card; and

(2) Initiate delivery of a terminated registered grower agent's identification card to the Commission.

C. The Commission shall revoke a registration of a grower agent upon receiving notification that a grower agent is no longer associated with a licensed grower.

D. If a registered grower agent did not return the agent's identification card within 30 days of the termination, the Commission shall notify the Maryland State Police and place a notice in the register of that fact.

.06 Prospective Grower Agent Drug Screen.

A. The licensee shall require a prospective grower agent to submit to a drug screen before commencement of association.

B. The drug screen shall be carried out following the procedures set forth in COMAR 17.04.09.04--.08.

C. In addition to the drugs to be screened in accordance with COMAR 17.04.09.06, the screen shall include any other drugs as required by the Commission.

D. Unless medically justified, a prospective grower agent who has a positive response to any tested substance on a drug screen that meets the requirements of COMAR 17.04.09.07 may not be registered by the Commission.

.07 Grower Agent Training.

A. The licensee shall train all registered grower agents on:

(1) Federal and State medical cannabis laws and regulations and other laws and regulations pertinent to the grower agent's responsibilities;

(2) Standard operating procedures;

(3) Detection and prevention of diversion of medical cannabis;

(4) Security procedures; and

(5) Safety procedures, including responding to:

(a) A medical emergency;

(b) A fire;

(c) A chemical spill; and

(d) A threatening event such as:

(i) An armed robbery;

(ii) An invasion;

(iii) A burglary; or

(iv) Any other criminal incident.

B. The licensee shall retain training materials and attendance records and make the training materials available for inspection by the Commission.

.08 Alcohol and Drug Free Workplace Policy.

A. Each registered grower agent shall declare in writing that the registered grower agent will adhere to the State alcohol and drug free workplace policy, as identified in COMAR 21.11.08.03.

B. The licensee shall retain the declaration in a registered grower agent's personnel record.

.09 Annual Verification of Registered Grower Agents.

Every year, on a date determined by the Commission, the licensee shall notify the Commission that the licensee has verified that no registered grower agent has been convicted of a felony drug offense.

