

BUREAU OF MEDICAL CANNABIS REGULATION

PRE-REGULATORY MEETING

GENERAL LICENSING REQUIREMENTS—MEETING SUMMARY

OAKLAND

September 26, 2016

Topic 1: Owners and financial interest; Definition of “owner”

BMCR Thoughts: Owners shall be defined as individuals with financial interests as follows:

- 1. Sole Proprietor: Includes investors, persons that provide monetary gifts, persons that provide loans, consultants.**
- 2. Partnership: Individuals with 5% as a general partner, 10% as a limited partner.**
- 3. Spouses and registered domestic partners.**
- 4. Corporation: Stockholders with greater than or equal to 5% of stock, directors and officers with greater than or equal to 5% of stock.**
- 5. Trust: All trustees, and any individual with greater than or equal to 10% ownership interest.**
- 6. Limited Liability Company: All managers, members with greater than or equal to 10% ownership interest.**
- 7. Joint Venture: All individuals entitled to receive income or benefit from joint venture.**
- 8. Landlord: Landlord entitled to receive greater than or equal to 40% of proceeds.**

COMMENTS:

- There is no such thing as a “solo proprietor.”
- Why is there a 40% limit for landlords? It should be the same as all other investors.
- Nonprofits are corporations, not a different kind of entity.
- Define “proceeds.” Does this mean “profit” or something else?
- Spouses and domestic partners should be excluded.
- Spouses and domestic partners should be included to keep out bad actors and prevent families from having multiple licenses that would otherwise be prohibited.
- Allow an applicant to provide a reason his or her spouse shouldn’t be included (e.g., separate property, legally separated).
- Include spouses because California is a community-property state.
- Add parents, grandparents, etc. Agree spouse should be included.
- Spouses don’t have an ownership interest until dissolution of the marriage, so don’t include them.
- Don’t include management companies or management consultants as “owners.”
- Align list of entities on the handout to reflect the law.
- The percentage for landlords is too high.
- The percentages are too low, should be 10-15%.
- If landlords receive a share of profits it should be defined in the lease.
- Ownership needs to be better defined.
- Loans to corporations should be included as a financial interest and not just stock.

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- Sole proprietors should be more specific and should have at least a 10% amount for loans, investments, etc.
- Anyone with a profit share of a certain percentage should be considered an owner.
- Under the proposed plan, sole proprietors are treated more harshly than other entities.
- The proposed scheme does not account for a situation where a financier of the company eventually owns a part of the company.
- All of the definitions are too broad and over-inclusive. It should mirror Alcohol Beverage Control regulations and the CA Corporations code.
- The definition of an owner is already defined in California law. There is no need to create a different definition.

QUESTIONS:

- What if a marriage occurs after a license is awarded?
- How will collectives be treated for ownership purposes? All patients/members have to apply?

Main Themes:

- Proposed definition of “owner” is over-inclusive.

Topic 2: Applicant Background Checks; Rehabilitation

BMCR Thoughts:

1. **Only owners will be required to have background checks.**
2. **Review the following factors when considering the qualifications of an individual with a criminal history:**
 - a. **Nature and severity of the act or offense under consideration as grounds for denial.**
 - b. **Evidence of any act committed subsequent to the act or offense under consideration as grounds for denial.**
 - c. **Time that has elapsed since the commission of the act or crime:**
 - i. **Set number of years**
 - ii. **Case-by-case**
 - d. **Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.**
 - e. **Total criminal record.**
 - f. **Certificates of rehabilitation or other similar documents from other states.**

COMMENTS:

- Agree with background checks for owners only.
- Owners only, not managers or employees.
- Other states require managers and other employees which complicates and lengthens the application process.
- Case-by-case is a good method.
- All crimes, including violent ones, should be looked at on a case-by-case basis.
- San Jose has a good process that the state should look at.
- State should be flexible and take in to account racial disparity.
- All information the state receives during the background check should be confidential and should not be shared with other agencies or the FBI.

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- Should have a sunset on the background check so that once a license is received applicants do not have to go through it or bring up past convictions again during the license renewal.
- A set number of years since conviction is good.
- Arrests that did not turn into a conviction should not be considered.
- Financial background checks should not be done on applicants.
- Background checks should be conducted the same across all licensing types.
- All non-violent cannabis-related convictions should be ignored.
- Only criminal convictions should be considered.
- Cannabis-related convictions should be looked at differently from other types of convictions.
- If expunged at the state level, ignore that offense entirely.
- The Bureau should look at how some local jurisdictions handle background checks for guidance.
- The Bureau should provide guidance to local jurisdictions that do not have a system in place.

QUESTIONS:

- Do background checks apply to spouses?
- What is considered to be “evidence” besides criminal convictions?

MAIN THEMES:

- Case-by-case with guidelines.
- Cannabis-related offenses should not prevent an applicant from obtaining a license.

Topic 3: Priority for Application Review

BMCR Thoughts: Define a business’ first date of operation as the first date it began conducting commercial cannabis activity. Determine good standing through a certified document on official letterhead from the local government affirmatively authorizing the proposed commercial cannabis activity that the individual is applying for that is signed by an authorized employee of the local jurisdiction. All applications that meet both of the criteria above will be reviewed in order of receipt.

COMMENTS:

- Date of operation should be the date of the filing of articles of incorporation, first date that taxes were paid, seller’s permit date or other similar date.
- State should create a template that the local jurisdictions can use for good standing.
- Different levels of priority should be considered by state.
- Many jurisdictions don’t offer permits or official approval. Proof of payment of state taxes should be enough to establish priority.
- The Bureau should provide another method for establishing the criteria when the local jurisdiction cannot provide documentation.
- “First date of operation” is vague and should be clarified.
- The date of incorporation should be used to determine start of business.
- Date of obtaining a seller’s permit or any receipts from transactions should be able to be used to show operation.
- Date of obtaining a business tax license should be used to establish priority.
- The system should allow businesses that were once operating, but are currently defunct to receive priority.
- Concern regarding the ability to prove the date of operation in order to establish priority.
- Date articles of incorporation were filed with Secretary of State should be date of operation.

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<ul style="list-style-type: none"> • Date sellers permit was obtained should be date of operation. • Date tax returns were filed (local or state) should be date of operation. • Prioritize within these priority apps by date of first operation. • Use point system for applications. • First come, first served within priority, then first come, first served generally. • Accept photographic evidence of operation. • Give the locals a form to fill out.
<p>QUESTIONS:</p> <ul style="list-style-type: none"> • Where do businesses that have been operating but are now changing their business structure (e.g., non-profit to for-profit corporation) fall in terms of priority review?
<p>MAIN THEMES:</p> <ul style="list-style-type: none"> • There should be multiple ways to demonstrate the date of operation. • The state should create a template for local jurisdictions to use for good standing.

Topic 4: Local Approval

BMCR Thoughts: Define “other authorization” as a certified document on official letterhead from the local government affirmatively authorizing the proposed commercial cannabis activity that the individual is applying for that is signed by an authorized employee of the local jurisdiction.

<p>COMMENTS:</p> <ul style="list-style-type: none"> • BMCR’s proposal is good. • The state should create a template that the local jurisdictions can use for “other authorization.” • A state-created form should be simple and limited to “operation is legal.” • Concerns that the local jurisdiction will not want to put anything in writing or create a form. State should create form that locals can use and include language that the local jurisdiction is “not opposed” to the business. • Should be able to use a business license obtained from a local government. • Some local jurisdictions are staggering the issuing of permits. Some types of permits may not be approved until after the state begins accepting applications for licenses.
<p>QUESTIONS:</p> <ul style="list-style-type: none"> • Can a personal residence be licensed? • If city or county has ordinance saying activity is okay but doesn’t give out permits, is this enough for “other authorization”? • Do you have to get a license in the type of business that you have been operating? • If the local jurisdiction is awaiting action from the state before taking action, is there still a way to get priority? • Will there be provisional licenses? • Does authorization to operate while local jurisdiction is processing a local permit application classify as authorization to operate while the state license application is pending.
<p>MAIN THEMES:</p> <ul style="list-style-type: none"> • State should create a template form for local jurisdictions to use. • Ways of obtaining certification of good standing from local jurisdiction should be flexible.

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