

BUREAU OF MEDICAL CANNABIS REGULATION

PRE-REGULATORY MEETING

GENERAL LICENSING REQUIREMENTS—MEETING SUMMARY

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October 5, 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:

- Ownership should not be a big concern for the state.
- Mostly agree with BMCR’s proposal.
- Owner should be defined as the person controlling the business and should not include silent partners, investors, etc.
- For landlords, define ownership interest as “whether or not rents received are more than the market value.”
- Landlords should be required to be California entities.
- The financial interest percentages should be standardized across all ownership types.
- Don’t include spouses and domestic partners.
- Don’t include contractors and consultants.
- Investors shouldn’t be counted as owners.
- There are equity-company problems.
- Don’t include “gift.” That’s not legally correct.
- 5% is too low. 10% to 20% is better. AUMA is 20%. ABC is 10%, and the pharma industry is 20%.
- Better clarity regarding own license, and there should be regulations regarding the sale of a license or a company merger.
- Say “spouses with community-property interest” instead of just “spouses.” Too overbroad.
- Including spouses of people who own a share (shareholder in corporation, for example).

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- The “owners” of a non-profit don’t have a financial interest and shouldn’t be included.
- Landlord should not be considered an owner unless there is a contract that states they have some ownership over the company.
- The new system should have some way for applying to the collective/cooperative model.
- Anyone with any amount of ownership interest should be considered an owner.
- Only individuals with 50% or more should be considered to be owners for all entities.
- The proposed percentages are too low. 20% ownership is more appropriate. Officers with 10% should be considered owners.
- Spouses and domestic partners should not be included as owners.
- Qualified ownership interest should be 10% across the board.
- Board of Directors should be considered “owners.”
- Landlord % of profits for owner definition should be around 5-10% - the lower the threshold helps prevent LL gouging or exerting undue influence.
- A spouse’s criminal background should not be a disqualifying event.
- The Bureau should stay consistent with “owner” definition used by other state agencies
- The state should allow non-profits to be licensed.
- The ownership interest structure should be made so that it keeps out/discourages “big business.”

QUESTIONS:

- Is there a way for the State to protect from landlords gauging businesses with high rents?
- Why are spouses included?
- How will the Bureau catch a transfer of title?
- What will license enforcement look like? How will the Bureau catch bad actors?

Main Themes:

- 20% is too high. 5% is too low.

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.**

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COMMENTS:

- All landlords should receive a background check because it goes to the issue of who the real owner of the property is.
- State should look closely at violent and serious crimes.
- People that have served their time should be considered rehabilitated and given a license.
- Review of felonies should be limited to past five years.
- Violent felons should be prohibited from ownership.
- A threshold of years would be good.
- Everyone in a fund that invests in a license would need background checks under these definitions. This is crazy.
- No employees get background checks.
- All employees should get background checks because this is a Schedule I substance.
- What if a majority owner is a corporation that is run by another corporation? This is too hard. Stop penetration if you don't have hands-on involvement in the business. Some funds have hundreds of people; can't check them all. Officers and principals should be checked and counted as owners.
- Check employees with access to cash or cannabis (and owners).
- Felony, violent crime or "hard drug" distribution felony should disqualify a person.
- Denial only for crimes of moral turpitude and violent crimes.
- Take a more social-justice approach like AUMA.
- Make specific disqualifying laws with the Penal Code section in regulations.
- Exclude cannabis-related crime after 1996.
- Agree that background checks should be evaluated on a case-by-case basis.
- Any offense that is a breach of ethics should be viewed negatively in the background check.
- There should be a broader definition of proof of rehabilitation besides official court documents. Letters from the community and other things should be considered.
- Concern that background checks may take too long and slow down the process. The state should be required to process background checks within a certain period of time.
- Should not require the background checks.
- Violent and non-violent crimes should be treated differently.
- Individuals who are denied a license due to a problem with their background check may choose to continue doing business illegally.

QUESTIONS:

- What is the intent of the background check?
- How will background checks be done on out-of-state and out-of-country owners?
- What does "severity" mean?
- What will the appeal process look like for a negative finding?
- How does a licensee modify a pending application?

MAIN THEMES:

- Doing background checks on everyone in the world is too broad.

Topic 3: Priority for Application Review

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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:

- The state should establish a threshold of what good standing is because the local jurisdictions will all create different standards which will be unfair.
- The state should create recommendations and guidelines for the local jurisdictions.
- A local license should be proof of good standing.
- First date of operation is whatever date the local jurisdiction gives.
- Give priority people at least 30-day head start to apply.
- Who is the local person authorized to sign off?
- Just have a checkbox and affidavit. You have to take people's word for it.
- Only 100 people will be able to get priority, so it's a nonissue (at least if "local approval" equals "permit").
- South Coast Air Quality Management (air district) allows you to operate if you pay twice the fees. That should be okay for "good standing."
- Break out priority by license type.
- The matter is moot because you can still operate and there is no cap.
- Should be able to use an operational permit or land-use document to prove local approval or date of operation. You have to have something "operational" to use.
- Make a form for locals to sign off on and say who exactly can sign the form at the local level. City manager or someone at city treasurer office or city clerk.
- When the permit runs with the land and not the business, how is that going to work?
- The date a local permit was obtained should be used to show a date of operation.
- The date of the filing for a collective mutual benefit corporation should be used as the date of operation.
- Proof of the first sale or a contract with a provider can be used to show date of operation.
- Local business permit or tax receipts can be used to show date of operation.
- The date of incorporation should not be used because it is not proof that the company was actually operating.
- Date of commercial activity should be the date the owner started investing money into the company. Proof of building or construction costs should be acceptable.
- There should be no limits on the number of licenses awarded.
- Tax returns (federal, state, BOE) should be used to prove that a business was operational.
- In some areas, for example the unincorporated areas of San Diego County, business licenses are not required. A fictitious business name document should be allowed to prove operation.
- Tax documents (1099) or receipts for sales can be used to prove the date operation started could be used.
- Articles of incorporation could be used.
- Local/city tax returns could be used.
- The state/Bureau should create and supply the required form with the necessary proof required.
- Tax documents (1099) or receipts for sales can be used to prove the date operation started.
- Articles of incorporation could be used.

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<ul style="list-style-type: none"> Local/city tax returns could be used. The state/Bureau should create and supply the required form with the necessary proof required.
QUESTIONS: <ul style="list-style-type: none"> How should locals define good standing?
MAIN THEMES: <ul style="list-style-type: none"> There are many different documents that could be used.

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.

COMMENTS: <ul style="list-style-type: none"> There should be multi-level approval where applicant gets each agency to sign off (Health Department, Planning and Zoning, Law Enforcement, etc.). The state should issue guidelines and recommendations about what goes into the local authorization. The state should issue a template form for local governments to use to show local approval. This requirement will greatly limit the number of applicants from certain areas. For example, San Diego has only issued 26 licenses. If businesses have difficulty obtaining local approval, they may choose to continue to operate illegally. Tax documents (1099) or receipts for sales can be used to prove the date operation started. Articles of incorporation could be used. Local/city tax returns could be used. The state/Bureau should create and supply the required form with the necessary proof required. The state should issue a template form for local governments to use to show local approval.
QUESTIONS: <ul style="list-style-type: none"> Can a business move? If a business does move, how would this affect their ability to obtain priority review?
MAIN THEMES: <ul style="list-style-type: none"> Many documents could be used.

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