

BUREAU OF MEDICAL CANNABIS REGULATION

PRE-REGULATORY MEETING

GENERAL LICENSING REQUIREMENTS—MEETING SUMMARY

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October 18, 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:

- The percentage of proceeds/landlord issue is confusing.
- Spouses and domestic partners should not be considered.
- Threshold should be higher for privately-held corporations.
- BMCR should follow ABC’s rules on regulators and state employee’s involvement in medical cannabis license ownership.
- Ownership on LLC/corporations should be determined on the basis of whether a person has a “voting” share or some form of management and control.
- Non-profits don’t have owners with financial interest, so will it be the boards that are considered “owners”? “You can’t background check the board.”
- The group expressed concerns about privacy/safety.
- Agree with the proposed plan.
- The industry needs more clarification on how to transition from the current non-profit model that is currently required to the for-profit model allowed under the new laws.
- The purpose of defining who an owner is should only be to determine who should undergo a background check and not to determine liability. The standard business entity rules regarding limited liability should still apply.
- Any passive investors should have a higher threshold (20-25%) before being considered an owner.
- Spouses should not be included if it can be proven that the spouse has no ownership interest in

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the business.

- Consultants should not be considered owners in any circumstance.
- The 40% for landlord is too high. The landlords should be held to the same threshold as other investors.
- The threshold for all investors should be 20-25% before they are considered to be an owner.
- Lenders should never be considered owners.
- Gift givers should never be considered owners.
- Ownership rules should be consistent with corporate law.
- Percentage rental is common in retail businesses. A landlord should not be considered an owner at 5%, but 40% makes no sense.

QUESTIONS:

- Who to qualify for LLC?
- What constitutes ownership control? If on payroll?
- Will there be a cap on the amount of licenses given?
- How can business owners prevent landlords from taking advantage of them and requiring certain amounts of rent?
- Can foreign companies apply for a license? Can a foreign entity own a corporation that holds a license?
- How will the ownership rules apply if companies are owned by other companies? Will the same threshold rules apply?

MAIN THEMES:

- Landlords should not be allowed to receive profits. Should have to set a standard rental rate.
- Spouses and domestic partners should not be considered owners.
- Fairness and equality across all ownership forms.
- The proposed plan is okay.
- The threshold for determining that an individual is an owner should be increased.

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:

- Owners and capital partners need background checks to prevent monopolies.
- Cannabis felons should have a clean slate.
- Violent felonies and environmental crimes should be scrutinized deeply when evaluating an application.
- Case-by-case basis is good, but the group expressed concerns about disparate treatment.
- Line employees should not receive background checks and should be left to the business, if they choose.
- Only owners should have background checks.
- Misdemeanors should not be considered.
- Checks shouldn't be different than for liquor licenses or other licenses (not more stringent).
- Nonviolent cannabis-related offenders shouldn't be punished.
- There needs to be clear criteria regarding background checks so you know whether you should apply.
- Will there be penalties for owners who don't do background checks on employees if a problem arises?
- Cannabis-related offenses should not hurt your chances of being approved for a license.
- Owners should be able to decide to background check their employees themselves. The state should not require the background checks.
- Fraudulent crimes should be looked at during the background check.
- Factors for consideration: How are related crimes weighed?
- Agree that only owners should undergo a background check.
- Companies should be required to background check their employees.
- Convictions should not be considered after some length of time has passed.
- The time that has passed since a conviction should be considered.
- The background check should only apply to felonies that were committed within the last 10 years.
- Convictions that have been expunged should be ignored during the background check.
- There should be a nexus between the prior criminal activity and the operation of a cannabis business.
- Applications should be reviewed on a case-by-case basis.
- The requirements should be the same as the requirements for obtaining a liquor license.

QUESTIONS:

- If one person has a problem background, can you shed them and keep the application active?
- Who is required to pay for the background check? The applicant or the state?
- Will the background check cost be part of the application fee?
- What kind of background check will the state require?

MAIN THEMES:

- Should be case-by-case with general guidelines.
- Violent felons should garner more scrutiny.
- The background check process should allow for some flexibility.

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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:

- The following types of documents which could be provided to demonstrate date of operation for priority purposes: articles of incorporation; proof of business insurance with date; sales receipts; collective/cooperative membership agreement with date.
- Applicant should have to be in compliance with all agencies for good standing.
- A template should be created for local jurisdictions to verify good standing.
- Many businesses may not have kept certain records because there was no regulatory scheme and were concerned about federal illegality.
- If an applicant can demonstrate they intended to be in compliance and were in substantial compliance that should be considered good standing.
- Having a permit or license should be proof of good standing.
- Tax certificate of good standing should be required.
- The state should mandate the local jurisdictions provide a list or BMCR should maintain a database of who is operating and in good standing.
- Huge concerns because transporters have no prior licenses.
- It will be difficult for transportation and distribution to provide evidence that they were in operation on a certain date and that they had local authority to conduct business.
- There should be no license caps.
- Tax documents should be able to be used to show the date of operation.
- There should be a veteran's preference in the application process.
- There should be a minority preference for the application process.
- Documents showing the creation of the entity and a certificate of good standing should be considered as evidence of the date of operation and good standing.
- Concerns regarding the dual licensing requirement and the fact that many local jurisdictions do not provide any permits or any other documents that may be used to show good standing.
- If a local government is silent on regulating medical cannabis, business owners in those cities should have some way to show that they are in good standing.
- A business license should be enough to satisfy both requirements in a jurisdiction where there are no medical cannabis rules.
- A seller's permit from the Board of Equalization should be able to be used to show good standing.

QUESTIONS:

- How can you prove "good standing" in a county without permits?
- Does "good standing" mean that an applicant is in compliance with all agencies or does it mean they have a license?
- Can a county website printout be considered as authority?
- Show what is required for business license or other licenses?

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MAIN THEMES:

- Flexibility in demonstrating good standing.
- Multiple documents/records should be considered for demonstrating the date operations began.
- In local jurisdictions where permits are not provided, there should be some allowance for establishing 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.

COMMENTS:

- Should create a state board to review local requirements and set a baseline for good standing.
- State should mandate what local authority provides.
- State should create a template letter for local authority to use.
- If there was an ordinance and a business was operating that should be proof that they were authorized.
- Transporters with no paperwork - Obtain letter on letterhead from County.
- Show what is required: business license or other licenses.
- With trucks, is a Motor Carrier Report required?
- Proof that the local jurisdiction accepted taxes from a business should be enough to prove local approval.
- A certificate from the city or the local police department stating that the business has not been subject to any crimes, fines, sanctions, etc. should be enough to establish local approval.
- A “setback” survey from a civil engineer should be required to establish that the business is the required distance away from school.

QUESTIONS:

- Should Secretary of State documents be part of the application to show you’re in good standing with the state?

MAIN THEMES:

- Flexibility in determining “other authorization.”
- State should create a template for local jurisdictions to use.

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