**Attention:** Bureau of Medical Cannabis Regulation, **10/05/2016**

Department of Consumer Affairs, California Department of Public Health,

Office of Medical Cannabis Safety

**C.c.:** Senator Mike McGuire, Senator Rob Bonta, Assemblyman Jim Wood,

Amber Morris (C.D.F.A.)

**Regarding:** Proposed Regulations for Cannabis Distribution, Manufacturing and Dispensation in 2018, under M.C.R.S.A.

**From**: Jason Browne (Expert Witness / Cannabis Industry Consultant)

Greetings,

After having reviewed the B.M.C.R. website and workshop survey, my partner and I were pleased to attend one of your recent public workshops. We've prepared an analysis of the questions and issues that you've raised so far regarding development of regulations under M.C.R.S.A., for your consideration. Please include this document within your ongoing discussions regarding the development of The Program, as part of the public record:

**I) General Licensing Topics.**

**1)** Owners and Financial Interest.

**A)** The definition of an "owner" should only be within the context of the proposed business, not the property itself. While it's true that an Applicant may in fact own the property, it's just as likely that an Applicant may be renting or leasing the property, and so the definition of "Applicant" should only refer to the "person" in possession of the License, and not to the ownership of the property. The term "Applicant" should not include property owners or property management companies who are leasing property to one or more Licensees, and having no direct interest in the License, and no profit sharing with the Licensee.

**B)** Likewise, there doesn't appear to be a description of the term "Premises", for the purposes of these regulations. Does premises mean the facilities used by the business in possession of the License? Or, does premises mean the land where the facilities are located? This makes a huge difference in the interpretation of any sentence using the word "premises".

**C)** Regarding "Entities", this should only include persons participating in the direction, control or management of a License. It should not include persons having a financial interest in the real estate, or any person or business who tenders investment capital or business loans to a Licensee. It is unlikely that banks, lending companies, holding corporations or investment firms will consider themselves to be “Applicants”, and there is no justifiable reason to consider them as such.

**D)** Likewise, the term “owners” should not include individuals who merely have non-controlling financial interests in a License. California Corporations Code defines Sole Proprietors, Partnerships, Corporations, Trusts, Limited Liability Companies and Joint Ventures. The regulations contained within M.C.R.S.A. should not contradict other, well established statutes, when it comes to legal definitions and categories of businesses. For the purposes of 1(a) – 1(h) from your pre-regulatory stakeholder meeting, I recommend the following:

The term “Sole Proprietor” does not include investors, persons who provide monetary gifts, persons that provide loans or consultants. None of these persons are owners of the business, and they cannot be considered as owners under the California Corporations Code.

The term “Partnership” includes all persons listed as partners with the Secretary of State, regardless of what % of ownership they have in the business. The 5% and 10% figures you’ve included here should be removed, as they are irrelevant to determining whether or not someone is a legal partner, under the California Corporations Code.

Spouses and Domestic Partners are most certainly not defined as owners of a business, by virtue of their relationship to an actual business owner. You should remove this section entirely, as it contradicts both the California Corporations Code, and well established doctrines of Family Law.

The language you have for Corporations, Trusts, LLC’s, Joint Ventures and Landlords looks fine, as is.

**2)** Background Checks.

I agree with BMCR’s choice, to only require DOJ background checks on the owners of a License. However, I think it’s a good idea to allow Licensees the option to run criminal background checks on their employees and independent contractors, at their own discretion. It makes sense that they may choose to do so, for certain positions. If BMCR is considering a requirement for employees and contractors, it should only be for officers and managers.

**3)** Priority for Application Review.

This entire section looks fine, as is.

**4)** Rehabilitation Consideration Factors.

I strongly recommend another alternative, in order to simplify the process of determining whether or not an applicant's background requires them to produce evidence of rehabilitation or precludes them from obtaining a License. I think the logical progression of 1(a) – 1(f) are fine, as is. I think the language of 1(b) – 1(f) are fine as is. However, instead of leaving the determination of the nature and severity of offenses up to individual licensing authorities, it would make more sense to replace the language in 1(a) entirely, with:

"In accordance with Business and Professions Code § 19323(b)(5), licensing authorities shall be required to conduct a thorough review of all Applicants having: A felony conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance; A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code; A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code, or; A felony conviction involving fraud, deceit, or embezzlement."

It makes no sense to expect hundreds of individual State and Local Licensing Agents, or dozens of Licensing Authorities, to

**5)** Local Government Approval.

I recommend an option 4, being "any of the above". I think any one of these options are reasonable choices.

And I also suggest adding #3, to read "Local jurisdictions provide State Licensing Authority with a certified copy of that jurisdiction's Ordinance or Resolution, forgoing a Local License option and deferring to State Licensing Authorities, in accordance with M.C.R.S.A."

Remember, it is possible for any city or county to both allow State Licensed activities, and to not participate as a Local Licensing Authority. This is one of three options available to local jurisdictions under M.C.R.S.A. (the other two being to "ban" such activities, or to directly participate in the Licensing system).

**II) Dispensary Licensing.**

**1)** Additional Dispensary Licenses.

**A)** I approve of the subtype known as "delivery only dispensaries", and simply recommend that the language at the end of the sentence be changed to read "BMCR and law enforcement would maintain the right to inspect the premises during normal business hours, or upon a mutually pre-arranged appointment." Dispensary owners and their employees are not "on call, 24/7", and are under no legal obligation to be at work when they are not being paid.

**B)** It's important to also recognize that all dispensaries are legally able to provide home-delivery services, by having Licensed Transporters on their staff.

**2)** Employee Requirements.

I agree with BMCR's options here. I would simply recommend that the Title, and 1(a), 1(b) and 1(c) be amended to say "…employees and/or independent contractors…" instead of just "employees". Some Licensees will have independent contractors in staff positions, and these regulations should apply to Licensee's staff equally, whether they are employees or independent contractors.

**3)** Delivery Requirements.

I like Option #1, and agree with the language in 1(a), 1(c), 1(d), 1(e), and 1(f).

I suggest that 1(b) be amended to "Name or California Department of Public Health ID Card # of primary caregiver or qualified patient…" This is in keeping with the privacy protections afforded to qualified individuals under State and Federal laws protecting patients, and will also provide additional incentives for people to obtain the ID Cards, in order to protect their privacy.

I suggest that 1(g) be amended to say "All actual stops on travel route." This more accurately charts each delivery, while allowing drivers the leeway to make whatever stops they deem necessary for fuel, vehicle maintenance, bathroom breaks, meals, or for reasons of unsafe road conditions or traffic diversions. There is no point in expecting Transporters to determine when and where stops will be made until they are actually on the road.

**4)** Transaction Limits.

I strongly encourage you to adopt an alternative option here (#4). It should read something like "Transactions shall be limited to reflect the annual needs of each qualified patient, based either on the amounts of cannabis authorized by the recommending physician, or on the amounts declared by the patient in a notarized declaration. All Licensed Dispensaries shall record the recommended or declared amount for each patient, into the Track and Trace Program. Any patient who fails to produce a recommended or declared amount shall be limited to no more than 8 ounces of usable cannabis per year, in accordance with the M.M.P.A. All transactions shall be monitored through the Track and Trace Program, ensuring that no patient may purchase amounts of cannabis that exceed his or her annual allotment, per year, regardless of how many dispensaries the patient frequents."

The Track and Trace Program is perfectly set up to provide State and Local Licensing Authorities with all the tools they need, in order to prevent or reduce the diversion of cannabis to or from the criminal "prohibition market". There is no need to set artificial limits on the amounts that patients can possess and use, because every patient has different medical needs. The benchmark for determining whether or not criminal diversion has taken place, must be on the actuality of such diversion, not on some arbitrary threshold that has nothing to do with identifying criminal acts.

The *Compassionate Use Act* and *Medical Marijuana Program Act* are still on the books, and *People v. Kelly* is still in effect. It is unconstitutional for State or Local Licensing Authorities to establish any arbitrary thresholds on medical cannabis use. The only result from doing so, would be to make millions of lawful cannabis users "criminals", overnight. It so happens that the patients with the worst ailments, who are in the most need of cannabis in order to improve their quality of life, or to even remain alive at all, require the largest amounts of cannabis for their medical needs. People with cancer, AIDS, and many other chronic and debilitating conditions, require vast amounts of cannabis in order to treat their medical conditions. Additionally, patients who require other methods of delivery, besides inhalation, require large amounts of cannabis plant conversions on a daily basis. The arbitrary limits you are considering here would literally turn all of those patients into criminals, under this Program.

Setting artificial limits on either the supply, or the consumer demand, have direct consequences to the wholesale and retail prices of cannabis. Such deliberate tampering with market forces only has one logical conclusion…it drives more business to the criminal "prohibition market". Every patient that can't legally obtain their medicine through the Program, would be diverted to the criminal market by the Program. Every artificial increase the Program inflicts on the price

of legal cannabis only drives more customers to the criminal market. Prohibition doesn't work, and the entire purpose of M.C.R.S.A. is to create a viable alternative to the criminal market, not to drive more people into it. BMCR should let the free market work here, and should only consider setting limits that are in keeping with California's medical cannabis laws. To do otherwise would set up the program to fail, before it even gets off the ground.

**III) Distributor Licensing.**

**IV) Transporter Licensing.**

**V) Volatile and Non-Volatile Manufacturing.**

**VI) Laboratory Testing.**