

**ALCOHOLIC BEVERAGE AND CANNABIS BOARD
ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Alcoholic Beverage and Cannabis Board (Board), pursuant to Section 14 of the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.13; and Mayor’s Order 2020-099, dated September 30, 2020; hereby gives notice of the adoption, on an emergency basis, of amendments to Subtitle C (Medical Marijuana) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

On July 28, 2020, the Council of the District of Columbia (Council) passed legislation that transitioned the District’s Medical Marijuana Program (Program) from the District of Columbia Department of Health (Department of Health) to the Board. *See* Medical Marijuana Program Administration Amendment Act of 2020, effective December 3, 2020 (D.C. Law 23-149; 67 DCR 10493). On January 30, 2023, Mayor Muriel Bowser signed the Medical Cannabis Amendment Act of 2022, effective March 22, 2023 (D.C. Law 24-332; D.C. Official Code § 7-1761.01 *et seq.*) (Act). Among other changes, the legislation allows qualifying patients to self-certify to participate in the Medical Cannabis Program (Program), provides a mechanism for unlicensed cannabis businesses to obtain medical cannabis facility licenses, creates new license categories and endorsements, creates various benefits for qualified social equity applicants and medical cannabis certified business enterprises, reforms the license application process, allows for Advisory Neighborhood Commissions to protest the issuance of cultivation center, manufacturer, retailer, and internet retailer licenses, and permits the Board to enforce section 1761 of Title 7 of the D.C. Official Code and Title 22-C of the DCMR.

In light of the new legislation, the Board adopts rules addressing the ability of testing laboratories and license holders to remediate medical cannabis and medical cannabis products that fail testing for reasons that may be addressed without harm to patients. The Board notes that other states allow remediation of product that fails testing under certain circumstances and would benefit the industry because it would prevent the disposal of useable product. For example, Virginia allows the remediation of medical cannabis product in accordance with 3 Va. Admin. Code 10-60-30.

On August 28, 2024, the Board voted 3 to 0, to adopt this Notice of Emergency and Proposed Rulemaking. The rules were adopted on an emergency basis based on the Board’s determination that they were “necessary for the immediate preservation of the public peace, health, safety, welfare, or morals,” D.C. Official Code § 2-505(c) and 1 DCMR § 311.5(d). In particular, medical cannabis is consumed to treat various medical conditions that may be especially damaging to patient health if impurities, pesticides, and other substances are found in medical cannabis; therefore, appropriate testing rules are necessary to ensure that patients receive medical cannabis products without harmful impurities. Furthermore, the present rules do not address situations where testing batches are spoiled (e.g., improper transport, broken sample containers) or subject to incorrectly performed tests by the testing laboratory.

In order to protect patient health, the Board also finds it necessary to address what types of

situations may be remediated and which may not. In particular, the Board finds that no remediation is permissible when a substance fails a pesticide test as the Board is aware of no safe means to address this issue. The Board also limits remediated product to medical cannabis oils and botanical cannabis which may be refined in a manner that addresses various impurity concerns.

Therefore, the issuance of this rule as an emergency is necessary to protect the health, safety, and welfare of the public. The Board also gives notice of its intent to adopt these proposed rules, in final, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and upon completion of the thirty (30) day review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. *See* D.C. Official Code § 7-1671.13(b). The proposed rules will also be submitted to the Council for review. The proposed rules shall be deemed approved at the conclusion of the thirty (30) day review period unless the Council does not approve or disapproves the proposed rulemaking in whole or in part. *See id.*

Subtitle C, MEDICAL MARIJUANA, of Title 22, HEALTH, of the District of Columbia Municipal Regulations, is amended as follows:

Chapter 65, CANNABIS TESTING, is amended as follows:

A new section 6511, REMEDIATION, is added, which shall read as follows:

6511 REMEDIATION

- 6511.1 If a sample of cannabis oil or dried or otherwise unprocessed cannabis plant material product submitted to a testing laboratory by a medical cannabis business does not pass the microbiological, mycotoxin, heavy metal, or residual solvent test based on the standards set forth in this chapter, the medical cannabis business may remediate the batch.
- 6511.2 If a medical cannabis business remediates a batch pursuant to § 6511.1, it shall submit the remediated batch for retesting in accordance with the Act and this title. If the submitted sample passes the test described in § 6511.1 that the previous sample failed, as well as any other applicable tests required by this chapter, the previous sample's failure shall not require destruction of the batch.
- 6511.3 If dried or otherwise unprocessed cannabis plant material batch fails retesting, it may be processed into cannabis oil, unless the failure is due to a violation of § 5620.1.
- 6511.4 A medical cannabis business may not remediate or process into cannabis oil and cannabis or cannabis product that fails a test related to the presence of pesticides or that is produced or grown in violation of § 5620.1.

Copies of the proposed rulemaking can be obtained by contacting ABCA.Records@dc.gov, Alcoholic Beverage and Cannabis Administration, 2000 14th Street, N.W., Suite 400, Washington, D.C. 20009. The rulemaking is also available on the agency's website. Persons with questions

concerning the rulemaking should contact Jonathan Berman at 202-442-4448 or email abca.legal@dc.gov. All persons desiring to comment on the proposed rulemaking must submit their written comments, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Jonathan Berman, Assistant General Counsel, Alcoholic Beverage and Cannabis Administration, at 2000 14th Street, N.W., 4th Floor, Washington, D.C. 20009 or abca.legal@dc.gov.