ALCOHOLIC BEVERAGE AND CANNABIS BOARD
ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

NOTICE OF SECOND EMERGENCY 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.

Rulemaking History of Chapter 65

This rulemaking amends Chapter 65 of Title 22-C of the D.C. Official Code.

Chapter 65 was created on an emergency and proposed basis on April 12, 2023, when the Board, by a vote of five (5) to one (1), approved emergency rules, which were set to expire on August 10, 2023. As part of its approval, the Board further gave notice to adopt the same rules as proposed rules pursuant to D.C. Official Code § 7-1671.13(b), for submission to the Council for review.

On August 9, 2023, the Board, by a vote of five (5) to zero (0), adopted the notice of second emergency and proposed rulemaking in response to the numerous comments that were received.

On December 6, 2023, the Board voted to approve a third emergency and proposed rulemaking, by a vote of 3 to 0.

On April 3, 2024, the voted unanimously voted to approve the Notice of Fourth Emergency and Proposed Rulemaking, which mostly maintained the same rules as the prior rules. On April 11, 2024, an amended version of the rule was adopted by unanimous vote of the Board to further clarify rules related to the documents non-District residents must submit to retailers to qualify to purchase medical cannabis.

Although the Notice of Emergency and Proposed Rulemaking and later versions were not published in the *District of Columbia Register*, the rulemakings were posted to the agency's website. The initial emergency rules were published on the agency's website on April 12, 2023; the second emergency rulemaking was published on the agency's website on August 11, 2023; the third emergency rulemaking was published on the agency's website on December 11, 2023; the original fourth emergency rulemaking was published on the agency's website on April 3, 2024; and the amended fourth emergency rulemaking was published on the agency's website on April 11, 2024. Copies of the emergency rulemakings were also available at ABCA's office or upon request.

The Board reconsidered the vote on April 3, 2024, on April 11, 2024, in order to amend 22-C DCMR §§ 503.7 and 503.8. As such, on April 11, 2024, in a 3-0 vote, the Board reconsidered and voted to replace the rules passed on April 3, 2024, with an amended version of the rules.

On July 31, 2024, the Board voted 3 to 0, to adopt the Notice of Fifth Emergency and Proposed Rulemaking. This fifth version of the rules were set to expire in one hundred twenty (120) days from the date of adoption, or on Thursday, November 28, 2024, unless superseded. ABCA published the fifth version of the rules on the agency's website.

On November 20, 2024, the Board voted 5 to 0, to adopt the Notice of Sixth Emergency and Proposed Rulemaking. This sixth version of the rules will expire in one hundred twenty (120) days from the date of adoption, or on Thursday, March 20, 2024, unless superseded. ABCA published the sixth version of the rules on the agency's website.

Remediation Rulemaking Amending Chapter 65

On August 28, 2024, the Board voted 3 to 0, to adopt the Notice of Emergency and Proposed Rulemaking to amend Chapter 65 of Title 22-C of the D.C. Municipal Regulations. 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 existing rules did 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. The rules would remain in effect for one hundred and twenty days (120) and were set to expire on Thursday, December 26, 2024.

On December 11, 2024, the Board voted 5 to 0 to adopt this Second Notice of Emergency Rulemaking for the purpose of keeping the current emergency rules in place while the permanent version undergoes review publication in the *D.C. Register* and review by the Council for permanent addition in accordance with D.C. Official Code § 7-1671.13(b). The rules will remain in effect for one hundred and twenty days (120) and expire on Thursday, April 10, 2024, unless earlier superseded by final rules.

These emergency rules are necessary to protect patient health. It is also 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 rulemaking as an emergency is necessary to protect the health, safety, and welfare of the public.

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 this rulemaking can be obtained by contacting ABCA.Records@dc.gov, Alcoholic

Beverage and Cannabis Administration, 899 North Capitol Street, N.W., Suite 4200-A, Washington, D.C. 20002. The rulemaking is also available on the agency's website. Persons with questions concerning the rulemaking should contact Jonathan Berman, Assistant General Counsel, at 202-442-4448 or email abca.legal@dc.gov.