



COLORADO
Department of Revenue
Enforcement Division - Marijuana
455 Sherman Street, Suite 390
Denver, CO 80203

October 6, 2015

Tom Downey, Esq.
Ireland Stapleton Pryor & Pascoe, PC
717 17th Street, Suite 2800
Denver, CO 80202

RE: Response to Request for Position Statement

Dear Mr. Downey:

This letter is in response to your Petition for a Statement of Position pursuant to Rule M 403, 1-CCR 212-1. With regard to all of the below responses, please note that your letter does not clarify whether your client is or should be subject to the Retail Code or the Medical Code.

1. Please verify that the Affidavit constitutes reliable evidence that no more than 30 percent of the audience for the program on which the advertisement is to air is reasonably expected to be under the age of 21, in accordance with regulation 1 CCR 212-2, Rule R1104.

Rule R 1104, 1 CCR 212-2, applies to licensed retail marijuana establishments. In the body of your letter, you imply that the affidavit at issue is from an authorized representative of the television station on which the advertisement would air, and that the affidavit certifies, based upon the applicable Denver Nielsen Station Index, that 97% of the audience during the time frame on which an advertisement would air is composed of individuals age 21 or older. An affidavit containing all such information, applicable to the relevant time period and to all places where the advertisement will air, would constitute reliable evidence that no more than 30 percent of the audience for the program on which the advertisement is to air is reasonably expected to be under the age of 21.

The sample affidavit attached to your request for position statement, however, does not appear to match this description. The sample affidavit does not clarify the role of the affiant, does not assert the basis for the affiant's knowledge, does not clarify that it covers all areas where the advertisement is going to air, and is generally drafted in an unhelpful and informal manner.

This response presumes the information in the affidavit is not contradicted by other evidence. Compliance with the applicable law is the licensee's responsibility. If the information in the affidavit is later determined to be false, or if the Marijuana Enforcement Division were to receive a complaint that warrants further investigation regarding R 1104, our investigators would review the matter.

2. The applicable regulations address Advertising (as defined in 1 CCR 212-2, Rule R 103 and 1 CCR 212-1, Rule M 103) only in the context of activity by "Retail Marijuana

Establishments” and “Medical Marijuana Businesses” (both as defined in the applicable regulations and collectively referred to herein as “Marijuana Establishments”). Please verify that although my client is not a Marijuana Establishment, it may purchase and cause to be aired television Advertising, without violating the Colorado Retail Marijuana Code (C.R.S. 12-43.4-101 et seq.), the Colorado Medical Marijuana Code (C.R.S. 12-43.3-101 et seq.), the Uniform Controlled Substances Act of 2013 (C.R.S. 18-18-101 et seq.), or any regulations promulgated under any of those statutes.

Rule R 1104, 1 CCR 212-2, applies to licensed retail marijuana establishments. Based upon the description of your client’s business model, it is possible that your client would be considered an undisclosed owner or an entity with an undisclosed financial interest in a licensed retail marijuana establishment. See, e.g., Rule R 204, 1 CCR 212-2 – Factors Considered When Evaluating Ownership of a Licensee: Retail Marijuana Establishments.

3. Assuming that entities that are not Marijuana Establishments may purchase and cause to be aired television Advertising, will such entities be held to the same standards with respect to Advertising as Marijuana Establishments, despite the fact that the applicable regulations, by their terms, apply only to Marijuana Establishments?

Rule R 1104, 1 CCR 212-2, applies to licensed retail marijuana establishments. Television advertising is also governed by local laws and by laws outside the State Licensing Authority’s jurisdiction.

4. Please clarify whether your answers to questions 2 and 3, above, are affected by whether the advertisement is for (i) a Marijuana Establishment, (ii) particular Retail or Medical Marijuana, (iii) particular Retail or Medical Marijuana Products, or (iv) marijuana accessories, as defined by the Colorado Constitution Article XVIII, Section 16(2)(g), which are exempted from the definition of drug paraphernalia in C.R.S. 18-18-426.

Rule R 1104, 1 CCR 212-2, applies to licensed retail marijuana establishments.

5. The Retail Marijuana regulations explicitly discuss television Advertising (1 CCR 212-2 Series R 1100) and explicitly permit such television Advertising so long as certain conditions are satisfied. However, the Medical Marijuana regulations regarding Advertising (1 CCR 212-1, Series M 1100) do not explicitly address television Advertising. The Series M 1100 regulations neither explicitly permit nor explicitly prohibit television Advertising. Please verify that television Advertising is permitted for Medical Marijuana Businesses, medical marijuana and medical marijuana products.

Rule R 1104, 1 CCR 212-2, does not apply to licensed medical marijuana businesses. Licensed medical marijuana businesses must comply with Sections 12-43.3-404(11)(a) and 12-43.3-901(4)(b), C.R.S. and Rule M 1101, 1 CCR 212-1. Television advertising is also governed by local laws and by laws outside the State Licensing Authority’s jurisdiction.

6. Assuming that television Advertising is permitted in the Medical Marijuana context, please verify that such Advertising shall be held to the same standards as television Advertising in the Retail Marijuana context.

Rule R 1104, 1 CCR 212-2, does not apply to licensed medical marijuana businesses. Licensed medical marijuana businesses must comply with Sections 12-43.3-404(11)(a) and 12-43.3-901(4)(b), C.R.S. and Rule M 1101, 1 CCR 212-1. Television advertising is also governed by local laws and by laws outside the State Licensing Authority's jurisdiction.

7. Certain provisions of the regulations (Rules R 1111 A. and M 1101 A.) require compliance with local ordinances regulating Advertising. Please clarify (i) whether such rules are intended to apply to television Advertising, and (ii) if so, how the applicable local area for the television Advertising is to be determined.

Rule R 1111(A), 1 CCR 212-2, relates to outdoor advertising. Rule M 1101(A), 1 CCR 212-2, relates to any type of advertising. Television advertising should comply with any applicable local laws or regulations in any jurisdiction in which the advertising is broadcast.

Thank you for your inquiry. If you have additional information or questions, please contact Jim Burack, MED's Chief of Investigations, at jim.burack@state.co.us.

Sincerely,



W. Lewis Koski, Director