

# STATE OF COLORADO

DEPARTMENT OF REVENUE  
Medical Marijuana Enforcement Division  
455 Sherman Street Suite 390  
Denver CO 80203



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April 12, 2012

Robert T. Hoban  
Hoban and Feola, L.L.C.  
1626 Wazee St., Suite 2A  
Denver, CO 80202

**Re: Request for Statement of Position**

Dear Mr. Hoban:

This is in response to your letter, dated March 8, 2012, wherein you request on behalf of an un-named client, a statement of position pursuant to Regulation 1.310, 1 CCR 212-1. Thank you for your agreement to extend the deadline of the MMED's response to April 13, 2012.

Pursuant to Rule 1.310 "any person...may petition the MMED [Medical Marijuana Enforcement Division] for a statement of position concerning the applicability to the petitioner of any provision of the [Medical Marijuana] Code, or any regulation of the state licensing authority." Be advised that the rule does not authorize or obligate the MMED to provide legal analysis or opinion above and beyond the applicability of the provisions of the Code or related regulations.

Your petition cites Code section 12-43.3-402, C.R.S. and 12-43.3-901, C.R.S. as relevant to the questions you've presented for position statement. The question presented in your letter is in italics and the MMED response follows.

***...may [the petitioner] legally sell marijuana seeds from his properly licensed Medical Marijuana Center?***

The following sections from the Medical Marijuana Code and the Colorado Constitution are applicable to my analysis:

§12-43.3-104(7), C.R.S., "Medical marijuana" means marijuana that is grown and sold pursuant to the provisions of this article and for a purpose authorized by section 14 of article XVIII of the state constitution but shall not be considered a nonprescription drug for purposes of section 12-22-102(20) or section 39-26-717, C.R.S., or any over-the-counter medication for purposes of section 25.5-5-322, C.R.S.

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Colo. Const., article XVIII, §14(1)(i), “usable form of marijuana” means the seeds, leaves, buds, and flowers of the plant (genus) cannabis, and any mixture or preparation thereof, which are appropriate for medical use as provided in this section, but excludes the plant’s stalks, stems, and roots.

§12-43.3-402(1), C.R.S., A medical marijuana center license shall be issued only to a person selling medical marijuana pursuant to the terms and conditions of this article.

§12-43.3-403(1), C.R.S., An optional premises cultivation license may be issued only to a person licensed pursuant to 12-43.3-402(1) ...who grows and cultivates medical marijuana...

§12-43.3-901(5), C.R.S. Except as provided in sections 12-43.3-402(4), 12-43.3-403, and 12-43.3-404, it is unlawful for a medical marijuana center...or medical marijuana center with an optional premises cultivation license to sell, deliver, or cause to be delivered to a licensee any medical marijuana not grown upon its licensed premises, or...to sell, possess, or permit sale of medical marijuana not grown upon its licensed premises.

The MMED finds no statutory or regulatory authority to prohibit an MMC licensee, or an MMC applicant currently authorized to sell medical marijuana pursuant to §12.43.3-103, from selling medical marijuana “seeds” that were cultivated in its commonly-owned optional premises cultivation to registered patients and other licensees, pursuant to applicable statutory restrictions. The MMED does believe that §12-43.3-901(5), C.R.S. clearly prohibits an MMC from selling medical marijuana seeds that are not grown upon its licensed premises.

If you should disagree with the position statement provided herein, you may have the right to appeal by seeking a Declaratory Order from the state licensing authority. An appeal is governed by the provisions of Rule 1.310, and must be made within thirty (30) days from the date of this position statement.

Sincerely,



Laura K. Harris

Director

Medical Marijuana Enforcement Division