



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

June 15, 2016

Micheline Smith
Heritage Organics

RE: Response to Request for Position Statement – OPC to MMC Transfers

Dear Ms. Smith:

This letter is in response to your request for a Statement of Position pursuant to Rule M 104(A), 1 CCR 212-1, received April 4, 2016.

You have asked for a statement of position as to three questions:

1. **“12-43.3-403(2) CRS: Does the law prohibit one medical OPC from transferring medical marijuana to more than one MMC with which it is vertically aligned, and commonly owned?”**

A licensed Medical Marijuana Optional Premises Cultivation (“OPC”) must be vertically aligned with a single licensed Medical Marijuana Center (“MMC”).¹ The Medical Marijuana Code and rules promulgated pursuant to the Medical Code do not permit an OPC to be vertically aligned with more than one Center. This limitation is established by several statutory provisions and rules. First, an OPC license may only be issued to a person licensed as an MMC or as a medical marijuana-infused products manufacturer (“MIP”). §12-43.3-403(1), C.R.S. (emphasis added). And an OPC “may only transfer Medical Marijuana to its commonly-owned [MMC].” Rule M 502(A), 1 CCR 212-1 (emphasis added).

Moreover, it is unlawful for any licensed MMC to possess at its vertically aligned OPC(s) a plant count in excess of that permitted for each patient who has registered the MMC as his or her primary center. See § 12-43.3-901(4)(e), C.R.S. Accordingly, pursuant to Rule M 402(A), 1 CCR 212-1, “[a] Medical Marijuana Center may only grow Medical Marijuana plants for patients who have designated the Medical Marijuana Center as being his or her primary center.” The number of medical marijuana plants a licensee may grow under the MMC’s OPC

¹ The rules governing medical marijuana licensees use a variety of synonymous terms to refer to the relationship between an OPC and its MMC. See, e.g., Rules M 403(A) (referring to an MMC’s “dedicated” OPC); M 501(d) (referring to the MMC or MIP that an OPC “is designated to”); Rule M 502(A) (referring to an OPC’s “commonly-owned” MMC). Each of these rules refers to the vertically aligned relationship between an OPC and an MMC.

license is dependent on the number of patients that have designated the (single) vertically aligned MMC as the patient's primary center.

The "thirty percent rule" is the sole exception to the above requirements. That is, an MMC may sell up to thirty percent of the MMC's total on-hand inventory to any other licensed MMC. § 12-43.3-402(4), C.R.S.; Rule M 403(A), 1 CCR 212-1. For purposes of this type of sale from MMC to MMC, the MMC's vertically aligned OPC may transport medical marijuana directly to any other licensed MMC if there is a corresponding documented point-of-sale transaction prior to transporting the marijuana from the OPC to a non-associated MMC. See § 12-43.3-403(2), C.R.S. Under these circumstances, the transferring licensees' inventory tracking system accounts must accurately reflect the transfer of medical marijuana between the OPC and its vertically aligned MMC prior to the sale between MMCs and subsequent transport from the OPC to the non-associated MMC. See Rule M 406(A)(3), 1 CCR 212-1.

Subsection 12-43.3-403(2), C.R.S., which you cite in your question, does not change this analysis. Instead, this provision merely sets forth the circumstances under which multiple OPC licenses may be combined in a common area. Even where multiple OPCs meet the criteria set forth in this provision and are combined in a common area, each OPC may only transfer to its designated MMC except where the thirty percent rule applies. This is true even if the OPC and other MMCs are commonly owned.

In conclusion, an OPC may transfer only to a single designated and commonly-owned MMC except where the thirty percent rule applies.

2. "MED Rule #501(D): Can one medical OPC be designated to two vertically aligned, commonly owned MMC?"

No, for the reasons set forth above.

3. "MED Rule #502(A): Can one medical OPC transfer medical marijuana to more than one vertically aligned, commonly owned MMC?"

No, for the reasons set forth above.

Thank you for your inquiry.

Sincerely,



James Burack, Director