

TITLE 442. OKLAHOMA MEDICAL MARIJUANA AUTHORITY

CHAPTER 1. ADMINISTRATIVE OPERATIONS

442:1-1-7. Summary suspension of licensee

(a) If the Executive Director or assigned administrative law judge finds that the public health, safety, or welfare requires emergency action and incorporates such finding to that effect in any Order, summary suspension of any licensee may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly initiated and held as provided in the Administrative Procedures Act, 75 O.S., §§ 301 through 326.

(b) A licensee whose license has been summarily suspended may make a written request for a hearing on the summary suspension not later than ten (10) days after the license was summarily suspended.

(c) The Executive Director or assigned administrative law judge shall conduct a hearing on the summary suspension promptly and in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling with the burden on the licensee to show good cause why the suspension should be set aside.

442:1-1-12. Summary order for destruction

(a) Any marijuana or marijuana product not properly logged in the inventory tracking system or untraceable product required to be in the system, altered or improperly packaged, or illegally held in violation of the Oklahoma Medical Marijuana and Patient Protection Act, any other laws of this state, or any rules promulgated by the Executive Director may be seized, destroyed, confiscated, embargoed, or placed on an administrative hold.

(b) If the Executive Director or assigned administrative law judge finds that the public health, safety, or welfare requires emergency action and incorporates such finding to that effect in any Order, a summary Order for destruction of marijuana or marijuana products may be issued.

(c) A licensee who owns or possesses marijuana or marijuana product that is the subject of a summary Order for destruction may make a written request for a hearing on the summary Order for destruction not later than ten (10) days after the Order is served.

(d) The Executive Director or assigned administrative law judge shall conduct a hearing on the summary Order for destruction promptly and in the same manner as other disciplinary hearings. At a hearing on a summary Order for destruction, the sole issue is whether the licensee's marijuana or marijuana product that is the subject of the Order should be destroyed with the burden on the licensee to show good cause why the summary Order should be set aside.

442:1-1-13. Appeal of adverse credential determination

(a) If the third-party vendor determines that an employee of a medical marijuana business does not meet the minimum statutory requirements for a credential, the applicant or employee shall have no recourse against the third-party vendor but may appeal such adverse determination to the Authority.

(b) An applicant for an employee credential whose application has been denied may make a written request for a hearing on appeal not later than thirty (30) days after the Authority provided notice to the applicant of the adverse determination.

(c) Notice of an adverse determination shall be sent to the applicant in the same method the application was submitted to the Authority.

(d) At a hearing on the appeal of an adverse credential determination, the sole issue is whether the application submitted by the applicant for an employee credential met the minimum statutory requirements for a credential at the time of submission.

(e) No evidence, other than what is contained in the application for an employee credential, shall be introduced, offered, or referenced by any party.

442:1-1-14. Declaratory rulings

(a) Pursuant to 75 O.S. § 307, the OMMA Executive Director or their duly authorized agent may issue declaratory rulings, as to the applicability of any rule, principle of law, and/or order of OMMA. OMMA licensees and the OMMA shall be the only parties with standing to seek a declaratory ruling.

(b) A petition for a declaratory ruling must be made in writing and filed with the OMMA pursuant to OAC 442:1-1-8.

(c) A petition for a declaratory ruling must specifically state:

(1) That a “declaratory ruling is requested pursuant to OAC 442:1-1-14”;

(2) The name of the licensee to whom the facts presented in the petition for declaratory ruling applies;

(3) The physical address of the licensee to whom the facts presented in the petition for declaratory ruling applies;

(4) The mailing address of the licensee to whom the facts presented in the petition for declaratory ruling applies;

(5) The license number of the licensee to whom the facts present in the petition for declaratory ruling applies;

(6) The physical address of the licensee;

(7) The issue(s) on which declaratory ruling is requested, stated clearly, concisely, and with particularity;

(8) A complete, clear, and concise statement of all relevant facts on which the declaratory ruling is requested;

(9) Whether the issue, as it regards the petitioner, is presently the subject of administrative action before OMMA;

(10) The petitioner’s desired result and the legal basis for that result, including reference to all applicable statutes, rules, regulations, and case law;

(11) The signature of the individual appearing on the petitioner’s behalf pursuant to OAC 442:1-1-5.

(d) In conjunction with the submission of the petition for declaratory relief, the petitioner may submit a proposed declaratory ruling granting the relief sought in the declaratory petition.

(e) OMMA may require additional information from the petition as deemed necessary to issue a declaratory ruling. Failure by petition to provide the requested information shall result in denial of the petition to issue the declaratory ruling.

(f) A declaratory ruling shall have the following effect:

(1) The declaratory ruling shall apply only to the particular fact situation stated in the declaratory ruling petition;

(2) The declaratory ruling shall apply only to the petitioner;

(3) The declaratory ruling shall bind OMMA, its duly authorized agents, and representatives as to the petitioner only prospectively;

(4) The declaratory ruling may be revoked, altered, or amended by OMMA at any time.

(g) The declaratory ruling shall cease to be binding if:

(1) A pertinent change is made in the applicable law;

(2) A pertinent change is made in the OMMA’s rules;

(3) A pertinent change in the interpretation of the law is made by a court of law or by an administrative tribunal; or

(4) OMMA determines the actual facts are materially different from the facts set out in the petitioner’s declaratory ruling petition;

(h) OMMA may in its sole discretion decline to issue a declaratory ruling for the following reasons:

(1) The petition does not comply with the information required by this Section;

(2) The petition involves hypothetical situations or alternatives;

(3) The petition requests OMMA make a determination as to whether a statute or rule, or application thereof, is constitutional under the Oklahoma Constitution or the United States Constitution;

- (4) The fact(s) or issue(s) presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue a declaratory ruling;
- (5) The issue(s) about which the declaratory ruling is requested is primary one of fact;
- (6) The issue is presently being considered in the rulemaking proceeding or the issue is the subject of investigation, audit, administrative proceedings, or litigation;
- (7) The issue cannot be reasonably resolved without additional legislative changes or rulemaking;
- (8) The petitioner is the subject of an investigation, audit, or administrative proceeding or litigation as it relates to the issue(s).
- (9) The petitioner is not identified or is anonymous;
- (10) In the opinion of the OMMA, the issue(s) are not ripe or fit for declaratory ruling.
- (i) The petitioner may withdraw its petition for a declaratory ruling, in writing, prior to the issuance of the declaratory ruling. Where the petitioner's license expires or is surrendered during the pendency of the declaratory proceeding, the declaratory petition shall be dismissed as moot.
- (j) A petition for declaratory ruling shall not be utilized to appeal, reopen, or reconsider an administrative matter in which a final agency order has been issued.

442:1-1-15. Emergency cease and desist

If the Authority finds that an emergency exists requiring immediate action in order to protect the health or welfare of the public, the Authority may issue an order, without providing notice or hearing, stating the existence of said emergency and requiring that action be taken by the commercial licensee as the Authority deems necessary to meet the emergency. Such action may include, but is not limited to, ordering the commercial licensee to immediately cease and desist operations. The order shall be effective immediately upon issuance and commercial licensees shall immediately comply with the provisions of the order. The Authority may assess a penalty not to exceed ten thousand dollars (\$10,000.00) per day of noncompliance with the order. In assessing such penalty, the Authority shall consider the seriousness of the violation and efforts taken by the commercial licensee to comply with applicable requirements. Upon application to the Authority, the licensee shall be offered a hearing within ten (10) days of issuance of the order.