

**BEFORE THE OKLAHOMA MEDICAL MARIJUANA AUTHORITY
STATE OF OKLAHOMA**

STATE OF OKLAHOMA *EX REL.* THE
OKLAHOMA MEDICAL MARIJUANA
AUTHORITY,

PETITIONER,

v.

LEON BERG,
LIC # GAAA-41QC-TP9W,

RESPONDENT.

Case No.: OMMA-2023-110

EMERGENCY ORDER OF SUMMARY SUSPENSION AND CEASE AND DESIST

THIS ORDER is issued pursuant to 75 O.S. §§ 314(C)(2), 314.1 and Oklahoma Administrative Code (“OAC”) 442:1-1-7 upon a finding that public health, safety, or welfare imperatively requires emergency action. In support thereof, the following findings are made:

FINDINGS

1. Respondent, Leon Berg (“Respondent”), holds medical marijuana commercial grower license GAAA-41QC-TP9W, initially issued on or about July 19, 2019. Respondent does business as Berg Farms.
2. Respondent operates a medical marijuana commercial grow in Pauls Valley, Oklahoma.
3. On May 9, 2023, OMMA conducted an inspection of Respondent’s licensed premises.
4. During the inspection of Respondent’s licensed premises, OMMA observed an U-Haul box truck and a white trailer that had been driven away from the grow buildings and parked in a grassy, wooded area on the licensed premises.

5. In the U-Haul box truck, OMMA observed one hundred and seventy-nine (179) marijuana plants in the flowering stage of growth; none of which were tagged with RFID tags or reported in the State inventory tracking system.

6. In the white trailer, OMMA observed five (5) large black trash bags of harvested marijuana and twenty-two (22) marijuana plants in the flowering stage of growth; none of which were tagged with RFID tags or reported in the State inventory tracking system.

7. As of the date of the inspection, Respondent reported zero medical marijuana plants, zero harvested medical marijuana packages, and zero medical marijuana waste in the State inventory tracking system.

8. Respondent failed to maintain records detailing all inventory tracking activities that were conducted.

9. The last inventory report submitted by Respondent to OMMA was for the month of July 2021, where the Respondent reported zero inventory.

10. OMMA commercial licensees are required to “use the State inventory tracking system by inputting inventory tracking data required to be reported to the Authority directly into the State inventory tracking system or by utilizing a seed-to-sale tracking system that integrates with the State inventory tracking system.” OAC 442:10-5-6(d).

11. The State inventory tracking system uses RFID tags to track and trace all medical marijuana grown in Oklahoma. For licensed growers, OAC 442:10-5-6(f)(3)(E) requires an RFID tag be attached to “each medical marijuana plant . . . [at] a lower supporting branch. The RFID tag shall remain affixed for the entire life of the plant until disposal.” Where the plant cannot yet support the weight of the RFID tag, “the RFID tag may be securely fastened to the stalk or other similarly situated position approved by the Authority.” *Id.*

12. OAC 442:10-5-6(f)(3)(A) requires a commercial licensee to “ensure its inventories are properly tagged and that a[n] RFID tag is properly assigned to medical marijuana, medical marijuana products, and medical marijuana waste as required by the Authority.”

13. The For licensed growers, OAC 442:10-5-6(f)(4) requires “that each wholesale package of medical marijuana must have a[n] RFID tag during storage and transfer and may only contain one harvest batch of medical marijuana.”

14. Through the use of RFID tags in conjunction with the State inventory tracking system, commercial growers are required to track:

“[t]he entire life span of a licensee’s stock of medical marijuana and medical marijuana products, including, at a minimum, notifying the Authority:

- (A) When medical marijuana seeds or clones are planted;
- (B) When medical marijuana plants are harvested and/or destroyed;
- (C) When medical marijuana is transported, or otherwise transferred, sold, stolen, diverted, or lost;
- (D) When medical marijuana changes form, including, but not limited to, when it is planted, cultivated, processed, and infused into a final form product;
- (E) A complete inventory of all medical marijuana; seeds; plant tissue; clones; usable marijuana; trim; shake; leaves; other plant matter; and medical marijuana products;
- (F) All samples sent to a testing laboratory or used for internal quality and testing or other purposes. . . .”

OAC 442:10-5-6(d)(2)(A)-(F).

15. Through the required use of the State inventory tracking system, OMMA commercial growers report to OMMA every stage of their medical marijuana inventory. OAC 442:10-5-6(f)(2) requires all commercial licensees to “ensure all on-premises and in-transit medical marijuana and medical marijuana products inventories are reconciled each day in the State inventory tracking system at the close of business, if not already done.”

16. OAC 442:10-7-1(g)(1) requires “Growers and processors shall store medical marijuana and medical marijuana products under conditions and in a manner that protects the

medical marijuana and medical marijuana products from physical and microbial contamination and deterioration.”

17. OAC 442:10-7-1(g)(2) requires “When not in use, medical marijuana and medical marijuana products shall be stored in receptacles that are capable of being fully closed and sealed and are kept fully closed and sealed.”

18. Respondent violated OAC 442:10-5-6(f)(3)(E) by failing to attach RFID tags to each medical marijuana plant for its entire life span. Respondent’s failure to comply with the tagging requirements, coupled with Respondent’s other violations including, but not limited to, failure to account for the entire lifespan of medical marijuana in the State inventory tracking system, and/or inaccurate or fraudulent reporting pose a public health and safety risk.

19. Respondent violated OAC 442:10-5-6(d)(2)(A)-(F) and OAC 442:10-5-6(f)(3)(A) by failing to account for the entire life span of medical marijuana including, but not limited to, the harvesting of medical marijuana. Respondent’s failure to comply with the mandatory reporting requirements, coupled with Respondent’s other violations including, but not limited to, inaccurate or fraudulent reporting, pose a public health and safety risk.

20. Respondent violated OAC 442:10-5-6(f)(4) and OAC 442:10-7-1(g) by failing to tag and properly store harvested medical marijuana. Respondent’s failure to comply with the tagging and storage requirements, coupled with Respondent’s other violations including, but not limited to, Respondent’s failure to account for the entire lifespan of medical marijuana in the State inventory tracking system and Respondent’s inaccurate or fraudulent reporting pose a public health and safety risk.

21. Respondent has engaged in inaccurate and/or fraudulent reporting which cannot reasonably be attributed to normal human error in violation of OAC 442:10-5-6.1(b). Violations of OAC 442:10-3-6, OAC 442:10-5-6, and/or OAC 442:10-5-6.1 pose a health and safety risk.

22. OAC 442:10-5-3.2 provides that a medical marijuana commercial license shall not be issued to, renewed, or held by: a person who was involved in the management or operation of any commercial licensee that, after the initiation of a disciplinary action, has had a medical marijuana license revoked, not renewed, or surrendered during the five (5) years preceding submission of the application and for the following violations:

- (A) unlawful sales or purchases;
- (B) any fraudulent acts, falsification of records or misrepresentation to the Authority, medical marijuana patient licensees, caregiver licensees, or medical marijuana business licensees;
- (C) any grossly inaccurate or fraudulent reporting;
- (D) threatening or harming any medical marijuana patient, caregiver, medical practitioner, or employee of the Authority;
- (E) knowingly or intentionally refusing to permit the Authority access to premises or records;
- (F) using prohibited, hazardous substance for processing in a residential area;
- (G) criminal acts relating to the operation of a medical marijuana business; or
- (H) any violation that endangers public health and safety or product safety, including, but not limited to, failure to test medical marijuana or medical marijuana products in accordance with these rules, failure to assist in a recall or embargo, or failure to adhere to any order or directive by the Authority that may endanger public health and safety.

23. All untagged medical marijuana on Respondent's licensed premises is held in violation of the Oklahoma Medical Marijuana and Patient Protection Act, other laws of this State, including, but not limited to, the Oklahoma's Uniform Controlled Dangerous Substances Act, and/or rules promulgated by the OMMA Executive Director.

ORDER

24. **WHEREFORE**, it is found that public health, safety and/or welfare imperatively require emergency action:

25. **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that medical marijuana commercial business license GAAA-41QC-TP9W is hereby **SUSPENDED** pending the final outcome of proceedings instituted pursuant to 75 O.S. §§ 250-317 including a proceeding for revocation or other action. Pursuant to this Emergency Order of Summary Suspension, Respondent may not take any of the below actions pending the final outcome of future proceedings. Failure to comply with the below limitations shall be punishable by contempt and/or any other administrative, civil, and/or criminal penalty authorized by law:

- a. Respondent shall not plant any medical marijuana seeds, clones, or plants from the date of this Order.
- b. Respondent shall not harvest any medical marijuana from the date of this Order.
- c. Respondent shall not dry any medical marijuana from the date of this Order.
- d. Respondent shall not cure any medical marijuana from the date of this Order.
- e. Respondent shall not package any medical marijuana from the date of this Order.
- f. Respondent shall not create any non-infused pre-rolled medical marijuana from the date of this Order.
- g. Respondent shall not sell or transfer any medical marijuana from the date of this Order.
- h. Respondent shall not transport or cause to transported any medical marijuana from the date of this Order.

- i. Respondent shall take no additional action in violation of Oklahoma law from the date of this Order.
- j. Respondent shall take no additional action which would be permitted by law because Respondent is the holder of a medical marijuana commercial growers license without the express authorization of OMMA.

26. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Respondent's violations endangering public health and safety meet the requirements of OAC 442:10-5-3.2(a)(7). No person involved in the management or operation of Respondent shall be eligible to hold a medical marijuana commercial business license for a period of five (5) years if, after the initiation of this action and/or any future action, Respondent's license is revoked, not renewed, or is surrendered.

27. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Respondents shall immediately **CEASE AND DESIST** all operations.

28. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Respondents shall immediately **CEASE AND DESIST** all access to either licensed premise by any owner, manager, employee and/or any other individual(s).

29. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Respondents immediately **CEASE AND DESIST** causing and/or allowing any individual(s) access to either licensed premise without the express authorization of OMMA.

30. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** all marijuana located in the U-Haul box truck and white trailer at Respondents licensed premises, including but not limited to five trash bags containing harvested marijuana and approximately two hundred and

one (201) marijuana plants, which were not tagged, accounted for in the State inventory tracking system or otherwise reported to OMMA shall be seized pursuant to 63 O.S. § 427.4(F)(3).

ADMINISTRATIVE HEARING REQUEST

31. Pursuant to OAC 442:1-1-7(b), Respondent may make a request for a hearing no later than ten (10) days after the date of this Order. Upon such request a hearing will be promptly held before the assigned administrative law judge 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. Respondent may request a hearing by email to HearingClerk@omma.ok.gov.

32. Pursuant to 63 O.S. § 427.6(L) and OAC 442:5-6.1(h), Respondents may make a request for a hearing on the Emergency Cease and Desist Order within ten (10) days of the issuance of this Emergency Order for Summary Suspension. Respondents may request a hearing by email to HearingClerk@omma.ok.gov.

33. Pursuant to OAC 442:1-1-5, "All parties to a proceeding must enter an appearance or may be determined to have waived their right to appear. Corporate entities, limited liability companies, other business entities, and governmental units or entities may appear only by an attorney licensed to practice law in Oklahoma or by an out-of-state attorney admitted to practice before the Agency pursuant to the rules of the Oklahoma Bar Association."

34. Pursuant to OAC 442:1-1-6, failure to appear at the requested hearing may be deemed a waiver of Respondent's right to present a defense and be present at a hearing.

DATED THIS 10th DAY OF MAY, 2023.

OKLAHOMA MEDICAL MARIJUANA AUTHORITY

ADRIA G. BERRY
EXECUTIVE DIRECTOR