TITLE 442. OKLAHOMA MEDICAL MARIJUANA AUTHORITY

CHAPTER 1. ADMINISTRATIVE OPERATIONS

442:1-1-1. Purpose

These rules are promulgated to provide due process to parties appearing before the Authority and are not to be construed inconsistently with the Oklahoma Administrative Procedures Act. The assigned ~~administrative law judge~~ hearing examiner has the discretion to waive, supplement or modify any requirement of the applicable law or rule of procedure where permitted by law and when the administration of justice requires.

442:1-1-2. Notice

Adequate notice of any hearing in accordance with these rules shall be given to every summoned person or entity. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default.

442:1-1-3. Record of hearing

All proceedings shall be recorded. A written transcript or a copy of the tape recording shall be made available to any person or entity alleged to have committed a violation of these rules or who is otherwise a party to an action upon written request and payment of costs for reproduction.

442:1-1-4. Duty of disclosure

It is the duty and obligation of every licensee to make full disclosure at any hearing of any knowledge of a violation of any law or of the rules and regulations of the Authority. No person may refuse to testify at any hearing on any relevant matter, except in the proper exercise of a legal privilege, nor shall any person testify falsely.

442:1-1-5. Appearance of parties

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.

442:1-1-6. Failure to appear

The license of any licensee or summoned person or entity who fails to appear before the assigned ~~administrative law judge~~ hearing examiner after having been ordered personally or in writing to do so may be suspended pending appearance before the assigned ~~administrative law judge~~ hearing examiner. Nonappearance of a summoned person or entity after adequate notice shall be construed as a waiver of right to be present at a hearing.

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

(a) If the Executive Director or assigned ~~administrative law judge~~ hearing examiner 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

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summary suspension not later than ten (10) days after the license was summarily suspended.
(c) The Executive Director or assigned ~~administrative law judge~~ hearing examiner 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.

442:1-1-8. Pleadings
(a) Pleadings shall be filed with the Authority and include appeals, applications, petitions, answers, complaints, exceptions, replies and motions. Submissions received after 5:00 p.m., CST or CDT, shall be deemed filed on the next regular business day.
(b) A request for discovery or a response to a request for discovery is not a pleading and is not a part of the administrative record of a contested case ~~unless the request or response is offered into evidence~~. The Hearing Clerk shall not affix a stamp to a request for discovery or a response to a request for discovery, nor shall the Hearing Clerk make a request for discovery or a response to a request for discovery part of the administrative record.
(c) ~~A party filing a pleading shall, by certified mail, electronic certified mail, email, or hand deliver, a copy of the pleading to each party of record. If a party is being represented by an attorney, service may be made on the attorney instead of on the party. The knowing failure of a party to accomplish service in accordance with this subsection is grounds for the Authority to strike the pleading from the record.~~
~~(d)~~ An objection to a defect, omission or fault in the form or content of a pleading must be specifically stated in a motion filed not later than seven (7) days before the date of the hearing. A party who fails to timely file an objection under this subsection waives the objection.
~~(e)~~(d) The assigned ~~administrative law judge~~ hearing examiner shall decide any motion or application without hearing based upon the written submissions of the parties unless the assigned ~~administrative law judge~~ hearing examiner determines that an evidentiary hearing is necessary for a proper resolution of the issue(s) submitted.
~~(f)~~(e) The tribunal ~~may~~ shall resolve any dispute or controversy by full or partial summary adjudication when the tribunal is satisfied that there is no reasonable dispute as to a material fact, or the reasonable inferences that may be drawn from material facts, or if only questions of law are involved. If the tribunal's summary adjudication and resolution does not dispose of all the issues pending in the action then it must recite the issues remaining for determination in its decision granting partial summary relief.
~~(g)~~(f) Confidential information filed with or submitted to the Authority or ~~administrative law judge~~ hearing examiner in conjunction with any proceeding pursuant to the 63 O.S. §§ 420 et seq., the Oklahoma Medical Marijuana and Patient Protection Act at 63 O.S. §§ 427.1 et seq., Medical Marijuana Waste Management Act, 63 O.S. §§ 428 et seq and the Oklahoma Administrative Code (''OAC'') 442, shall not constitute a public record and shall be sealed by the Court.

442:1-1-9. Failure to comply
Failure or refusal to comply with an order from the ~~administrative law judge~~ hearing examiner, including a consent order, may result in the imposition of sanctions against the offending party. In addition, the Authority may seek enforcement by District Court order.

442:1-1-10. Discovery
~~Discovery shall not be commenced unless a scheduling order is entered in the case and the tribunal determines that discovery is necessary for the resolution of the issues. Discovery shall be completed in accordance with the scheduling order entered in the case. The tribunal may set the total permitted number of written discovery including interrogatories, requests for production and requests for admission based on the~~

~~needs of the case. The tribunal may limit the frequency, scope, and manner of depositions based on the needs of the case.~~

(a) Discovery shall not be commenced unless a scheduling order is entered in the case.

(b) **Disclosure by the Authority.**

(1) The Authority shall, within ten (10) days of filing a Petition disclose the following:

(A) Administrative reports made for the enforcement of regulatory functions.

(B) The Authority shall redact all administrative reports in compliance with 51 O.S. §24A.5.

(2) Upon written request, the Authority shall disclose:

(A) The name and address of witnesses which the attorney for the Authority intends to call at the hearing, together with a statement identifying which allegations of fact each witness may possess relevant knowledge.

(B) Any books, papers, documents, photographs, or tangible objects with the attorney for the Authority intends to use in the hearing.

(C) Any reports or statements made by experts in connection with the proceeding.

(c) **Disclosure by the respondent**. Upon written request, the respondent shall disclose:

(1) The name and address of witnesses which the respondent intends to call at the hearing, together with a statement identifying which allegations of fact of which each witness may possess relevant knowledge.

(2) Any books, papers, documents, photographs, or tangible objects which the respondent intends to use in the hearing.

(3) Any reports or statements made by experts in connection with the proceeding.

(d) **Time of discovery**.

(1) All discovery shall be completed no less than ten (10) business days prior to the scheduled hearing on the merits unless otherwise ordered by the hearing examiner.

(2) Any exhibit or discovery not turned over shall not be admitted at the hearing without compelling reason.

(e) **Subpoenas**.

(1) The Authority may require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers or other objects as may be necessary and proper for the purposes of the proceeding or investigation.

(2) The Authority, OMMA Executive Director, hearing examiner, or any other duly authorized member or employee thereof, upon its own motion may, and upon the request of any party appearing in an individual proceeding shall:

(A) Issue subpoenas for witnesses;

(B) Issue subpoenas duces tecum to compel the production of books, records, papers or other objects, which may be served by the marshal of the agency or by any person in any manner prescribed for the service of a subpoena in a civil action.

(3) Any and all subpoenas shall be served in accordance with the scheduling order entered in the case.

(4) Upon a motion from any party, the hearing examiner shall determine which witnesses are necessary and proper for the purposes of the proceeding. The hearing examiner shall quash a witness subpoena upon a finding that the witness is neither necessary nor proper for purposes of the proceeding.

(5) Upon motion from any party, the hearing examiner shall determine what information is necessary and proper for the purposes of the proceeding. The hearing examiner shall quash a subpoena duces tecum upon a finding that the information sought is neither necessary nor proper for purposes of the proceeding.

(6) In case of disobedience to any subpoena issued and served, or of the refusal of any person to testify to any matter regarding which he or she may be interrogated lawfully in a proceeding before an agency, the Authority may apply to the district court for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony.

(f) **Depositions.**

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(1) The Authority, or any party to a proceeding before it, may take the depositions of witnesses, within or without the state, in the same manner as is provided by law for the taking of depositions in civil actions in courts of record.
(2) The total number of depositions shall be established in the scheduling order entered in the case. The number of depositions permitted shall not change, absent good cause shown.
(3) The hearing examiner may limit the frequency, scope, and manner of depositions upon the motion of any party.
(4) Witnesses must have knowledge of the facts necessary and proper for adjudication of the proceeding, or be designated as an expert witness, to be deposed.
(5) Upon a motion from any party, the hearing examiner shall determine whether a witness is necessary and proper. Upon a finding that a witness is not necessary nor proper, the Court shall quash the deposition subpoena.
(6) Any requested depositions of Authority personnel shall take place at an Authority-designated location by non-video means unless the hearing examiner finds a compelling reason to order otherwise. This rule shall be construed strictly to protect the health, safety, and welfare of Authority personnel and their identities.
(7) All depositions will be taken in accordance with the OBA Standards of Professionalism, Rule 3.2(b)(1)-(13).
(8) All parties must notify opposing counsel and the court or other tribunal as early as possible when scheduled depositions must be cancelled or rescheduled. A deposition shall not be rescheduled if the party cancelling or rescheduling the deposition fails to comply with this rule.

(g) **Non-discoverable material**.
(1) The Authority shall not disclose information deemed confidential by the Legislature as set forth in 63 O.S. §§ 420 et seq., the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. §§ 427.1 et seq., or any other applicable statute, except the Authority shall disclose information which it intends to admit at a hearing before the tribunal.
(2) Upon a motion from any party, the hearing examiner may conduct an in camera review of records to determine whether the records are privileged and/or confidential and should not be disclosed. These records shall be marked "confidential" until a final determination is made.

(h) **Continuing Duty to Disclose.**
(1) If, prior to or during the hearing, a party discovers additional discoverable material previously requested or ordered, such party shall promptly notify the other party and the hearing examiner of the existence of the additional discoverable material.
(2) The hearing examiner shall determine what evidence is necessary and proper for the purposes of the proceeding.

442:1-1-11. Emergency actions

When the Executive Director or an assigned ~~administrative law judge~~ hearing examiner finds that the public health, safety or welfare requires that action be taken immediately and when such a finding is incorporated in an order, emergency action may be ordered. Such order shall be served on every named party by certified mail or by personal service at an address listed on Agency records. If a party is being represented by an attorney, service may be made on the attorney instead of on the party. The knowing failure of a party to accomplish service in accordance with this subsection is grounds for the Authority to strike the pleading from the record.

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~~ hearing examiner 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~~ hearing examiner 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 or revocation of ~~adverse~~ employee 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.~~ Failure of an individual to continue to meet the statutory requirements for a credential shall result in the revocation of said credential.
(f) At a hearing on the revocation of a credential, the sole issue is whether the applicant for an employee credential met or continued to meet the minimum statutory requirements for a credential at the time of filing the Petition for Revocation.

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.

442:1-1-16. Purpose of hearing and burden of proof

(a) The Authority shall hold a hearing for the purpose of receiving factual evidence regarding the contested factual issues involved in the monetary penalty, denial of renewal, revocation, or suspension of any license. Extensive argument should not be offered into evidence but rather presented in opening or closing statements of counsel or in memoranda or proposed findings of fact and conclusions of law.

(b) At any hearing for the denial of renewal application, suspension or revocation of a license, or the assessing of a fine the Authority shall have the burden of proving by clear and convincing evidence, except where statute has expressly provided for a different burden of proof.

442:1-1-17. Evidence

(a) Evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs shall be admitted and given probative effect.

(b) All evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence, is relevant and admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Oklahoma, by statute or by these rules. Evidence which is not relevant is not admissible and shall be excluded by the hearing examiner.

(c) Hearsay is not admissible except for:

(1) Testimony given as a witness at another hearing of the same or another proceeding, or in a deposition taken in compliance with law, if the party against whom the testimony is now offered had an opportunity to develop the testimony by direct, cross or redirect examination;

(2) Any testimony or evidence enumerated in Section 2803 of Title 12 of the Oklahoma Statute.

(d) Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) A document bearing a seal purporting to be that of the United States or of any state, district, commonwealth, territory, or of a political subdivision, department, office or agency thereof, and a signature purporting to be an attestation or execution.

(2) A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph 1 of this section, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine;

(3) A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph 1 or 2 of this section.

(4) Books, pamphlets or other publications, including online publications and/or databases purporting to be issued by public authority.

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(e) A witness may not testify to a matter unless evidence is introduced sufficiently to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony.
(f) Testimony of State employees not employed by the Authority may be taken by written declaration sworn under penalty of perjury under the laws of Oklahoma.
(g) Effect shall be given to the rules of privilege recognized by law with respect to:
(1) self-incrimination;
(2) confidential communications between husband and wife during the subsistence of the marriage relation;
(3) communication between attorney and client, made in that relation;
(4) confessions made to a clergyman or priest in his or her professional capacity in the course of discipline enjoined by the church to which he or she belongs;
(5) communications made by a patient to a licensed practitioner of one of the healing arts with reference to any physical or supposed physical disease or of knowledge gained by a practitioner through a physical examination of a patient made in a professional capacity;
(6) records and files of any official or agency of any state or of the United States which, by any statute of a state or of the United States are made confidential and privileged.
(7) Any records and files deemed confidential and/or privileged by any statute of the State of Oklahoma or of the United States including those as set forth in 63 O.S. §§ 420 et seq. or the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. §§ 427.1 et seq.

442:1-1-18. Proposed findings of fact and conclusions of law

Any party to the hearing may file proposed findings of fact and conclusions of law within the time fixed by the hearing examiner. Any party filing shall also serve one copy of their proposed findings and conclusions upon each party to the hearing.

442:1-1-19. Final Agency Order

The hearing examiner shall issue his/her order in the proceeding, which shall set forth the final rule or decision and the findings of fact and conclusions of law upon which the rule or decision is based, if not at the proceeding, then, within thirty (30) days of the individual proceeding. Final Agency Orders and any findings of fact therein shall be based exclusively on the evidence received and on matters officially noticed in the individual proceeding unless otherwise agreed upon by the parties on the record. Incompetent, immaterial, irrelevant, and unduly repetitious evidence shall be excluded from the record and not considered in the findings of fact.

442:1-1-20. Process of service

Service of all filings shall be made by certified mail, electronic certified mail, email, or hand delivery, of a copy of the filing to each party of record. If a party is being represented by an attorney, service may be made on the attorney instead of on the party. The knowing failure of a party to accomplish service in accordance with this subsection is grounds for the Authority to strike the filing from the record.

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