

7/13/20

The following information is being provided pursuant to the requirements of Executive Order 2011-01K and Senate Bill 2 of the 129th General Assembly, which requires state agencies, including the State of Ohio Board of Pharmacy, to draft rules in collaboration with stakeholders, assess and justify an adverse impact on the business community (as defined by S.B. 2), and provide an opportunity for the affected public to provide input on the following rules.

Amend:

- 3796:6-4-02 - Establishes the type and scope of inspections conducted by the Board, including compliance inspections conducted with or without notice. Rule is amended for grammatical fix.
- 3796:6-4-03 - Establishes the grounds under which a dispensary or employee license may be suspended, revoked, placed on probation or renewal denied, pursuant to Chapter 119. of the Revised Code. Rule is amended for grammatical fix and to include being charged with a disqualifying offense as grounds for discipline.
- 3796:6-4-05 - Establishes summary suspension grounds for a dispensary employee and clarifies that the Board may suspend a license utilizing a telephone conference.
- 3796:6-4-06 - Establishes summary suspension grounds for a licensed dispensary and clarifies that the Board may suspend a license utilizing a telephone conference call.
- 3796:6-4-07 - Provides notice that failure to properly store medical marijuana may subject products to being placed under seal. Upon reasonable suspicion that improper products are being sold to patients or caregivers, products may be confiscated for laboratory testing. Amended to include that the cost of testing samples is the responsibility of the dispensary.
- 3796:6-4-09 - Requires the department, pharmacy board and medical board to notify the other agencies as well as local law enforcement when action is taken on a license. Amended to clarify that this applies to both provisional licenses and certificates of operation.
- 3796:6-5-01 - Establishes the fees for applications, certificates of operation, renewals, reissued certificates, and employee identification cards. Renewal for all licenses is every two years and outlines fees for transfers of ownership, change in location, and modifications of premises. The rule removes the requirement that the Board issue a physical employee identification card.

Comments on the proposed rules will be accepted until close of business on August 3, 2020. Please send all comments to the following email address: RuleComments@pharmacy.ohio.gov

In addition, please copy your comments to: CSIPublicComments@governor.ohio.gov



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: State of Ohio Board of Pharmacy

Rule Contact Name and Contact Information: Cameron McNamee
Cameron.mcnamee@pharmacy.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

Dispensary Enforcement and Fees

Rule Number(s): 3796:6-4-02, 3796:6-4-03, 3796:6-4-05, 3796:6-4-06, 3796:6-4-07,
3796:6-4-09, 3796:6-5-01

Date of Submission for CSI Review: 7/13/20

Public Comment Period End Date: 8/3/20

Rule Type/Number of Rules:

New/ rules

No Change/ rules (FYR?)

Amended/ 7 rules (FYR? Y)

Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness,

predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
 - 3796:6-4-03, 3796:6-4-06, 3796:6-4-07 - A certificate of operation is required to operate a dispensary.
 - 3796:6-4-05 - Dispensary employees are required to be licensed by the Board of Pharmacy.

- b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
 - 3796:6-4-02 - Failure to produce documents, records, or any other material pertinent to an investigation of an application or alleged violation may be grounds for denial of a dispensary license or discipline.
 - 3796:6-4-03 - A violation of these rules may result in disciplinary action or monetary fine by the Board with potential referral to criminal prosecution.
 - 3796:6-4-05 - A violation of this rule may result in the immediate suspension of a dispensary employee license. Serious violations may be referred for prosecution.
 - 3796:6-4-06 - A violation of this rule may result in the suspension of the dispensary’s license without a hearing.
 - 3796:6-4-07 - Any dispensary that does not store medical marijuana in compliance with this division, or that stores medical marijuana at a location other than that for which the dispensary license was issued, may have its license suspended or revoked. Serious violations may be referred for prosecution.

- c. Requires specific expenditures or the report of information as a condition of compliance.**

- 3796:6-4-02 - Persons responsible for maintaining records must make those records available to Board on request. The state board of pharmacy may also require an applicant, a dispensary under a provisional license, or a licensed dispensary to produce documents, records, or any other material pertinent to an investigation of an application or alleged violation.
 - 3796:6-4-05 - Notification from a dispensary that an employee is abusing or becomes addicted to the use of controlled substances, has been convicted of or pleaded guilty to a disqualifying offense, or pleaded guilty to, was found guilty by a jury or court of, or was convicted of a felony drug abuse offense could result in the immediate suspension of the employee's license.
 - 3796:6-4-07 - There will be costs to build and maintain facilities to store medical marijuana products.
- d. **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Amend:

- 3796:6-4-02 - Establishes scope of inspections and the different inspections by the board including compliance inspections conducted with or without notice. Rule is amended for grammatical fix.
- 3796:6-4-03 - Establishes the grounds under which a dispensary or employee license may be suspended, revoked, placed on probation or renewal denied. Provides chapter 119 due process. Rule is amended for grammatical fix and to include “charged” to disqualifying offense.
- 3796:6-4-05 - Establishes summary suspension grounds for a dispensary employee, including: (1) Substance abuse or addiction; (2) Continuing operation as a dispensary employee presents a danger of immediate and serious harm to oneself or others; and (3) Upon notification of a felony drug conviction.
- 3796:6-4-06 - Establishes summary suspension grounds for a licensed dispensary when continual operation would result in immediate and serious harm to others. Includes notice that product may be placed under seal. The rule is amended to clarify that the Board can suspend a provisional dispensary license via conference call.
- 3796:6-4-07 - Describes the consequences a dispensary may face for failing to properly store medical marijuana and clarifies that dispensaries bear the costs related to the testing of samples that are reasonably suspected to be expired, damaged, deteriorated, misbranded, or adulterated.

- 3796:6-4-09 - Requires the Board to notify the Department of Commerce, Medical Board, and local law enforcement when it revokes or suspends a medical marijuana provisional license or certificate of operation.
- 3796:6-5-01 - Establishes the non-refundable licensing and change in description fees and removes provisions no longer necessary because the Board will cease printing employee identification cards.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

The proposed rules are authorized by section 3796.04 of the Ohio Revised Code. The statutes the rules amplify or implement are sections 3796.04, 3796.10, 3796.12, 3796.13, 3796.14, 3796.15, 3796.16, and 4776.02 of the Revised Code.

4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

These rules do not implement a federal requirement.

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

This rule package exceeds federal requirements because the regulation of the medical marijuana is done at the state level. The drafting of the rules did take into consideration the United States Department of Justice drug enforcement priorities.

6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Ohio House Bill 523 of the 131st General Assembly established the Ohio Medical Marijuana Control Program (“MMCP”). Outlined in Chapter 3796 of the Revised Code, the responsibilities for the MMCP are outlined are divided between three state agencies. The Board of Pharmacy is responsible for the administration, implementation, and enforcement related to dispensaries under the MMCP.

Because marijuana is a schedule I controlled substance under federal law, state rules regulating the cultivation, processing, sale, possession, and administration of medical marijuana are necessary to protect against the risk of criminal charges.

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The success of these regulations will be measured by the availability of safe medical marijuana products and dispensary environments for patients and caregivers. The MMCP rules are designed to accommodate the needs of patients, caregivers, and the industry.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The rule in this package were reviewed by the public and the Medical Marijuana Advisory Committee (MMAC).

Prior to filing with CSI, the rules were also reviewed and approved by the Board.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The Board received comments from the public and stakeholders on these rules during the initial public comment process. These comments were reviewed and discussed by Board staff.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The rules were originally developed after benchmarking with regulators in other states, talking with industry experts, and hearing from patients and caregivers registered under other state programs. The rules are being amended after the program was implemented, based on feedback from internal staff, industry, patients, and caregivers.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

There are no alternative regulations or specific provisions within the regulation to be considered.

13. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

Given the nature of the rules contained in this package, and the Board's responsibility to ensure a uniform practice across Ohio, this rule package does not contain performance-based regulations.

14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Although it is the Board's responsibility to regulate dispensaries, to the extent that its regulations could duplicate others, the Board works closely with the Department of Commerce and State Medical Board to ensure consistency and to eliminate redundancy within the MMCP. Board's staff reviewed the proposed rules to ensure that the regulations do not duplicate other state regulations.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The rules will be posted on the MMCP web site, information concerning the rules will be included in materials e-mailed to licensees, patients, and caregivers. MMMCP staff are also available via phone or email to answer questions regarding implementation of the rules. In addition, the Board's MMCP agents are trained to educate licensees on current and/or new regulations during on-site inspections.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community; and

The rule package impacts the following:

- Dispensaries
- Dispensary Employees

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and

Violation of these rules may result in administrative discipline for a licensee. Discipline might include reprimand, denial of a license, suspension of a license, monetary fine and/or revocation of a license.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

Amend:

- 3796:6-4-02 - Establishes scope of inspections and the different inspections by the board including compliance inspections conducted with or without notice. Rule is amended for grammatical fix. No adverse impact is expected from the rule amendment.
- 3796:6-4-03 - Establishes the grounds under which a dispensary or employee license may be suspended, revoked, placed on probation or renewal denied. Provides chapter 119 due process. Rule is amended for grammatical fix and to include “charged” to disqualifying offense. No adverse impact is expected unless an employee is charged with a disqualifying offense.
- 3796:6-4-05 - Establishes summary suspension grounds for a dispensary employee, including: (1) Substance abuse or addiction; (2) Continuing operation as a dispensary employee presents a danger of immediate and serious harm to oneself or others; and (3) Upon notification of a felony drug conviction. No adverse impact is expected, as the content of the rule is not changing.
- 3796:6-4-06 - Establishes summary suspension grounds for a licensed dispensary when continual operation would result in immediate and serious harm to others. Includes notice that product may be placed under seal. The rule is amended to clarify that the Board can suspend a provisional dispensary license via conference call. No adverse impact is expected, as the content of the rule is not changing.
- 3796:6-4-07 – Describes the consequences a dispensary may face for failing to properly store medical marijuana and clarifies that dispensaries bear the costs related to the testing of samples that are reasonably suspected to be expired, damaged, deteriorated, misbranded, or adulterated. Notably, possible costs incurred would only result as described within the rule (i.e. suspicion of sales of expired, damaged, misbranded or adulterated medical marijuana).
- 3796:6-4-09 - Requires the Board to notify the Department of Commerce, Medical Board, and local law enforcement when it revokes or suspends a medical marijuana provisional license or certificate of operation. No adverse impact is expected.
- 3796:6-5-01 - Establishes the non-refundable licensing and change in description fees and removes provisions no longer necessary because the Board will cease printing employee identification fees. All of the fees are included in the existing rule and no adverse impact is expected as a result of the amendment.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Board believes that the regulatory intent of the proposed rules is necessary in order to protect the health and safety of all that are participating in the medical marijuana program. The regulatory intent of the rules justifies the adverse impact because the manufacturing, possession, sale, and administration of medical marijuana constitute violations of federal drug laws, necessitating strict compliance with the MMCP.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

These rules do not provide any exemptions or alternative means of compliance for small businesses. The law does not differentiate on the size of the business and therefore the regulation is uniform across Ohio.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

To the extent R.C. 119.14 would apply to a violation of the proposed amendments, the Board will provide verbal and written notification to the small business to correct the paperwork violation. Thereafter, the Board would allow the small business a reasonable time to correct the violation. The Board and its staff would also offer any additional assistance necessary to aid in remediation of the violation. No further action would be taken unless the small business fails to remedy the violation within the reasonable time allotted by the Board.

20. What resources are available to assist small businesses with compliance of the regulation?

MMCP staff is available by telephone and e-mail to answer questions. Board staff members also provide presentations to groups and associations who seek updates on current regulations and regularly meet with stakeholders. Additionally, staff are trained to educate licensees on compliance with all Board rules and regulations.

3796:6-4-02

Compliance and inspection of medical marijuana dispensaries.

- (A) Dispensaries are subject to random and unannounced dispensary inspections and medical marijuana testing by the state board of pharmacy.
- (B) The state board of pharmacy and its authorized representatives may:
- (1) Enter any place, including a vehicle, in which medical marijuana is held, stored, dispensed, sold, produced, delivered, transported, manufactured, or disposed of;
 - (2) Inspect in a reasonable manner, the place and all pertinent equipment, containers, and labeling and all things including records, files, financial data, sales data, shipping data, pricing data, personnel data, research, papers, processes, controls, and facility, and inventory of any stock of medical marijuana; and
 - (3) Obtain any medical marijuana or medical marijuana product, any labels or containers for medical marijuana, or paraphernalia.
- (C) The state board of pharmacy may investigate an applicant, application, a [provisional dispensary](#) ~~with under a provisional license~~ [licensee](#), a licensed dispensary, principle officer, dispensary employee, third party vendor or any other party associated with a dispensary for an alleged violation of Chapter 3796. of the Revised Code or this division or to determine qualifications to be granted a license by the state board of pharmacy.
- (D) The state board of pharmacy may require an applicant, a dispensary under a provisional license, or a licensed dispensary to produce documents, records or any other material pertinent to the investigation of an application or alleged violation of Chapter 3796. of the Revised Code or this division. Failure to provide the required material may be grounds for denial or discipline.
- (E) Every person charged with preparation, obtaining or keeping records, logs, reports or other documents in connection with Chapter 3796. of the Revised Code or this division, and every person in charge, or having custody of those documents shall, upon request by the state board of pharmacy, make the documents immediately available for inspection and copying by the state board of pharmacy, the state board of pharmacy's authorized representative or others authorized by law to review the documents.
- (F) All information collected by the state board of pharmacy in the course of an examination, inspection or investigation of a licensee or applicant, including, but

not limited to, any complaint against a license filed with the state board of pharmacy and information collected to investigate a complaint, shall be maintained for the use of the state board of pharmacy and shall not be disclosed except as authorized by state or federal law.

3796:6-4-03

Grounds for discipline.

- (A) The state board of pharmacy, after notice and hearing in accordance with Chapter 119. of the Revised Code, may revoke, suspend, limit, place on probation, or refuse to grant or renew a ~~dispensary~~ provisional [dispensary](#) license, certificate of operation, or a dispensary employee license, or may impose a monetary penalty or forfeiture if the board finds that the licensee:
- (1) Has violated any state or federal law or rule, regardless of jurisdiction in which acts were committed, except for minor traffic violations such as parking violations, speeding tickets and violations such as failure to obey a red light, failure to use a turn signal or expired registration. Acts in accordance to Chapter 3796. of the Revised Code and this division that constitute a violation of federal law shall not be considered as grounds for discipline;
 - (2) Has committed a crime of moral turpitude, as defined in section 4776.10 of the Revised Code;
 - (3) Demonstrates an absence of good moral character and habits;
 - (4) Guilty of dishonesty or unprofessional conduct, [as defined in rule 3796:6-1-01 of the Administrative Code](#), over the course of his or her dispensary duties;
 - (5) Is addicted to or abusing alcohol or drugs or impaired physically or mentally to such a degree as to render the employee unfit to operate or work in a dispensary;
 - (6) Has been convicted of a misdemeanor or felony related to, or committed in, any function related to the operation of a dispensary;
 - (7) Violated, conspired to violate, attempted to violate, or aided and abetted the violation of any of the provisions of Chapter 2925., 3715., 3719., 3796., or 4729. of the Revised Code, or of any rule adopted by the board under those provisions;
 - (8) Divided or agreed to divide remuneration made in the course of the cultivation, processing, dispensing, purchase or sale of medical marijuana with any licensed health professional certified to recommend medical marijuana;
 - (9) Knowingly lent the employee's name to an illegal operator of a medical marijuana cultivating, processing, or dispensing facility or having professional connection with an illegal medical marijuana entity;

- (10) Allowed a physician with a certificate to recommend medical marijuana to obtain an ownership or investment interest in or a compensation arrangement with a licensed dispensary;
- (11) Allowed a recommending physician to conduct a physical examination or follow up care on dispensary premises;
- (12) Allowed medical marijuana to be consumed on licensed dispensary premises or consumed medical marijuana on licensed dispensary premises;
- (13) Committed fraud, misrepresentation, or deception in furnishing information to the state board of pharmacy, including in applying for or securing a license, registration, or renewal issued under Chapter 3715., 3719., 3796., or 4729. of the Revised Code;
- (14) Failed to comply with an order of the board or a settlement agreement;
- (15) Engaged in a pattern of conduct that demonstrates incompetence;
- (16) Failed to respond to a written request for information by the state board of pharmacy within thirty days, unless otherwise provided in the written request from the state board of pharmacy;
- (17) Was arrested, [charged](#), and/or convicted of a disqualifying offense;
- (18) Has a causal connection to a finding by the state board of pharmacy of a substantial discrepancy in a state board of pharmacy audit of medical marijuana;
- (19) Has a causal connection to a finding by the state board of pharmacy of a substantial discrepancy in a state board of pharmacy audit of capital or funds;
- (20) Has an inability to operate using reasonable judgment, skill or safety due to physical or mental illness or other impairment or disability, including without limitation, deterioration through the aging process or loss of motor skills or mental incompetence;
- (21) Has engaged in or permitted the fraudulent use of a dispensary employee identification card;

- (22) Tampered with, falsified, altered, modified, or duplicated a dispensary employee identification card;
- (23) Failed to report to the state board of pharmacy, within five calendar days of becoming aware, that an employee identification card has been lost, stolen, or destroyed;
- (24) Failed to report to the state board of pharmacy, within five calendar days, any arrest, charge, or conviction for a disqualifying offense;
- (25) Failed to report to the state board of pharmacy, within five calendar days, any adverse action taken against the employee by any licensing jurisdiction in any state or any territory of the United States or any foreign jurisdiction, any governmental agency, any law enforcement agency or any court;
- (26) Failed to notify the state board of pharmacy of a change of address;
- (27) Disclosed customer names, personal information or protected health information in violation of any state or federal law;
- (28) Dispensed medical marijuana to any person other than a qualified patient or designated caregiver, or when otherwise prohibited under this division;
- (29) Is an entity that operated as a dispensary before obtaining a certificate of operation from the state board of pharmacy;
- (30) Is an associated key or key employee who failed to report to the state board of pharmacy when he or she knew or should have known that a dispensary employee was using medical marijuana when the employee does not have a qualifying patient registration;
- (31) Is subject to any fact or condition which, if it had existed at the time of the original application for the license, would have warranted the denial of the license;
- (32) Selling, distributing, transferring in any manner, or giving medical marijuana or medical marijuana products to any unauthorized persons;
- (33) Permitted a person without a valid dispensary employee license to be employed by a dispensary;

- (34) Failed to assign a designated representative as required under this division;
- (35) Failed to hire sufficient personnel or maintained employment of employees who were unqualified in training or experience to properly operate a dispensary;
- (36) Engaged in any pattern of activity that causes harm to the community;
- (37) Dispensed or allowed to be dispensed, medical marijuana with improper labeling or medical marijuana that did not meet the labeling requirements of this division;
- (38) Failed to provide appropriate education to a patient or caregiver in compliance with rule 3796:6-3-15 of the Administrative Code;
- (39) Knowingly provided inaccurate or inappropriate education to a patient or caregiver;
- (40) Has ever been denied a license to prescribe, dispense, administer, supply, or sell a controlled substance by the appropriate issuing body of any state or jurisdiction, based, in whole or in part, on the inappropriate prescribing, dispensing, administering, supplying or selling a controlled substance or other dangerous drug other than medical marijuana dispensed;
- (41) Has held a license issued by the drug enforcement administration or a state licensing agency in any jurisdiction, under which the person may prescribe, dispense, administer, supply or sell a controlled substance, that has ever been restricted, based, in whole or in part, on the ~~prescriber's~~ person's inappropriate prescribing, dispensing, personally furnishing, diverting, administering, supplying, or selling a controlled substance or other dangerous drug;
- (42) Has been subject to disciplinary action by any licensing entity that was based, in whole or in part, on the ~~prescribers~~ person's inappropriate prescribing, dispensing, diverting, administering, personally furnishing, diverting, supplying or selling a controlled substance or other dangerous drug;
- (43) Canceled a bond and the licensee failed to file a new bond with the state board of pharmacy in the required amount on or before the effective date of cancellation;
- (44) Placed or maintained, or caused to be placed or maintained, an unauthorized

advertisement of medical marijuana or medical marijuana products; and

- (45) Failed to prevent diversion, theft, or loss of medical marijuana or to notify the state board of pharmacy thereof;
 - (46) Engaged in any other conduct for which the board may impose discipline as set forth in rules adopted under Chapter 3796. of the Revised Code or this division.
- (B) A dispensary is responsible to the state or local governmental entity for all expenses incurred by the state or local governmental entity in the following:
- (1) Cleaning up, mitigating or remedying any environmental damage caused by the dispensary; and
 - (2) Administrative costs for investigation ~~and~~and/or prosecution.
- (C) When considering disciplinary action against a dispensary employee, the state board of pharmacy shall consider compliance with rule 3796:6-3-20 of the Administrative Code as a mitigating factor.

3796:6-4-05

Suspension of a dispensary employee license without a hearing.

(A) Pursuant to division (B)(3) of section 3796.14 of the Revised Code, the state board of pharmacy may suspend a dispensary employee license ~~by using a telephone conference call to review the allegations and take a vote~~ under the following circumstances:

- (1) Upon a finding that a dispensary employee is abusing or becomes addicted to the use of controlled substances the dispensary employee's license shall be suspended by the board until the person offers satisfactory proof to the state board of pharmacy that the person no longer is addicted to the use of controlled substances;
 - (2) If the board determines that there is clear and convincing evidence that continuation of the dispensary employee's practice or method of dispensing, using or furnishing medical marijuana presents a danger of immediate and serious harm to oneself or to others, the state board of pharmacy shall suspend the person's license without a hearing;
 - (3) On receiving notification that a dispensary employee has been convicted of or pleaded guilty to a disqualifying offense, the state board of pharmacy shall suspend the person's license without a hearing;
 - (4) On receiving notification that a dispensary employee pleaded guilty to, was found guilty by a jury or court of, or was convicted of a felony drug abuse offense; a finding by a court of the dispensary employee's eligibility for intervention in lieu of conviction; a dispensary employee's plea of guilty to, or a finding by a jury or court of the employee's guilt of, or the employee's conviction of an offense in another jurisdiction that is substantially the same as a felony drug abuse offense; or a finding by a court of the employee's eligibility for treatment or intervention in lieu of conviction in another jurisdiction, the state board of pharmacy immediately shall suspend the license of that person.
- (B) The board shall follow the procedure for suspension without a prior hearing in section 119.07 of the Revised Code. The suspension shall remain in effect, unless removed by the board, until the board's final adjudication order becomes effective, except that if the board does not issue its final adjudication order within ninety days after the hearing the suspension shall be void ninety-one days after the hearing. The board may suspend a license utilizing a telephone conference call to review the allegations and take a vote.

3796:6-4-06

Suspension of a ~~dispensary~~ provisional dispensary license or certificate of operation without a hearing.

Pursuant to division (B)(3) of section 3796.14 of the Revised Code, if the state board of pharmacy determines that there is clear and convincing evidence that the method used by a dispensary to possess or dispense medical marijuana presents a danger of immediate and serious harm to others, the board may suspend the dispensary's license without a hearing. Upon the suspension of a dispensary certificate of operation, all medical marijuana shall be placed under seal in accordance with division (C) of section 3796.15 of the Revised Code. The board shall follow the procedure for suspension without a prior hearing in section 119.07 of the Revised Code. The suspension shall remain in effect, unless removed by the board until the board's final adjudication order becomes effective, except that if the board does not issue its final judgment order within ninety days after the hearing, the suspension shall be void on the ninety-first day after the hearing. The board may suspend a license utilizing a telephone conference call to review the allegations and take a vote.

3796:6-4-07

Failure to properly store medical marijuana.

- (A) Any dispensary that does not store medical marijuana in compliance with this division, or that stores medical marijuana at a location other than that for which the dispensary license was issued, may have its license suspended or revoked. In such a case, all medical marijuana under the dispensary's control will be subject to being placed under seal by the state board of pharmacy in compliance with division (C) of section 3796.15 of the Revised Code.
- (B) The state board of pharmacy may retrieve samples of dispensary inventory and submit such samples to a testing laboratory for appropriate testing, both at the cost of the dispensary from which the samples were retrieved, upon reasonable suspicion that expired, damaged, deteriorated, misbranded or adulterated medical marijuana:
- (1) Is being or has been dispensed to patients or caregivers; or
 - (2) Is intermingled with a dispensary's medical marijuana inventory until they are destroyed in accordance with the dispensary's destruction policy. Expired, damaged, deteriorated, misbranded or adulterated medical marijuana shall not be stored at the licensed dispensary for more than one week.

3796:6-4-09

Interagency cooperation.

Whenever the state board of pharmacy revokes or suspends a medical marijuana dispensary [provisional](#) license [or certificate of operation](#), it shall notify the department of commerce, the medical board, local police departments and county sheriff's office whose jurisdiction includes the licensee's dispensing location.

3796:6-5-01

Medical marijuana dispensary fee structure.

(A) The following non-refundable licensing fees are as follows:

- (1) The application fee for a dispensary license is five thousand dollars. One application fee must be submitted with each application.
- (2) The certificate of operation fee is seventy thousand dollars. One certificate of operation fee must be submitted for each certificate of operation.
- (3) In addition to the certificate of operation fee, the fee to file an untimely certificate of operation renewal is ten thousand dollars.
- (4) The application fee for a dispensary associated key employee is five hundred dollars. ~~This fee includes the associated key employee identification card.~~
- (5) The application fee for a dispensary key employee is two hundred fifty dollars. ~~This fee includes the key employee identification card.~~
- (6) The application fee for a dispensary support employee is one hundred dollars. ~~This fee includes the support employee identification card.~~
- (7) The biennial renewal fee for a dispensary license is seventy thousand dollars.
- (8) The biennial renewal fee for a dispensary associated key employee card is five hundred dollars.
- (9) The biennial renewal fee for a dispensary key employee card is two hundred fifty dollars.
- (10) The biennial renewal fee for a dispensary support employee card is one hundred dollars.
- ~~(11) The fee for a reissued dispensary certificate of operation or employee identification card is fifty dollars.~~

(B) The following non-refundable, change in description fees are as follows:

- (1) The fee for a change in ownership is five thousand dollars.
- (2) The fee for a relocation is five thousand dollars.

- (3) The fee for a major modification or renovation is five thousand dollars.
- (C) The non-refundable advertising approval fee is one hundred dollars per advertisement.
- (D) All fees required under this rule shall be paid to the state board of pharmacy by check, or other method approved by the state board of pharmacy, made payable to the ~~treasurer, state of~~ Ohio [treasurer of state](#).