

IN THE MATTER OF
MARYMED, LLC

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BEFORE THE NATALIE M.
LAPRADE MEDICAL
CANNABIS COMMISSION

* * * * *

CONSENT ORDER

The Natalie M. LaPrade Medical Cannabis Commission (“the Commission”) voted to award pre-approvals to applications for a medical cannabis grower license, a medical cannabis processor license, and a medical cannabis dispensary license each submitted by **MaryMed, LLC** (“Respondent”). The Commission subsequently received information relating to the medical cannabis operations maintained by a related company of MaryMed, LLC and opened an investigation. On June 26, 2017, based on the information provided to the Commission during the investigation, the Commission voted to issue a Notice of Intent to Deny Medical Cannabis Grower, Processor, and Dispensary Licenses (“Notice”) against the Respondent’s pre-approved applications for medical cannabis grower, processor, and dispensary licenses in the State of Maryland. The Notice was sent on September 8, 2017 and alleged that the Respondent had violated the Code of Maryland Regulations (COMAR), Title 10, Subtitle 62 specifically:

10.62.08.02 provides in pertinent part:

G. An applicant [for a medical cannabis grower license] shall amend an application within 3 business days to include the name and documentation of a request to forward the criminal history record information to the Commission of:

- (1) A new individual investor of an interest of 5 percent or more; or
- (2) Another manager or director of the entity, even after a license is issued.

10.62.08.05 provides in pertinent part:

B. The Commission may deny an application [for a medical cannabis grower license] that contains a misstatement, omission, misrepresentation, or untruth.

C. An application [for a medical cannabis grower license] shall be complete in every material detail.

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10.62.08.06 provides in pertinent part:

C. The Commission may deny issuing a pre-approval of a [medical cannabis grower] license if, for any individual identified in the application specified in Regulation .02B(1) of this chapter:

- (1) The criminal history record information or any other evidence that demonstrates an absence of good moral character; or
- (2) The payment of taxes due in any jurisdiction is in arrears.

10.62.19.02 provides in pertinent part:

E. An applicant [for a medical cannabis processor license] shall amend an application within 3 business days to include the name and documentation of a request to forward the criminal history record information to the Commission of a new individual investor of an interest of 5 percent or more or another manager or director of the entity, even after a license is issued.

10.62.19.04 provides in pertinent part:

B. The Commission may deny an application [for a medical cannabis processor license] that contains a misstatement, omission, misrepresentation, or untruth.

C. An application [for a medical cannabis processor license] shall be complete in every material detail.

10.62.19.05 provides in pertinent part:

C. The Commission may deny issuing a pre-approval of a [medical cannabis processor] license if, for any individual identified in the application specified in COMAR 10.62.19.02B(1) and (2) of this chapter:

- (1) The criminal history record information or background information demonstrates an absence of good moral character; or
- (2) The payment of taxes due in any jurisdiction is in arrears.

10.62.25.02 provides in pertinent part:

D. An applicant [for a medical cannabis dispensary license] shall amend an application within 3 business days to include the name and documentation of a request to forward the criminal history record information to the Commission of a new individual investor of an interest of 5 percent or more or another manager or director of the entity, even after a license is issued.

10.62.25.05 provides in pertinent part:

B. The Commission may deny an application [for a medical cannabis dispensary license] that contains a misstatement, omission, misrepresentation, or untruth.

C. An application [for a medical cannabis dispensary license] shall be complete in every material detail.

10.62.25.06 provides in pertinent part:

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C. The Commission may deny issuing a pre-approval of a [medical cannabis dispensary] license if, for any individual identified in the application specified in Regulation .02B(1) and (2) of this chapter:

- (1) The criminal history record information or background information demonstrate an absence of good moral character; or
- (2) The payment of taxes due in any jurisdiction is in arrears.

10.62.34.01 provides in pertinent part:

In the event the Commission finds there is a reasonable likelihood of diversion, contamination of medical cannabis, or any risk to the health of a patient or any other individual, after written notice and a hearing in accordance with the State Government Article, §§ 10-201-10-226, Annotated Code of Maryland, the Commission may:

- A. Impose a fine of up to \$10,000 per violation on a licensed grower, licensed processor, licensed dispensary or registered independent testing laboratory;
- B. Deny the license or registration;
- C. Suspend the license, licensee, agent, employee, registration or registrant; or
- D. Revoke the licenses, licensee, agent, employee, registration or registrant.

On September 14, 2017, Respondent requested a hearing. The Commission delegated authority to the Office of Administrative Hearings to conduct a hearing and present the Commission with proposed findings of fact.

On March 7 and 8, 2018, Administrative Law Judge John J. Leidig conducted a full evidentiary hearing. On May 4, 2018, the Commission received the Proposed Findings of Fact prepared by ALJ Leidig. In his Proposed Findings of Fact, ALJ Leidig found that MaryMed responded reasonably promptly to the Commission's requests for information concerning its applications and further found that "[t]here is not a reasonable likelihood that medical cannabis was diverted from [Minnesota Medical Solutions] to Vireo NY."

On June 7, 2018, the Respondent, represented by counsel, and Robert Gilbert, Esquire and Michael Kao, Esquire, administrative prosecutors, attended a case resolution conference ("CRC") at the Commission in an effort to resolve the pending matter. Per the Order issued by Judge Leidig

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following the evidentiary hearing, the Commission hereby accepts the following Findings of Fact, Conclusions of Law, and Order.

I. FINDINGS OF FACT

The Commission finds that:

1. On or about November 4, 2015, MaryMed submitted applications to the Commission for medical cannabis grower, processor, and dispensary licenses.
2. At that time, 90% of MaryMed was owned by Vireo Health, LLC (Vireo Health) and 10% was owned by Dr. Mark Schneyer, MaryMed's Clinical Director.
3. As of December 2015, Vireo Health was also the majority owner of two other entities, Minnesota Medical Solutions (MMS) and Vireo Health of New York (Vireo NY).
4. In its applications, MaryMed identified its officers, which included the following individuals:
 - Laura Bultman, M.D. (Bultman);
 - Robert Shimpa (Shimpa); and
 - Ronald Owens (Owens).
5. On August 5, 2016, the Commission voted to award pre-approvals to an application for a medical cannabis grower license as well as an application for medical cannabis processor license submitted by Respondent.
6. The Commission subsequently became aware that Minnesota authorities had opened an investigation in response to allegations that Bultman and Owens had transported cannabis oil from an MMS facility to a Vireo NY facility.
7. On November 28, 2016, the Commission voted to award pre-approval to an application for medical cannabis dispensary submitted by Respondent.

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8. On January 31, 2017, MaryMed's counsel sent a letter to the Commission explaining that as a result of the Minnesota investigation, MaryMed has taken steps to replace certain executives named in MaryMed's initial application, including Bultman and Owens. MaryMed's January 31, 2017 letter also explained that MaryMed had taken steps to isolate its operations from Vireo Health and, accordingly, MaryMed was no longer owned by Vireo Health.
9. On February 3, 2017, the State of Minnesota, Wright County, filed two felony counts each against Bultman and Owens in the Wright County District Court for the 10th Judicial District (Minnesota Court). Count I alleges an intentional transfer of medical cannabis to a person other than allowed by law, and Count II alleges aiding and abetting an intentional transfer of medical cannabis to a person other than allowed by law. These Minnesota Court criminal proceedings remain open and pending.
10. The Commission conducted an investigation and on September 8, 2017, based on the information provided to the Commission during the investigation, the Commission issued a Notice of Intent to Deny Medical Cannabis Grower, Processor, and Dispensary Licenses ("Notice") against the Respondent's pre-approved applications for medical cannabis grower, processor, and dispensary licenses in the State of Maryland.
11. On September 14, 2017, Respondent requested a hearing.
12. On March 7 and 8, 2018, Administrative Law Judge John J. Leidig conducted a full evidentiary hearing.
13. On May 4, 2018, the Commission received the Proposed Findings of Fact prepared by ALJ Leidig, a copy of which is attached to this Consent Order as Exhibit A.

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14. In his May 4, 2018 Proposed Findings of Fact, ALJ Leidig found that MaryMed responded reasonably promptly to the Commission's requests for information concerning its applications.
15. Further in his May 4, 2018 Proposed Findings of Fact, ALJ Leidig found that "[t]here is not a reasonable likelihood that medical cannabis was diverted from [Minnesota Medical Solutions] to Vireo NY."

II. CONCLUSIONS OF LAW

Based on the foregoing findings of fact at the conclusion of the evidentiary hearing, the Commission concludes that Respondent is entitled to reinstatement of the stage one pre-approvals awarded to its applications for medical cannabis grower, processor, and dispensary licenses upon certain conditions.

III. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law by the Administrative Hearing Judge, it is hereby:

ORDERED that the pre-approvals of applications for medical cannabis grower license, processor license, and dispensary license submitted by MaryMed, LLC are hereby reinstated on the condition that if and when MaryMed, LLC establishes that it has met the requirements for final licensure in any licensing category, such license(s) will be issued subject to the following terms and conditions:

1. The Respondent must adopt best industry practices as approved by the Commission related to diversion prevention and inventory control;
2. The Respondent must submit to enhanced supervision by the Commission as directed;

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3. The Respondent shall retain storage of all recordings of security video surveillance, as required under COMAR 10.62.10.07, 10.62.21.06, and 10.62.27.07, for a minimum of 365 days; the Respondent shall be responsible for all costs associated with retention and storage of security video surveillance; and be it further

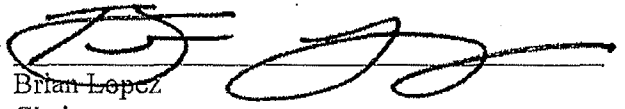
ORDERED that after **ONE (1) YEAR** from the effective date of any license for medical cannabis grower, medical cannabis processor, or medical cannabis dispensary issued to Respondent, the Commission may consider a petition to terminate the conditions identified above, provided that the Respondent has been compliant with all of the terms of this Consent Order; and be it further

ORDERED that failure to comply with any of the terms and conditions of this Order shall constitute a violation of the Consent Order; and be it further

ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, the Commission, in its discretion, after notice and an opportunity for an evidentiary hearing, may impose, by further public Order of the Commission, any sanction(s) authorized by Health Gen. § 13-3301 *et seq.*; and be it further

ORDERED that this Consent Order, including its attached Exhibit A, is a **PUBLIC RECORD** pursuant to Md. Code Ann., Gen. Prov., §§ 4-101, *et seq.* (2014).


7/2/2018
Date


Brian Lopez
Chairman
Natalie M. LaPrade Medical Cannabis Commission

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CONSENT

I sign this Consent Order after having an opportunity to consult with an attorney, voluntarily and without reservation, and I fully understand and comprehend the language, meaning, terms, and effect of this Consent Order.



Dr. Kyle Kingsley
Chief Executive Officer, MaryMed, LLC

NOTARIZATION

CITY: Minneapolis

COUNTY: Hennepin

I HEREBY CERTIFY that on this 3 day of July, 2018, before me, Notary Public of the State and City/County aforesaid, Dr. Kyle Kingsley personally appeared, and made oath in due form of law that signing the foregoing Consent Order was the voluntary act and deed of Dr. Kyle Kingsley.

AS WITNESSETH my hand and notarial seal.


Notary Public

My Commission Expires: 1-31-22

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EXHIBIT A

NATALIE M. LAPRADE MEDICAL
CANNABIS COMMISSION,
MARYLAND DEPARTMENT
OF HEALTH

v.

MARYMED, LLC,
RESPONDENT

* BEFORE JOHN J. LEIDIG,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: MDH-MMCC-170-17-36882
* MMCC Case No.: 2017-001

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PROPOSED FINDINGS OF FACT

STATEMENT OF THE CASE
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION

STATEMENT OF THE CASE

On September 8, 2017, the Natalie M. LaPrade Medical Cannabis Commission (Commission), Maryland Department of Health (Department), issued a Notice of Intent to Deny Medical Cannabis Grower, Processor, and Dispensary Licenses against MaryMed, LLC (MaryMed or Respondent), alleging violations of Maryland law concerning the licensing of medical cannabis growers, processors and dispensaries. Code of Maryland Regulations (COMAR) 10.62. On September 14, 2017, the Respondent requested a hearing.

On November 2, 2017, the Commission transmitted the hearing request to the Office of Administrative Hearings (OAH), delegating to the OAH the authority to conduct a contested case hearing and “prepare proposed findings of fact related to the charges issued by the Commission with a particular finding of fact on whether there is a reasonable likelihood that medical cannabis

was diverted from Minnesota Medical Solutions, a subsidiary of Vireo Health, to Vireo Health of New York.” Commission Transmittal at 1; Md. Code Ann., State Gov’t § 10-205 (2014).¹

On January 18, 2018, in accordance with the Commission’s delegation, I conducted a pre-hearing conference (Conference) at the OAH in Hunt Valley, Maryland. On March 1, 2018, after considering submissions from the parties, I issued a Ruling on Motions and Pre-Hearing Memorandums to address matters raised at the Conference.²

On March 7 and 8, 2018, I held an evidentiary hearing at the OAH in Hunt Valley, Maryland. Robert J. Gilbert, Deputy Counsel, Health Occupations Prosecution and Litigation Division (HOPL), and Michael Kao, Assistant Attorney General, HOPL, appeared on behalf of the State of Maryland (State). Steven K. White, Esquire, and Matthew C. Smilowitz, Esquire,³ Stinson Leonard Street LLP, appeared on behalf of MaryMed.

The contested case provisions of the Administrative Procedure Act and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov’t §§ 9-1607.2, 10-201 through 10-226 (2014 & Supp. 2017); COMAR 28.02.01.

¹ The delegation statement from the Commission presupposes that the question of whether there is a reasonable likelihood medical cannabis was diverted from Minnesota Medical Solutions, a subsidiary of Vireo Health, to Vireo Health of New York is a question of fact. I believe that it is a mixed question of law and fact that involves the application of specific facts to COMAR 10.62.34.01B. This regulation states in pertinent part as follows: “In the event the Commission finds there is a reasonable likelihood of diversion . . . after written notice and a hearing in accordance with the State Government Article, §§10-201—10-226, Annotated Code of Maryland, the Commission may: . . . B. Deny the license or registration.” (emphasis added). COMAR 10.62.34.01B.

² The parties submitted the following: State’s Post Pre-Hearing Conference Memorandum of Law, February 1, 2018; MaryMed LLC’s Motion to Compel, Motion in Limine, and Pre-Hearing Initial Brief, February 1, 2018; State’s Response to MaryMed, LLC’s Motion to Compel, Motion in Limine and Pre-Hearing Initial Brief, February 8, 2018; MaryMed LLC’s Response to State’s Post Pre-Hearing Conference Memorandum of Law, February 8, 2018; and MaryMed, LLC’s Reply to State’s Response to MaryMed, LLC’s Motion to Compel, Motion in Limine and Pre-Hearing Initial Brief, February 12, 2018.

³ Mr. Smilowitz is specially admitted to participate in these proceedings pursuant to an Order entered by the Circuit Court for Baltimore County on January 8, 2018 (*In the Matter of MaryMed, LLC*, Case No. 03-C-18-108).

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits at the hearing. Joint exhibits are designated as JT; State exhibits as ST; MaryMed exhibits as MM; and the OAH exhibit as OAH.

- JT 1 Memorandum from Mark Rodeheaver (Rodeheaver), the Commission's Senior Investigator, Bureau of Enforcement and Compliance (BEC), to David Kloos (Kloos), BEC Director, July 7, 2017
- JT 2 Complaint and supporting materials for *State of Minnesota v. Laura Lynn Bultman* (Bultman Case), State of Minnesota, County of Wright, District Court, 10th Judicial District (Minnesota Court), February 3, 2017
- JT 3 Letter from Eddie L. Pounds, Esquire (Pounds) to Patrick Jameson (Jameson), the Commission's Executive Director, January 31, 2017
- JT 4 Letter from Pounds to Jameson, February 7, 2017
- JT 5 Email from Paul J. Quill (Quill), Commission's Senior Investigator, to Pounds, February 15, 2017; letter from Pounds to Quill, February 17, 2017
- JT 6 Emails between Pounds and Quill, February 17, 2017 to March 1, 2017; letter from Pounds to Quill, with spreadsheet attachment, March 3, 2017
- JT 7 Letter from Quill to Pounds, March 13, 2017
- JT 8 Letter from Pounds to Quill, March 29, 2017
- JT 9 Letter from Pounds to Quill, April 4, 2017
- JT 10 Emails between Pounds and Jameson, with attachments, May 19, 2017 to May 22, 2017
- JT 11 Email from Rodeheaver to Pounds, May 23, 2017; letter from Rodeheaver to Pounds, with attachments, March 23, 2017; email from Pounds to Rodeheaver, with attachments, March 23, 2017
- JT 12 Company Statement of Vireo Health and Minnesota Medical Solutions re: Investigation Stemming from Accusations of Former Disgruntled Employee, June 1, 2016
- JT 13 MaryMed's applications
 - 13-1 Grower Application
 - 13-2 Processor Application
 - 13-3 Dispensary Application

- JT 14 Electronic Calendar entry for Ari Hoffnung, for appointment on September 30, 2016
- JT 15 "Dear Pre-approved Grower, Processor, Dispensary Applicant" Letter from the Department, with attachment, March 24, 2017
- JT 16 "Dear Pre-approved Dispensary Applicant" Letter from the Department, with attachment, March 28, 2017
- JT 17 Emails between Pounds and Quill, March 29, 2017 to March 30, 2017
- JT 18 Emails between Pounds and Quill, April 6, 2017 to April 13, 2017
- JT 19 Commercial Lease Agreement between MaryMed and 100 Enterprise Drive, LLC, April 21, 2017
- JT 20 Report from the Department (redacted), May 11, 2017
- JT 21 Letter from Pounds to Kloos, May 16, 2017
- JT 22 Commission's Meeting Minutes, May 17, 2017
- JT 23 Email from Quill to Jake May (May), Special Agent of the Minnesota Bureau of Criminal Apprehension (BCA), with attachments, May 18, 2017
- JT 24 Emails between Rodeheaver and May, May 22, 2017 to May 31, 2017
- JT 25 Email from Pounds to Rodeheaver, May 26, 2017
- JT 26 Emails between Rodeheaver and Minnesota Department of Health, June 5, 2017 to June 14, 2017
- JT 27 Email from Kloos to MaryMed and others, June 7, 2017
- JT 28 Letter from Stinson Leonard Street LLP (Stinson) to Assistant Attorney General (AAG) Heather Nelson (Nelson), June 14, 2017
- JT 29 Emails between Rodeheaver and Pounds, June 16, 2017
- JT 30 Email from Rodeheaver to policechief@cheverly-md.gov, with attachment, June 20, 2017
- JT 31 Letter from Pennsylvania Department of Health to Dr. Kyle Kingsley, June 20, 2017
- JT 32 Emails among Steven White, Esquire (White), Stinson, Rodeheaver and AAG Nelson, June 20, 2017 to June 21, 2017

- JT 33 Email from White to Nelson, June 23, 2017
- JT 34 Commission's Meeting Minutes, June 26, 2017
- JT 35 MaryMed's Supplemental Grower License Application, June 25, 2017
- JT 36 MaryMed's Supplemental Processor License Application, June 25, 2017
- JT 37 Letter from White to Mary Jo Mather (Mather), Commission's Director of Administration, July 11, 2017
- JT 38 "Dear Applicants" email from Kloos, with attachment, July 19, 2017
- JT 39 Renewal letter from New York Department of Health to Vireo Health, July 31, 2017
- JT 40 Renewal statement from Minnesota Department of Health, August 2, 2017
- JT 41 Order Denying Motion to Dismiss in the Bultman Case, August 2, 2017
- JT 42 Letter from Amber Shimpa, MaryMed's Chief Financial Officer, to Kloos, with attachments, August 14, 2017
- JT 43 Letter from White to Nelson, August 25, 2017
- JT 44 Notice of Agency Action: letter from Commission to MaryMed, with attachment, September 8, 2017; Notice of Intent to Deny Medical Cannabis Grower, Processor, and Dispensary Licenses, September 8, 2017
- JT 45 Letter from Mather to White, October 25, 2017
- JT 46 Motion to Dismiss in the Bultman Case, November 3, 2017
- JT 47 Press Release from Pennsylvania Department of Health, December 19, 2017
- ST 48 Commission's investigative notes, undated
- ST 49 Order entered in the Bultman Case, February 16, 2018
- ST 50 Order entered in State of Minnesota v. Ronald Dale Owens in the Minnesota Court, February 16, 2018
- MM 51 Letter from Quill to Pounds, March 13, 2017
- MM 52 Memo from Quill to Kloos, May 11, 2017
- MM 53 Memo from Rodeheaver to Kloos, June 20, 2017

- OAH 54 Contested Case Hearing Agreement between the OAH and the Commission, December 11, 2017; Transmittal from the Commission to the OAH, November 2, 2017
- MM 55 Receipt and Certificate of Burn/Destruction from Pope/Douglas Solid Waste Management, April 26, 2016

Testimony

The State presented testimony from the following witness: Mark Rodeheaver (Rodeheaver), the Commission's Senior Investigator, Bureau of Enforcement and Compliance (BEC).

MaryMed presented testimony from the following witnesses: Paul Quill (Quill), the Commission's former Senior Investigator, BEC; and Dr. Kyle Kingsley (Kingsley), MaryMed's Chief Executive Officer.

PROPOSED FINDINGS OF FACT

I propose that the Commission make the following findings of fact. Except as otherwise noted, all of these proposed findings are by a preponderance of the evidence.

1. On or about November 4, 2015, MaryMed submitted applications to the Commission for Stage 1 cannabis grower, processor and dispensary licenses. True copies of the applications were admitted into evidence as Joint Exhibits 13-1, 13-2, and 13-3.
2. At that time, 90% of MaryMed was owned by Vireo Health, LLC (Vireo Health) and 10% was owned by Dr. Mark Schneyer (Schneyer), MaryMed's Clinical Director.
3. As of December 2015, Vireo Health was also the majority owner of two other entities, Minnesota Medical Solutions (MMS) and Vireo Health of New York (Vireo NY).
4. As of December 2015, Dr. Kyle Kingsley was the Chief Executive Officer of MaryMed, MMS and Vireo NY.

5. Each of MaryMed's three applications states that "the Applicant is under a continuing duty to promptly notify the Commission if there is a change in the information provided to the Commission." JT 13 at 15.

6. In its applications, MaryMed identified its officers, which included the following individuals:

- Laura Bultman, M.D. (Bultman), as Chief Medical Officer;
- Robert Shimpa (Shimpa) as Chief Operations Officer; and
- Ronald Owens (Owens) as Security Director.

7. The Commission hired the Regional Economic Studies Institute (RESI) of Towson University to score and rank the grower, processor, and dispensary applicants.

8. RESI, in turn, hired a panel of third-party evaluators composed of subject matter experts from across the country to evaluate all applicants that met the Commission's minimum mandatory qualifications.

9. RESI provided applications to the evaluators in a Word document that was redacted as follows:

The Word document must be devoid of any identifying information after Form 5, including the Applicant's name, the company name of the Applicant (if applicable), and the names of any investors and/or employees. The related documents must be devoid of any identifying information including the Applicant's name, the company name of the Applicant (if applicable), and the names of any investors and/or employees. Only the redacted Word document and related documents will be sent to evaluators if the Application meets the mandatory qualification criteria.

JT 13 at 10.

10. RESI assigned scores and rankings to the applications based on the criteria stated in the applications and reported those scores and rankings to the Commission.

11. Each application states that the "Commission will make the final decision on issuing any [grower/processor/dispensary] licenses." JT 13 at 11.

12. As of December 2015, Vireo NY's New York facility was not experiencing a supply shortage of any cannabis products or strains.

13. On or about December 6, 2015, Bultman and Owens drove MMS's armored vehicle, a 2011 Yukon Denali, to Vireo NY's facility in Queens, New York. For business reasons, MMS had previously decided to use the armored vehicle in New York rather than Minnesota.

14. In April 2016, MMS fired Dan Abate Pella (Pella), who had served for approximately one year as MMS's Chief Scientific Officer.

15. In response to his firing, Pella stated that he would "bring this company down." Transcript of May 8, 2018 hearing (Tr. II) at 49. He also intentionally altered or manipulated a High Performance Liquid Chromatography (HPLC) machine that is used by MMS to test product concentrations, in order to damage MMS.

16. Later in April 2016, Pella provided Minnesota law enforcement authorities with a screen shot of a Vireo or MMS computer purporting to show that on December 10, 2015, 372 grams of cannabis oil was transported from the Otsego, Minnesota facility to one of Vireo's patient centers in Minnesota. Pella told authorities that the screen shot was evidence of improper diversion because the patient center only sold cannabis oil products in vaporizers or cartridges and it could not convert bulk shipments of cannabis oil into the types of vaporizers or cartridges that are used by the center's patients.

17. Pella also provided Minnesota authorities with copies of text messages purportedly between himself and Bultman from December 3, 2015 to December 5, 2015. Pella told authorities that these text messages substantiated that MMS was diverting cannabis oil in order to meet a supply shortfall for certain strains of cannabis products at the Vireo NY facility.

18. After reviewing the screen shot and the text messages, and based on information told to them by Pella, Minnesota authorities initiated an investigation into possible diversion of cannabis oil by MMS.

19. Senior Special Agent Robert Nance (Nance) and Special Agent Jake May (May) of the Minnesota Bureau of Criminal Apprehension (BCA) were assigned to the Minnesota investigation.

20. In the course of their investigation, Nance and May obtained and reviewed the following:

- The screen shot provided by Pella purporting to show a transfer of 372 grams of cannabis oil to an MMS-affiliated patient center on December 10, 2015
- The text messages purportedly between Pella and Bultman between December 3, 2015 and December 5, 2015 concerning an alleged plan to divert cannabis oil from MMS to Vireo NY to resolve a cannabis oil supply shortage at the New York facility
- A seven-page Biotrack inventory report from Bultman for December 2015
- An eight-page Biotrack inventory report from Brian Harvey (identified as MMS's lead pharmacist) for December 2015
- Data "extracted from" the hard drives of the computers of Kingsley, Shimpa, and Bultman, including emails
- A report from The Wadsworth Center (identified as a company that does "marijuana testing in New York")
- An inventory spreadsheet generated by Mia Vang (a technician at MMS) on December 8, 2015
- Labeled jars of Vireo product, allegedly from the Otsego, Minnesota and New York facilities
- Smartphone records for Bultman, Owens, and Shimpa
- Emails between Mia Vang and Bill Corrigan (other MMS employees)

JT 2.

21. In addition, Nance and May interviewed Pella; Owens; John Purdes (Purdes), a manufacturing technician employed by MMS; two unidentified employees at the Pope/Douglas Solid Waste facility; Duane Archie Lindenfelser (Lindenfelser), an MMS employee; Tom Barrett of Legend Technical Services; and Doug Maniak, identified as the former Manufacturing Manager of MMS.

22. Bultman resigned from MMS in July 2016.

23. On August 5, 2016, the Commission voted to award MaryMed Stage 1 cannabis grower and processor licenses.

24. During August 2016, the Commission became aware of the Minnesota investigation of MMS and Vireo NY.

25. On August 25, 2016, Kingsley attended a mandatory meeting called by the Commission for successful Stage 1 grower and processor applicants.

26. On September 9, 2016, a Certificate of Formation was filed to form Dorchester Capital, LLC (Dorchester), a Delaware limited liability company.

27. On September 30, 2016, Kingsley participated in a conference call with the Commission's Executive Director Patrick Jameson and its Director of Bureau of Enforcement and Compliance (BEC) David Kloos. MaryMed's Chief Strategy Officer Ari Hoffnung (Hoffnung) and MaryMed's counsel Eddie Pounds, Esquire, (Pounds) also participated in the call.

28. During the September 30, 2016 conference call, MaryMed representatives stated that the Minnesota BCA was investigating criminal charges of diversion of cannabis oil from MMS to Vireo NY, and that Bultman and Shimpa were no longer employed by MMS.

29. During November 2016, Vireo Health and Schneyer contributed and transferred all of their equity in MaryMed to Dorchester in exchange for Class A Units of Dorchester.

30. On November 28, 2016, the Commission voted to award MaryMed a Stage 1 cannabis dispensary license.

31. On January 26, 2017, MaryMed hired Jennifer Duey to become a Security and Compliance Director. Jennifer Duey was hired to replace Ronald Owens, who was terminated effective January 31, 2017.

32. On January 31, 2017, MaryMed's counsel sent a letter to the Commission explaining that as a result of the Minnesota BAC investigation, "MaryMed has taken steps to isolate its operations from Vireo Health." JT 3 at 1. The letter also states that "MaryMed is no longer owned by Vireo Health." *Id.*

33. MaryMed's January 31, 2017 letter also states as follows:

... several individuals outlined on the original applications are no longer employed by Vireo Health or affiliated with MaryMed as shareholders or prospective employees. To this end, the following replacements have been made with individuals of similar or superior qualifications:

- Medical Director Stephen Dahmer, M.D., replaced Laura Bultman, M.D.
- Security and Compliance Director Jennifer Duey replaced Ronald Owens
- Scientific Director Eric Greenbaum replaced Dan Abate Pella
- Operations Director Nik Goran replaced Robert Shimpa

In addition, Chief Strategy Officer Ari Hoffnung and Assistant Head Cultivator Chuck Schmitt have been added to MaryMed's leadership team.

Id.

34. On February 3, 2017, the State of Minnesota, Wright County, filed two felony counts each against Bultman and Owens in the Wright County District Court for the 10th Judicial District (Minnesota Court). Count I alleges an intentional transfer of medical cannabis to a person other than allowed by law, and Count II alleges aiding and abetting an intentional transfer of medical cannabis to a person other than allowed by law.

35. On February 7, 2017, MaryMed sent a letter to the Commission notifying it that a criminal complaint had been filed in the Minnesota Court.

36. On February 15, 2017, the Commission's investigator Quill sent an email to Pounds (MaryMed's counsel) requesting "details on 'Dorchester'" and asking whether Bultman and Owens were "terminated or allowed to resign." JT 5.

37. Pounds responded to Quill with a letter dated February 17, 2017. He enclosed the "incorporation document" for Dorchester. JT 5. Pounds further wrote as follows:

Although we can confirm that Laura Bultman, M.D., and Ron Owens are no longer employed by [MMS], a subsidiary of Vireo Health, LLC, based on confidentiality and other obligations that we are subject to, we are limited in our ability to describe the nature of their separations.

JT 5.

38. On March 1, 2017, Quill sent an email to Pounds asking him to "identify the new investors, corporate officers" of Dorchester, and asking whether there is any association between Amber Shimpa (listed as MaryMed's CFO) and Robert Shimpa. JT 6.

39. On March 3, 2017, Pounds sent a letter to Quill stating that Dorchester is "controlled by its manager, Dorchester Management, LLC, a Minnesota limited liability company, which is owned by Kyle Kingsley and Amber Shimpa, and managed by Kyle Kingsley." JT 6. The letter identifies Dorchester's officers as Kingsley (CEO), Amber Shimpa (CFO), Dahmer (Chief Medical Officer), and Hoffnung (Chief Strategy Officer); it also states that Amber Shimpa is Robert Shimpa's spouse.

40. In his March 3, 2017, letter to Quill, Pounds also reported that "Dorchester has raised more than \$3.2 million from Maryland-based investors and entities." *Id.* Pounds attached a spreadsheet showing ten investors, and listing their addresses, number of assigned Class A Units, and the purchase price. *Id.* The spreadsheet does not show the percentage interest owned by each investor or the dates on which each purchased Class A Units.

41. On March 13, 2017, Quill sent a letter to Pounds stating that the “Commission objects to all proposed changes to MaryMed’s organization unless and until MaryMed provides all information requested by the Commission in order to complete its evaluation of the application.” JT 7. Quill also asked for additional details concerning the “separations” of Bultman, Owens and Shimpa from MaryMed, as well as “a copy of all reports, documents, data, records, and notes contained in the company’s internal investigation.” *Id.*

42. On March 29, 2017, Pounds responded to Quill with a letter stating that Bultman resigned in July 2016, Shimpa resigned in September 2016, and Owens was terminated in January 2017. In the days preceding this letter, Pounds had attempted to set up a meeting between MaryMed’s “team” and Quill. JT 8.

43. On April 4, 2017, Pounds sent a letter to Quill stating as follows:

Vireo Health, LLC (“Vireo Health”) hired outside legal counsel to conduct an internal investigation. Neither MaryMed nor Vireo Health have in their possession any reports, documents, data, records, or notes from this investigation.

JT 9.

44. On April 6, 2017, Quill sent an email to Pounds requesting a copy of the “internal investigation.” MM 52 at 4.

45. On April 13, 2017, Pounds sent an email to Quill and Assistant Attorney General Heather Nelson. The email states that an investigation was conducted by outside counsel and that “in its due diligence, outside counsel generated notes from interviews of witnesses and reviewed various other documents and records” JT 18 at 2. Pounds’ email further asserts that any notes are protected by the attorney-client privilege.

46. On May 17, 2017, the Commission met and “voted to suspend the application of MaryMed for . . . failing to provide the internal investigation as requested.” MM 53 at 13. During April and May, 2017, leading up to the date of the Commission’s vote, MaryMed’s

counsel told Quill that he would make Kingsley and other members of MaryMed's leadership team available to the Commission for interviews, but Quill did not pursue any interviews. Tr. I at 176-177, JT 18.

47. At all relevant times, neither MaryMed nor Vireo Health had any reports from the internal investigation.

48. On May 19, 2017, W. Anders Folk, Esquire (of the Stinson firm, MaryMed's outside counsel) sent a letter to the Commission stating as follows:

My firm was hired by Vireo in July 2016. As part of our work for Vireo, we performed an investigation into issues raised by a criminal investigation conducted by Minnesota authorities. My firm's work on behalf of Vireo did not include drafting a written report of investigation and I am not aware of any such report having been prepared for Vireo.

JT 11.

49. Quill resigned effective May 23, 2017, and Rodeheaver was hired by the Commission to take over his role as Senior Investigator.

50. On May 23, 2017, Rodeheaver wrote to Pounds setting forth nine queries and document requests relating to the "investigation conducted by Stinson Leonard Street." JT 11. Pounds provided "the requested information" to Rodeheaver the next day. MM 53 at 13.

51. Rodeheaver received no response from the Commission in response to a request for documents sent on June 1, 2017.

52. Rodeheaver sent an email and followed up with a phone call to the investigator conducting an investigation in New York. He received no response. He was seeking information to determine, among other things, whether there was a product shortage at the New York facility and whether Vireo NY was facing penalties for failing to meet production deadlines in New York.

53. Rodeheaver did not investigate the circumstances of Pella's termination from MMS.

54. During June 2017, Rodeheaver, Assistant Attorney General Heather Nelson, and Executive Director Jameson rejected MaryMed's offer to make Kingsley available for an interview. Tr. I at 94, 104-105, JT 33.

55. On July 19, 2017, the Commission sent MaryMed a revised Pre-Inspection Checklist that included an item called "Criminal History Checks completed."

56. On August 1, 2017, MaryMed sent a request to the CJIS-Central Repository in Baltimore requesting criminal background checks be performed on all of the new individuals named in its Stage 2 applications.

57. On August 2, 2017, the Minnesota Court ruled that, assuming the truth of all of the facts set forth in the Statement of Probable Cause, Bultman and Owens were not acting on behalf of MMS or Vireo Health.

58. On August 2, 2017, the Minnesota Department of Health renewed MMS's cannabis growing, processing and distributing licenses.

59. On August 14, 2017, MaryMed provided documentation to the Commission showing that it had requested criminal background checks on all of the new individuals named in its Stage 2 applications.

60. MaryMed responded reasonably promptly to the Commission's requests for information concerning MaryMed's grower, processor and dispensary applications.⁴

⁴ Whether MaryMed complied with specific regulatory deadlines contained in COMAR 10.62 is a question of law that may involve analysis of waiver, forfeiture, and equitable considerations. There may also be interpretive questions to resolve concerning the phrases "amend an application," "within 3 business days," "new investor," "investor of 5 percent or more," and "material detail," that are part of the regulations cited by the Commission. *See* COMAR 10.62.08.02, .05, .06; COMAR 10.62.19.02, .04, .05; COMAR 10.62.25.02, .05, .06. Because the Commission's delegation is limited to the issuance of proposed findings of fact, I have not been delegated the authority to undertake these analyses.

61. There is not a reasonable likelihood that medical cannabis was diverted from MMS to Vireo NY.

DISCUSSION

The Commission delegated authority to the OAH to conduct a contested case hearing and “prepare proposed findings of fact related to the charges issued by the Commission with a particular finding of fact on whether there is a reasonable likelihood that medical cannabis was diverted from Minnesota Medical Solutions, a subsidiary of Vireo Health, to Vireo Health of New York.”

For the reasons explained in the Rulings on Pre-Hearing Memorandums issued on March 1, 2018, MaryMed bears the burden of proving its qualifications as an applicant for grower, processor, and dispensary licenses. COMAR 10.62.08.05A (grower licenses); COMAR 10.62.19.04A (processor licenses); COMAR 10.62.25.05A (dispensary licenses).

COMAR 10.62.34.01B states in pertinent part as follows:

In the event the Commission finds there is a reasonable likelihood of diversion . . . after written notice and a hearing in accordance with the State Government Article, §§10-201—10-226, Annotated Code of Maryland, the Commission may:

. . . .

B. Deny the license or registration.

COMAR 10.62.34.01B (emphasis added). The term “reasonable likelihood” is not defined in COMAR 10.62.

“Reasonable,” means “[f]air, proper, or moderate under the circumstances[.]” Black’s Law Dictionary (10th ed. 2014). Similarly, Merriam–Webster defines “reasonable” as “not

extreme or excessive” and “moderate, fair.” Merriam–Webster Collegiate Dictionary (11th ed. 2003). “Likelihood” means “probability.” *Id.*⁵ Thus, the term “reasonable likelihood” is synonymous with “reasonable probability.” See *Rowhouses, Inc. v. Smith*, 446 Md. 611, 657 (2016) (“we conclude that a “reasonable probability” is a fair likelihood that something is true.”).⁶

In the *Rowhouses* case, the Court of Appeals wrote that “a reasonable probability is less than more likely than not, but more than a possibility.” Regarding the term “possibility,” the Court further wrote as follows:

something that is possible is less probable than something that is reasonably probable; a possibility is a mere chance that something might be true, as opposed to a fair likelihood that something is true. Establishing a possibility requires a lower quantum of proof or evidence (the showing of a chance, not necessarily a fair likelihood) than establishing a reasonable probability. In that regard, a “reasonable probability” is a higher standard than a “possibility.”

A “possibility” is:

1. The quality, state, or condition of being conceivable in theory or in practice; the character of perhaps being, of perhaps existing, or of comporting with physical laws or the laws of reason[.] . . . In this sense, the word often (but not always) conveys a sense of uncertainty or improbability.
2. The chance that something is . . . true, or that something . . . will happen[.]

Possibility, Black's Law Dictionary (10th ed.2014). Similarly, Merriam–Webster defines “possibility” as “a chance that something might exist, happen, or be true[.]” Possibility, Merriam–Webster (2015)

Id.

⁵ The fourteenth edition of Black's Law Dictionary does not contain an entry for “likelihood.”

⁶ I find the *Rowhouses* case to be instructive on the definition of reasonable likelihood. Even so, I recognize that the Court of Appeals was reviewing a lower court's grant of summary judgment. The lower court in *Rowhouses*, accordingly, evaluated the evidence in the light most favorable to the non-moving party; it could also permissibly draw inferences from the evidence favorable to the non-moving party. Those principles do not apply here because I conducted an evidentiary hearing for the purpose of making proposed factual findings.

The term “diversion” is not defined in the statute creating the Commission or the regulations set forth in COMAR 10.62. The concept is mentioned in section 13-3313(b)(1) of the Health General Article as follows:

(b) (1) A person may not distribute, possess, manufacture, or use cannabis that has been diverted from a qualifying patient, a caregiver, a licensed grower, or a licensed dispensary.

(2) A person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.

(3) The penalty under this subsection is in addition to any penalties that a person may be subject to for manufacture, possession, or distribution of marijuana under the Criminal Law Article.

Md. Code Ann., Health-Gen. § 13-3313(b) (emphasis added) (Supp. 2017). According to Merriam-Webster, “diversion” means “the act or an instance of diverting from a course, activity, or use.” Merriam-Webster Collegiate Dictionary (11th ed. 2003). It defines “divert” to mean “to turn from one course or use to another.” *Id.* Based on these sources, and considering the context of the COMAR regulation, I conclude that diversion means the transfer of cannabis to a person who is not authorized by law to possess it.⁷

The Minnesota investigation of MMS’s alleged cannabis oil diversion was initiated based on statements and documents provided to Minnesota authorities by Dan Abate Pella in April 2016. Specifically, Special Agents Nance and May indicate in the Statement of Probable Cause that the investigation was opened because Pella provided authorities with a screen shot from the MMS Biotrack inventory system purportedly showing that 372 grams of cannabis oil were transported to a patient center affiliated with MMS in December 2015.

Previously, Pella had held a high position with MMS (Chief Scientific Officer), and had access to cannabis product, computers, calibration equipment, and sensitive information about the company. In April 2016, however, MMS fired Pella. At the hearing, Kingsley testified

⁷ Section 13-3313 of the Health General Article does not state what level of criminal intent is required to prove the felony of diversion. Therefore, for purposes of this analysis, I have assumed that there is no intent requirement.

credibly that Pella was threatening and destructive when he learned of his termination. Tr. II at 48-49. According to Kingsley, Pella intentionally manipulated an expensive HPLC machine that MMS used to test product concentrations and specifically threatened to “bring this company down.” *Id.*; JT 12 (press release). The State did not offer any credible evidence to rebut Kingsley’s account of Pella’s termination. Moreover, although the Commission made several attempts to interview and obtain information from Pella, Pella never discussed any details of the alleged diversion with them. JT 1 at 10.

Based on these facts, Pella had a motive to fabricate an allegation of cannabis diversion by MMS. This is significant because Pella’s statements are the sole evidentiary support for the allegations that (1) Vireo NY had a shortage of acceptable cannabis product at its New York facility; (2) several strains of cannabis being grown in New York were not producing acceptable levels of THC and CBD⁸ to meet New York cannabis product standards; (3) MMS had to “rescue New York” with cannabis oil supply; (4) it was unusual for Bultman to make Biotrack entries for outbound transfers of cannabis oil; (5) MMS was facing New York State regulatory deadlines to replenish its supply of acceptable cannabis products; and (6) the State of New York was about to impose fines and/or penalties as a result of the product shortfall. JT 2 at 2-4; MM 53 at 7.

There is no credible, corroborating evidence in the record for any of these allegations, and it is reasonable to think that if the State of New York were about to impose penalties on Vireo NY for a supply shortfall, there would be some documentary or other evidence of that action. It is also telling that, although May interviewed Purdes, an MMS manufacturing technician who claimed he was at the Vireo NY facility “the week before Christmas in 2015 in order to assist in producing the final products,” there is no evidence showing that Purdes corroborated Pella’s claim of a shortage in New York. JT 2 (Statement of Probable Cause at 3).

⁸ Tetrahydrocannabinol (THC) and cannabidiol (CBD) are the two most prominent cannabinoids found in cannabis.

In addition, the Commission's investigator testified that he contacted Michael Lanuto, the investigator conducting an investigation in New York, and requested "information regarding the production deadlines in New York that Vireo was facing and possible penalties involved for not making those deadlines." Tr. I at 90:10-21. The investigator further testified that he "received no response and attempted to contact [Lanuto] via telephone with no return call" and that he did not obtain "any information that indicated there would be any sanctions [in New York]." I found this testimony credible, and it buttresses Kingsley's testimony that there was no production shortage in New York as of December 2015. Tr. II at 51-52.

I found Kingsley to be a credible witness. He gave straightforward answers to the State's questions on cross-examination; was candid about his own shortcomings and those of MMS and its employees; and admitted that there was a possibility that cannabis oil had been diverted. JT 12 (company statement admitting that the inventory system in place as of December 2015 was inadequate for tracking cannabis oils); Tr. II at 93-94, 121. With respect to Pella's termination, Kingsley testified that Pella threatened to "bring this company down" and intentionally manipulated the company's HPLC machine to harm the company. Despite knowing that Pella had been fired from MMS and was also the informant to Minnesota authorities about MMS, the Commission's investigator admitted that he did not "make any investigation into the circumstances of [Pella's] termination" or investigate Pella's "reaction to his termination of employment." Tr. I 92:7-16. For these reasons, I do not find any of the statements that Pella made to the Minnesota investigators to be reliable hearsay.

The documents, data, and statements relied upon by Nance and May for the Minnesota criminal investigation are not part of the record before me. None of the following were offered or admitted into evidence: the screenshots and text messages provided by Pella that prompted the investigation; the seven-page Biotrack inventory report from Bultman for December 2015,

the eight-page Biotrack inventory report from Brian Harvey for December 2015; the data extracted from the hard drives of the computers of Kingsley, Shimpa, and Bultman; copies (as opposed to redacted transcriptions) of emails of MMS employees; the inventory spreadsheet generated by Mia Vang on December 8, 2015; and photos or samples of the labeled jars of MMS products. Also, the record does not include transcripts or audio or video recordings of any of the interviews conducted by Nance and May. As a result, there is little to no context for the sketchy bits of evidence cited in the Statement of Probable Cause. The Statement of Probable Cause and supporting affidavits make it apparent to me that Nance and May asked many leading questions during their interviews, and there is no way of knowing what potential evidence collected by Nance and May is not contained in the Statement of Probable Cause.

For example, the Statement of Probable Cause cites Biotrack records of one purported outbound transfer by Bultman on December 10, 2015, and five purported outbound transfers by Bultman on December 16, 2015, as the transfers that constituted an illegal diversion of cannabis oils to Vireo NY. JT 2 at 1-4 (May's Supporting Affidavit). Based on May's Affidavit, these transactions were singled out because there was "no destination listed" for them on certain Biotrack reports. *Id.* Without having the complete Biotrack logs from December to examine, there is too much guesswork involved in determining whether the Statement of Probable Cause cites every Biotrack entry that is material to the question of whether a diversion occurred, and even whether May accurately found and listed all outbound entries for which no destination was listed. The State presented no evidence to establish why the absence of a vendor or destination in a Biotrack entry would, in itself, be improper. In fact, in the statement issued by MMS following the incident, the company noted that its inventory system at the time was inadequate for tracking cannabis oils. JT 12 at 2. The statement also contained the following content:

Having transfers with no destination is common in this system and only indicates that a precise disposition is not yet in the system. For example, when we send

materials to a third party testing lab or for disposal as waste, no destination is listed because of a system limitation. For that reason, there are actually dozens of entries that have no destination listed, not just the small number of entries cherry picked by the disgruntled former employee.

Id. There is no indication in the record that Nance, May, Quill, Rodeheaver, or the Commission ever considered this information as an explanation for the “no destination” entries on the Biotrack logs, despite this being the most likely explanation. Moreover, the states of Minnesota, New York, and Pennsylvania granted or renewed MMS’s cannabis growing, processing and/or dispensing licenses after the disclosure of the MMS Biotrack entries that purportedly do not list a vendor or destination. JT 39, 40, 47.

The Statement of Probable Cause also cites text messages of December 3, 2015 and December 5, 2015, purportedly between Pella and Bultman. Bultman’s statement in these texts that she is “Making plans. None of which can be discussed electronically” might reasonably raise a vague suspicion of improper activity. However, lacking context and corroboration, these texts are too vague; they might also reflect a harmless concern for privacy or confidentiality. The texts are not particularly probative on the issue of whether there is a reasonable likelihood of diversion, especially without authenticated copies of the texts or a full, or at least a more complete, record of the conversation before and after the cited texts.

Similarly, the text messages between Bultman and Shimpa on December 8, 2015, prove very little other than that these MMS employees arranged for the transport of some cannabis oils that they referred to as “Christmas reds.” See MM53 at 8-9. It would require far too much speculation to conclude that these messages involve a conspiracy to divert cannabis oils from MMS to Vireo NY. Moreover, May admitted in his affidavit that there was never any confirmation of receipt by Vireo NY on or around the first week of December 2015 of 5.6 kilograms of cannabis oil that matched the products being tracked by the Minnesota BAC. JT 2 (May affidavit at 1-4).

I found Kingsley's explanation reasonable that MMS's armored vehicle would be more beneficial to the company in Queens, New York rather than Minnesota. Tr. II 53-54. And the State did not refute Kingsley's testimony that the armored vehicle has remained in New York since it was driven there in December 2015. *Id.* These facts effectively rebut the State's position that the armored vehicle was driven to New York as a means of illegally diverting cannabis oil.

MaryMed presented a receipt from Pope/Douglas Solid Waste Management (Pope/Douglas) purporting to show that certain "plant based drugs" were incinerated on April 26, 2016. This document references certain allegations in the Statement of Probable Cause that Owens told investigators he destroyed the 5.6 kilograms of cannabis oil that is the subject of the Minnesota investigation by having it incinerated at Pope/Douglas. Nance and May concluded that Owens' statement was not true. In reaching this conclusion, they interviewed Lindenfelser, who Owens identified as the person who accompanied him to Pope/Douglas. Lindenfelser did not testify at the hearing, and the brief, elliptical snippets of his answers that are included in the Statement of Probable Cause (the questions asked by the investigator are omitted) do not persuade me to either accept or reject Owens' account. Lindenfelser's statement that there were five or six boxes to be incinerated is consistent with MaryMed's position that the oil at issue was stored in five or six containers; however, Lindenfelser also told investigators that the total weight of the packages was substantially less than 5.6 kilograms. In the Statement of Probable Cause, Nance wrote that he:

learned from multiple sources, including Tom Barrett of Legend Technical Services, an accredited cannabis testing laboratory, that there would be no reason to destroy the 5.6 kilograms of concentrated oils. Those oils could be reprocessed and reformulated. . . . Doug Maniak, the former Manufacturing Manger of MMS [reported] that there would be no reason to destroy 372 grams of a finished product as that would be a waste of a lot of money.

JT 2 at 4. I gave little weight to these hearsay opinions; they were not supported by sufficient or credible foundation, evidence of expert credentials, or scientific validation. Still, the record did

not contain any persuasive evidence explaining why MMS would have waited more than three months, apparently until after a criminal investigation had been initiated, to dispose of the cannabis oil that was the subject of the Minnesota BAC investigation. Moreover, Kingsley was unable to adequately corroborate the Pope-Douglas receipt. Considering the record in its totality, MaryMed did not prove by a preponderance of the evidence that Owens destroyed the 5.6 kilograms of cannabis oil that is the subject of the Minnesota BAC investigation by having it incinerated at Pope/Douglas on April 26, 2016.⁹

Nevertheless, MaryMed's burden of proof in this case is to show that there is not a reasonable likelihood that medical cannabis was diverted from MMS to Vireo NY. For the reasons set forth above, MaryMed met this burden by credibly and sufficiently refuting each allegation and item of evidence offered in support of diversion.

Regarding the Commission's knowledge of the Minnesota investigation, I find Paul Quill's May 11, 2017 memorandum to be credible evidence that the Commission became aware of the investigation during August 2016. MM 52 at 2. I also found credible Kingsley's testimony that the investigation was discussed during the September 30, 2016 conference call in which Executive Director Jameson and BEC Director Kloos participated. Disclosing the investigation was a reasonable thing for Kingsley to do given that the company was about to incur significant liabilities during Stage 2 of the licensing process. See, e.g., JT 19 (Commercial Lease).

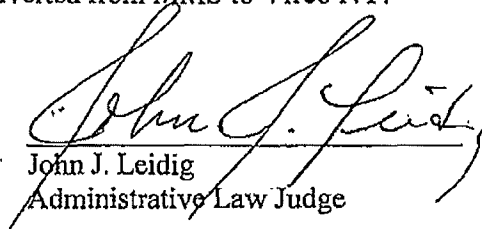
Regarding employee termination dates, the evidence showed that Bultman resigned in July 2016, and MaryMed did not produce sufficient evidence to rebut that date. Tr. II at 90-91

⁹ To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so[.]" when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

(testimony of Kingsley). Kingsley also admitted that Shimpa resigned in September or October 2016. Tr. II at 93. There was no dispute that Owens was terminated in January 2017.

Based on the August 2, 2017, Minnesota Court Order that is part of the record (MM 41), I propose that the Committee find the Minnesota Court ruled that, even assuming the truth of the Statement of Probable Cause, Bultman and Owens were not acting on behalf of MMS or Vireo NY. Because the Commission delegated limited authority to the OAH to make proposed findings of fact but not conclusions of law, the questions of whether the Minnesota Court's ruling is correct and whether the ruling is entitled to preclusive effect are beyond the scope of this analysis. The answers, however, may be dispositive in determining whether there is a reasonable likelihood that medical cannabis was diverted from MMS to Vireo NY.

May 4, 2018
Date Mailed and Emailed


John J. Leidig
Administrative Law Judge

JJL/dlm
#173638

RIGHT TO FILE EXCEPTIONS

Any party adversely affected by these Proposed Findings of Fact has the right to file written exceptions with the Chair of the Maryland Medical Cannabis Commission (Commission) within twenty-one (21) days of receipt of this decision. Md. Code Ann., State Gov't §§ 10-216, 10-220 (2014); cf. COMAR 10.01.03.18A. The Commission or the Commission's designee will review timely exceptions before rendering the final Commission decision. Md. Code Ann., State Gov't §§ 10-216, 10-220, 10-221 (2014). The Office of Administrative Hearings is not a party to any review process.

Copies Mailed and Emailed To:

MaryMed, LLC
207 South 9th Street
Minneapolis, MN 55410

Steven K. White, Esquire,
Stinson Leonard Street LLP
1775 Pennsylvania Avenue, N.W., Suite 800
Washington, DC 20006
steven.white@stinson.com

Matthew C. Smilowitz, Esquire
Stinson Leonard Street LLP
1775 Pennsylvania Avenue, N.W., Suite 800
Washington, DC 20006
matthew.smilowitz@stinson.com

Robert J. Gilbert, Deputy Counsel
Office of the Attorney General
Health Occupations Prosecution and Litigation Division
300 West Preston Street, Suite 201
Baltimore, MD 21201
Robert.gilbert@maryland.gov

Michael Kao, Assistant Attorney General
Office of the Attorney General
Health Occupations Prosecution and Litigation Division
300 West Preston Street, Suite 201
Baltimore, MD 21201
Michael.kao@maryland.gov