IN THE MATTER OF	*	**BEFORE THE MARYLAND**
CHESAPEAKE APOTHECARY	*	**MEDICAL CANNABIS COMMISSION**
Licensee	*	
License No.: D-18-00017	*	
	*	**Case Nos.: 18-00067 and 19-00068**
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PRE-CHARGE CONSENT ORDER

The Maryland Medical Cannabis Commission (the "Commission") held a pre-charge Case Resolution Conference ("CRC") on March 14, 2019 with Chesapeake Apothecary (the "Licensee"), license number D-18-00017, pursuant to its authority to regulate medical cannabis dispensaries under the Natalie M. LaPrade Medical Cannabis Commission Act (the "Act") codified at Md. Code Ann., Health-Gen. § 13-3301 *et seq.* (2015 Repl. Vol. and 2018 Supp.). Thereafter, after additional negotiation, the Licensee (hereinafter the "Respondent") and the Administrative Prosecutor agreed to resolve this matter as set forth herein in lieu of proceeding with formal charges. The Commission then ratified this agreement.

The pertinent provisions of the Act provide as follows:

§ 13-3307. Dispensary License Requirements

. . .

(f) The Commission shall establish requirements for security and product handling procedures that a dispensary must meet to obtain a license under this section, including a requirement for a product-tracking system.

(g) The Commission may inspect a dispensary licensed under this section to ensure compliance with this subtitle.

(h) The Commission may impose penalties or rescind the license of a dispensary that does not meet the standards for licensure set by the Commission.

. . .

§ 13-3316. Regulations

The Commission shall adopt regulations to implement the provisions of this subtitle.

The pertinent Code of Maryland Regulations (COMAR) (2018) for which the Licensee's license is being disciplined provide as follows:

10.62.03.02 Compensation from a Licensed Grower, Licensed Processor or Licensed Dispensary.
A. A certifying physician may not receive compensation, including promotion, recommendation, advertising, subsidized rent, or anything of value, from a licensed grower, licensed processor, or a licensed dispensary unless the certifying physician submits an application to the Commission for approval for the compensation.

10.62.30.03 Procedure for Dispensing Medical Cannabis

. . .

B. Before any distribution of medical cannabis, a dispensary agent shall query the Commission data network and verify that:

. . .

(3) The amount of medical cannabis that has already been dispensed pursuant to the written certification.

. . .

D. 30-day supply.

(1) A qualifying patient or caregiver may obtain a portion of a 30-day supply at any time once the written certification is presented to a licensed dispensary, provided the portion being sought when added to portions previously obtained does not exceed a 30-day supply.

(2) The dispensary agent shall enter the weight of usable cannabis or the weight of ?9-Tetrahydrocannabionol (THC) dispensed in the Commission data network.

10.62.34.01 Operational Failure Risking Diversion or Endangering Health.
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.

10.62.34.03 Violation of Requirements

In the event the Commission finds that a licensee, registrant, agent or employee violated a requirement of this subtitle, 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 $5,000 per violation on a licensed grower, licensed processor, licensed dispensary or independent testing laboratory;

B. Suspend the license, registration, licensee, registrant, employee or agent; or

C. Revoke the license or registration.

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Respondent was initially licensed on February 22, 2018, license number D-18-00017, to dispense medical cannabis and operates a dispensary in White Plains, Maryland.

2. There are two limits of medical cannabis products identified on a patient's written certification and which sets forth the qualifying patient's 30-day supply: one for usable cannabis and one for cannabis-infused products. Both are designated by weight in grams. The limits on a patient's certification are a combined limit, not two individual limits. A patient may purchase portions of each type of product in quantities that, when combined, do not exceed his/her 30-day supply.

I. Excessive Sales to Respondent's Agent-Employee

3. On September 11, 2018, the Respondent advised the Commission that it had dispensed medical cannabis to a qualifying patient in excess of the patient's 30-day supply as specified by the patient's certifying provider. A review of the Commission's authorized data network,

Marijuana Enforcement Tracking Regulation and Compliance system ("METRC"), revealed a Patient Information screen viewable by the Licensee in METRC at the time of sale. The screen displayed the following, with the numbers in red print:

Amount available to purchase today:

Dried flower (grams): -271.85

THC (grams): -81.56

4. The Commission determined upon further investigation that this patient was one of the Respondent's agents and employees and received a 40% discount on products.

5. On September 12, 2018, a Commission investigator visited the Respondent and conferred with this agent/qualifying patient ("agent-employee") and with the Respondent's head of operations. The investigator reviewed METRC and the Respondent's point of sale ("POS") system and determined that, for approximately 60 days, the Respondent and its POS system had not been processing sales in "real time." In other words, neither the Respondent nor METRC had accurate, contemporary 30-day supply information.

6. The investigator concluded, based upon a review of the METRC and the Licensee's POS system, that sales were being posted in the system between 1 - 20 days **after** the actual date of sale, creating a window for sales to be made to patients in excess of patients' certified 30-day allotments.[1] The Commission had listed Respondent's POS system on its list of validated providers of POS systems – companies that "ha[d] been approved by the [Commission], … received training, instructions and ha[d] … demonstrated their ability" to communicate with METRC. As part of the validation process, the Commission verified that the provider's POS

[1] During an interview in January 2019, the Respondent assured the Commission that the issues between METRC and the Licensee's point of sale system had been resolved and that all "real time" data was showing in the Licensee's system as of September 11, 2018.

system could timely update sales data in METRC. However, this Commission listing stated that "[e]ven though the integrators provided in this list have been granted access to the [METRC system,] it is the responsibility of the licensee to enter accurate information into the Validated system in order to comply with [Commission] rules and regulations."

7. METRC is designed to calculate available allotment totals on a rolling 30-day time period. The amount that a patient may purchase on a given day is calculated as the certified amount minus the total of all purchases made in the last 30 days, not in a calendar month. Thus, any consecutive 30-day time period chosen to sample should not exceed the patient's 30-day supply. If the product being sought exceeds the patient's 30-day supply, an error screen should appear in the METRC system. This alert system is designed to prevent sales above a patient's certified supply during any given 30-day period. The Respondent's POS system did not have such an alert.

8. The Commission notified the agent-employee and the head of operations of the transactions that exceeded 30-day supply totals.

9. Moreover, on July 3, 2018, the Commission sent a bulletin to all licenses titled "Patient Registration Lookup Reminder." The bulletin reminded all licensees and their agents, including the Respondent, that a dispensary agent must query the Commission's patient registry system to verify that a patient is currently registered, has a current provider certification, and has not already been dispensed his/her 30-day supply.

10. Over the course its investigation, the Commission queried METRC several times to determine if the employee/qualifying patient had exceeded his 30-day supply for a number of randomly selected 30-day time periods. During the relevant time period, the agent-employee's certified 30-day supply was 120 grams of usable cannabis/36 grams of medical cannabis-infused

product. The Commission investigator found that at various times the agent-employee exceeded his monthly allotments by more than 90%.

11. The agent-employee advised the investigator that he sometimes sold medical cannabis to himself at the end of the business day, or if another dispensary employee was available, the dispensary employee would sell to the agent-employee.

12. At all times relevant to this investigation, the Commission did not prohibit dispensary agents from selling or dispensing medical cannabis directly to themselves.

13. The agent-employee asserted that the excess sales to himself were not made for the purposes of illicit distribution of medical cannabis but rather for the treatment of a certified medical condition under the care of his certifying provider.

14. On January 22, 2019, Commission staff conducted an investigative interview of the Respondent's owners and the agent-employee. At this interview the agent-employee provided a written statement denying that he had willfully exceeded the 30-day allotment on a routine basis.

15. However, the Commission investigator's analysis revealed that the Respondent's other employee-patients (a total of eight persons) were nearly all in compliance with their 30-day supply limits during all relevant periods, with the exception of one employee exceeding the 30-day supply by approximately 3 grams during one date range.

16. Based on the amount of medical cannabis sold to the agent-employee in excess of his thirty-day supply as recommended by the agent-employee's certifying physician, the Commission finds as a matter of fact that the Respondent, by permitting excessive sales to the agent-employee in the quantities described above, contributed to a reasonable likelihood of diversion in violation of the regulation – COMAR 10.62.34.01 (2018) – in force during the relevant timeframe.

II. Unauthorized Promotion of a Certifying Physician

17. On March 1, 2019, the Commission received notice that the Respondent had hosted an event on February 28, 2019 from 6 – 8 p.m. at a restaurant in White Plains, Maryland for certifying physicians to confer with potential medical cannabis patients. This event was also to involve other medical cannabis industry participants. The Commission obtained an advertisement for this event.

18. When initially questioned by the Commission's investigator about which certifying physicians were at the event, Seth Erlin, a co-owner of the Respondent, reported that the language in the ad was a mistake and that he would contact his IT staff. He provided the investigator with copies of the ads reflecting typographical errors

19. Mr. Erlin stated that he had no intention of promoting a certifying physician.

20. However, in speaking with another of the Respondent's co-owners, the investigator learned that a physician from CannaBay Docs was present at the location for the event in question.

21. The investigator contacted CannaBay Docs and confirmed that the event occurred and that a certifying physician was present at the event.

22. Neither the Respondents nor CannaBay Docs has submitted an application to the Commission to request approval for compensation or promotion of a certifying physician pursuant to COMAR 10.62.03.02.

III. Mitigating Factors

23. Respondent self-reported the excess sales promptly to the Commission upon discovery by the agent-employee and the head of operations. During the time that the excess sales took place, METRC experienced numerous service outages which prohibited dispensary-agents across the state from querying METRC to verify patient allotments. During those outages, the Commission

issued letters to licensed dispensaries that they were permitted to conduct sales despite the METRC outages.

24. Respondent retained the services of an independent compliance auditor in March 2019, before the CRC related to this investigation. That auditor conducted a comprehensive review of Respondent's operating procedures and made applicable revisions to ensure future compliance with all Commission regulations and related statutes.

25. Respondent has had numerous announced and unannounced inspections by the Commission since March 2019, including its most recent inspection on March 18, 2020. The Respondent currently demonstrates consistent compliance with all applicable laws and regulations.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Commission concludes as a matter of law that there are grounds for discipline of the Respondent's medical cannabis dispensary license pursuant to Health Gen. § 13-3307 for violations of COMAR 10.62.03.02, 10.62.30.03, 10.62.34.01, and 10.62.34.03.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law by the Commission, it is hereby

ORDERED that the Respondent's license to dispense medical cannabis shall be placed on **PROBATION** for a period of **ONE YEAR** from the date of this Order; and it is further

ORDERED that during the period of probation, the Respondent shall ensure the following measures are undertaken:

a. The Respondent shall contract with a third-party industry compliance agency to conduct an ongoing evaluation and assessment of the Licensee SOPs and staff training throughout the probationary period;

b. The Respondent shall comply with all recommendations made by the compliance agency, subject to any recommendations or modifications made by the Commission;

c. The Respondent shall, beginning on the first calendar month after this order goes into effect, ensure that the compliance agency provide the Commission's Bureau of Enforcement and Compliance with monthly reports regarding its findings and recommendations;

d. The Respondent and/or the compliance agency shall document its staff training efforts and provide the same to the Commission; and

e. The Respondent shall be subject to random inspections by the Commission to ensure compliance with the foregoing; and it is further

ORDERED that within three months prior to the end of the probationary period, the Respondent may petition for termination of its probation and the Commission, or several commissioners meeting as a committee or Case Resolution Conference panel, may terminate or shorten the probation period if the Respondent can demonstrate full and satisfactory compliance with this Order; and be it further

ORDERED that the Licensee's failure to comply with the terms of this Consent Order shall constitute a violation of probation and may result in immediate revocation of the license, subject to a hearing pursuant to Md. Code Ann., State Gov't §§ 10-201 *et seq.*; and be it further

ORDERED that within 12 months of the effective date of this Order, in satisfaction of all grounds for discipline of Respondent's license as described above, the Respondent shall pay to the Commission **a fine of $100,000 in proportional monthly installments**; and it is further

ORDERED that this Consent Order is a **PUBLIC RECORD** pursuant to Md. Code Ann., Gen. Prov. § 4-401 *et seq*. (2014 Repl. Vol., 2018 Supp.)

8-17-2020
Date

[redacted]

CONSENT

I, John Scrima, am a Member of the Board of Managers of Chesapeake Apothecary, LLC, (hereinafter "Respondent"), and have legal authority to enter into this agreement on behalf of the Respondent. Respondent acknowledges that it has had the opportunity to seek advice of counsel in this matter. By this Consent, Respondent agrees and accepts to be bound by this Consent Order and its conditions and restrictions. Respondent waives any rights it may have had to contest the Findings of Fact and Conclusions of Law.

Respondent acknowledges the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which the Licensee would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on its own behalf, and to all other substantive and procedural protections as provided by law. Respondent acknowledges the legal authority and the jurisdiction of the Commission to initiate these proceedings and to issue and enforce this Consent Order. Respondent also affirms that it is waiving its right to appeal any adverse ruling of the Commission that might have followed any such hearing.

I sign this Consent Order with authority on behalf of Respondent after having had the opportunity to consult counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order and understand its meaning and effect.

6-17-2020
Date

John Scrima
[Signature]

John Scrima, Member of the Board of Managers
for Chesapeake Apothecary, LLC

NOTARY

STATE OF New York

CITY/COUNTY OF Bronx

I HEREBY CERTIFY that on this 17 day of June 2020, before me, a Notary Public of the foregoing State and City/County, personally appeared John Scrima on behalf of Chesapeake Apothecary, LLC, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Notary Public

My Commission expires: 11-17-2023

JEFFREY STONEY
Notary Public - State of New York
NO. 01ST6101699
Qualified in Westchester County
My Commission Expires 11-17-23