

IN THE MATTER OF	*	BEFORE THE
	*	
BLAIR WELLNESS CENTER, LLC,	*	MARYLAND CANNABIS
	*	
RESPONDENT	*	ADMINISTRATION
	*	
	*	OAH No: MDH-MMCC-173-22-21298
* * * * *	*	* * * * *

FINAL DETERMINATION AND ORDER

INTRODUCTION

On October 21, 2021, the Natalie M. LaPrade Maryland Medical Cannabis Commission (MMCC) filed administrative charges against Blair Wellness Center, LLC (Respondent), a Maryland cannabis dispensary operating license D-18-00028¹. The charges alleged violations of COMAR 10.62.34.02(A) (failure to adhere to standard operating procedures), 10.62.28.02 (failure to receive, create and enter accurate data into a perpetual inventory system), 10.62.25.07 (failure to meet standards of licensure), 10.62.34.01(A) (diversion), 10.62.32.02 (failure to maintain records) and 10.62.27.09(A) (failure to properly log visitors).

The charges also included an allegation that Matthew Blair, an employee and former owner of Respondent, was no longer eligible to serve as a dispensary agent pursuant to COMAR 10.62.26.03(D).

On August 24, 2022, MMCC transmitted the matter to the Office of Administrative Hearings (OAH) with the following delegation: for an Administrative Law Judge (ALJ) “to conduct an evidentiary hearing and prepare proposed findings of fact and proposed conclusions of law related to the Commission’s administrative charges against both Respondents on October 21, 2021.” The parties appeared by counsel for a pre-hearing conference on November 9, 2022, and again on January 24, 2023.

The OAH held a seven-day hearing on August 15 - 18, 2023, and August 21 - 23, 2023. After the hearing, the parties submitted post-trial bench memoranda on the meanings of the terms “diversion” and “perpetual inventory system.”

On October 10, 2023, the ALJ issued Proposed Findings of Fact and Conclusions of Law, which also included a Proposed Order with proposed penalties of a six-month suspension of Respondent’s license and a \$57,500 fine. On the same date, the ALJ issued a Ruling on Motion

¹ Respondent’s license has been converted in order to operate in the combined medical and adult-use market. The license number is now DA-23-00026.

for Judgment, which included a proposed conclusion of law that dismissed the charge² against Matthew Blair. Respondent filed exceptions to the Proposed Filings of Fact and Conclusions of Law and requested a hearing. The Maryland Cannabis Administration (MCA), successor agency to MMCC, held an exceptions hearing on February 7, 2024.

Following the hearing, on March 21, 2024, counsel for the parties were asked to submit a Joint Statement of Disciplinary History for Respondent or, in the event the parties could not agree, to submit separate statements of Respondent's Disciplinary History. Each party submitted a Statement of Disciplinary History; the State on April 8, 2024, and Respondent on April 9, 2024.

FINDINGS OF FACT

With the exception of Findings of Fact 8 and 10, discussed below, MCA adopts the ALJ's proposed Findings of Fact 1 through 96, which are incorporated by reference into the body of this document as if set forth in full and are attached hereto as Exhibit 1. The factual findings were proven by a preponderance of the evidence.

Finding of Fact 8 states, "In 2015, the MMCC granted Matthew Blair a dispensary license, under number D-18-00028." (footnote omitted). The license was granted to Blair Wellness, LLC, a limited liability company.³

Finding of Fact 10 states, in reference to Respondent, "Deliveries occur Monday through Friday, during normal business hours." This is certainly how Respondent describes its standard practices for accepting deliveries, but Finding of Fact 41 describes a delivery that occurred "On Saturday, December 19, 2020 [...]."

LEGAL ANALYSIS

Respondent's Exceptions

Respondent's Exceptions center on the ALJ's recommendations concerning penalties. Respondent argues initially that the recommendation for the imposition of fines and suspension of Respondent's license exceed the scope of MMCC's delegation to OAH and, therefore, should not be relied upon by MCA in its Final Order. Respondent argues further that the sanctions proposed by the ALJ are not supported by the evidence. The State responds that Respondent has

² The ALJ's Proposed Findings of Fact and Conclusions of Law could be interpreted to indicate there was more than one charge against Mr. Blair. The MCA identifies only one charge against Mr. Blair in the charging document. Regardless, there is no dispute that the ALJ recommended dismissal of all charges against Mr. Blair, whether one or two.

³ The award of the license is reflected in the audio minutes of May 24, 2018 MMCC meeting, available at: https://mmcc.maryland.gov/Documents/180524_1359.mp3 (45:36)

waived this argument by presenting evidence and argument on the issue of sanctions and that, in any event, Respondent is not prejudiced because MCA is “the final decision maker.” (State’s Reply to Respondent’s Exceptions, pg. 3).

MMCC⁴ has the authority to issue charges against licensees and seek sanctions such as penalties and the suspension or revocation of a cannabis license. COMAR 10.62.34. A licensee may request a hearing upon receipt of a charge of a violation. *See, e.g.*, COMAR 10.62.34.01(B)(2). When a licensee elects to have a hearing, the hearing will be before the Commission, agency head or their designee. The Commission may also delegate authority to OAH. Md. Code Ann., State Gov. § 10-205(a)(1)(ii)(1).

When a matter is delegated to OAH, the delegating agency may delegate authority to issue:

- (1) proposed or final findings of fact;
- (2) proposed or final conclusions of law;
- (3) proposed or final findings of fact and conclusions of law;
- (4) proposed or final orders or orders under Title 20 of this article; or
- (5) the final administrative decision of an agency in a contested case.

Id. § 10-205(b). The delegation is final unless the delegating agency has adopted regulations defining a procedure for revocation of all or part of the delegation. *Id.* § 10-205(d).

MMCC’s delegation to OAH granted authority “to conduct an evidentiary hearing and prepare proposed findings of fact and proposed conclusions of law related to the Commission’s administrative charges against both Respondents on October 21, 2021.” The ALJ’s Proposed Findings of Fact and Conclusions of Law included a section entitled “Recommended Order” (pg. 45-46). The final recommendations in this section are “[t]hat the Respondent dispensary be suspended for a period of six months; and [t]hat the Respondent pay a monetary penalty of \$57,500.00.”

MMCC did not delegate authority to OAH to make a recommended Order and any such recommendations from the ALJ exceed the scope of MMCC’s delegation. Accordingly, Respondent’s exceptions related to the scope of the delegation are granted. Respondent’s exceptions concerning whether the evidence supported the recommended sanctions are denied as moot.

ALJ’s Conclusions of Law

⁴ On May 3, 2023, the Cannabis Reform Act took effect. Among other things, the Cannabis Reform Act established the Maryland Cannabis Administration as the successor agency to MMCC. This Order references MMCC throughout as it was the regulatory body at the time of the incidents underlying the charges in this matter.

The charges of violations are found at paragraphs 62 through 69 of the charging document. MCA adopts the ALJ's conclusions of law as to paragraphs 62, 63, 64, 65, 67, 68 and 69 of the charging document which are incorporated by reference into the body of this document as if set forth in full. MCA does not adopt the ALJ's conclusions of law as to paragraph 66.

While no exceptions to the ALJ's proposed conclusions of law were made by either party, as the proposed conclusions of law are not final, MCA has discretion in adopting them. Where MCA has not adopted the ALJ's proposed conclusion of law, the conclusion of law and MCA's findings are discussed below.

Paragraph 66 of the Charging Document

Paragraph 66 states, "Based upon the allegations set forth herein detailing Respondent's multiple large unexplained package adjustments, the dispensary failed to create and enter timely and accurate data into a perpetual inventory control system that identifies and tracks the licensee's inventory of medical cannabis as required by COMAR 10.62.28.02.A(2) on more than 20 occasions."

The ALJ found that the "perpetual inventory system" referred to by this and other MMCC regulations is the seed-to-sale tracking software known as METRC. (Findings of Fact 1 through 4). The findings of fact made by the ALJ support a determination that Respondent failed to enter timely and accurate data on three occasions: 1) When Respondent failed to update METRC concerning the missing OD Buds - Black Raspberry and OD Buds - The Vision (roughly two pounds total of cannabis flower) for 11 days after discovering that the product was missing (see Findings of Fact 41, 47 and 48); 2) When Respondent failed to update METRC concerning a weight discrepancy for the Sour Papaya Trim for almost three months after the final sale of the product (see Findings of Fact 52, 54 and 55); and 3) When Respondent failed to update METRC concerning a weight discrepancy for the Grape GG Trim for 13 days after the final sale of the product (See Findings of Fact 57, 59 and 60).

The ALJ's proposed finding of fact on this charge seems to rest on Findings of Fact 64 and 65. In Finding of Fact 64, the ALJ notes that Respondent made 1,643 adjustments to METRC over a time period of just over four months. In Finding of Fact 65, the ALJ notes that "significant weight adjustments" were made for 21 bulk packages, most on May 27, 2021. While MCA agrees that these facts have been proven by a preponderance of the evidence, these facts alone are insufficient to find that the adjustments were inaccurate or untimely. There are no findings of fact that explain what happened to the packages between receipt by Respondent and May 27, 2021, when Respondent made 21 package adjustments in METRC. Further, it is expected that licensees will sometimes have to make reasonable weight adjustments in METRC as circumstances warrant. (See, e.g., Findings of Fact 6 and 7 discussing loss of weight due to

drying). None of the ALJ's Findings of Fact support a conclusion that, outside of those discussed above, the May 27, 2021 package adjustments (or the other 1,622 adjustments discussed in Finding of Fact 64) were not "timely and accurate."

MCA agrees with the ALJ that the evidence "warrant[s] an impression that the Respondent repeatedly failed to keep and maintain proper records" (Proposed Findings of Fact and Conclusions of Law, pg. 37), but an impression is not evidence and MCA declines to find that Respondent violated this regulation over 20 times without findings of fact to support that conclusion.

While Respondent failed to "enter timely and accurate data" into METRC on three occasions, there are insufficient findings of fact for MCA to determine that Respondent failed to enter timely and accurate data into the METRC "on more than 20 occasions" as is charged, and accordingly MCA is unable to find a violation as charged in Paragraph 66.

PENALTIES

The Statements of Disciplinary History submitted by the parties are mostly in alignment. Outside of the incidents at issue in this matter, described above, Respondent's disciplinary history is summarized below:

1. November 5, 2019: MMCC issued a Letter of Non-Compliance to Respondent citing four violations, three of which were related to Respondent's practices surrounding logging visitors and one related to employee records. No fine was issued and Respondent was required to submit a Plan of Correction.
2. August 26, 2019: MMCC issued a Letter of Non-Compliance to Respondent related to licensee quarterly reporting requirements. Respondent has asserted in response to the Letter that it was timely in its submission of its report.
3. December 30, 2019: MMCC issued a Letter of Non-Compliance to Respondent citing Respondent's numerous failures to adhere to thirteen COMAR requirements including cannabis storage requirements, alarm system requirements, METRC use, and keeping records related to maintenance and calibration of Respondent's equipment. No fine was issued and Respondent was required to submit a Plan of Correction.
4. April 27, 2023: MMCC issued a Letter of Non-Compliance finding three violations related to an employee dispensing cannabis to himself. No fine was issued and Respondent was required to submit a Plan of Correction.

In addition to these matters, MMCC and MCA have issued, collectively, nine Letters of Compliance to Respondent following inspections of Respondent's dispensary. While Respondent has been disciplined for conduct similar to the violations found in this matter, no fine has been issued associated with that conduct. Suspension under these circumstances is not

justifiable given the nature of the violations found, the lack of fines previously issued or other progressive disciplinary penalties in the past. Moreover, Respondent's most recent discipline occurred about one year ago, was over three years after the disciplinary action preceding it and the underlying conduct in Respondent's most recent disciplinary action is unrelated to the conduct at issue in this matter.

However, Respondent's history demonstrates both notice and an awareness of issues related to properly logging visitors and maintaining METRC records. Those incidents, which lead to Letters of Non-Compliance without the imposition of fines, also occurred close in time to the incidents discussed *infra*. Accordingly, these incidents serve as aggravating factors in determining an appropriate penalty. This is balanced by Respondent's generally unremarkable disciplinary record in the years that follow and numerous Letters of Compliance.

Respondent has been found to have violated the following regulations. Pursuant to COMAR 10.62.34.09, MMCC has published a fine schedule⁵ outlining the maximum penalties for violations and the maximum penalty is noted for each violation discussed below.

- 1. Violation of COMAR 10.62.34.02(A) by Respondent's failure to adhere to its SOP on August 31, 2020, and September 9, 2021. The maximum penalty is a \$5,000 fine per incident and/or revocation of the license.**
-

These regulations are in place, in part, to maintain the safety and health of the public and of industry staff, and to prevent legally cultivated cannabis from entering the illicit market. Cannabis licensees are required to have an SOP in place to ensure uniform processes for handling products and to ensure discrepancies in deliveries are known as soon as possible and addressed in a timely manner.

MCA has identified two instances that constitute violations of this regulation: On August 31, 2020, when Respondent's employee failed to inspect the contents of the delivery of 40 vape cartridges, and on September 9, 2021, when Respondent's staff failed to log a delivery driver as a visitor to the dispensary. The ALJ's findings of fact do not support a determination that Respondent's other conduct constitutes violations of this regulation.

Respondent attributed its failure to adhere to its SOP on August 31, 2020, by not inspecting the contents of a delivery to ensure the products described in the delivery manifest actually were delivered to Respondent, to a training error. Thus, Respondent's staff was trained not to follow its own SOP and, in turn, to violate MMCC regulations. This failure, and its origins, are significant; the failure led to Respondent's inability to account for 40 vape cartridges. For that reason, the maximum fine is warranted and MCA imposes a \$5,000.00 fine for this violation.

Respondent's failure to adhere to its SOP on September 9, 2021, resulted from its failure to log the delivery driver as a visitor. This is the same conduct (not logging visitors) prohibited by COMAR 10.62.27.09(A) and is punishable by a maximum fine of \$500. The conduct being punished here, however, is the failure to follow protocols established by Respondent itself. This incident, not logging the delivery driver as a visitor, while substantial, does not rise to the same level of severity as Respondent's failure to verify the contents of a delivery. Still, it is imperative

⁵ Available at https://cannabis.maryland.gov/Documents/2021_Policy_Regulations/MMCC%20Fine%20Schedule.pdf

that Respondent and its staff are deliberate in following the protocols for delivery receipt that are established to maintain staff and public safety. Based on these factors and Respondent's disciplinary history, MCA imposes a fine for this violation of \$1,000.

2. The Findings of Fact concerning Respondent's receipt of deliveries on December 15, 2020 and September 9, 2021 do not support a finding of violation of COMAR 10.62.34.02.

The ALJ's analysis notes that "Respondent failed on no less than three occasions to confirm the accuracy of a manifest against the delivery contents." (Proposed Findings of Fact and Conclusions of Law, pg. 32). The three occasions are described as related to the missing vape cartridges, the two pounds of missing cannabis, and the missing 133 grams of gSpot Bud. (*Id.* at 32-33) MCA does not agree that the Findings of Fact made by the ALJ support a conclusion that the incidents related to the two pounds of missing flower or the 133 grams of missing gSpot Bud constitute violations of this regulation for the reasons stated below:

Respondent's Standard Operating Procedure (SOP) No. 5.05 governs receipt of cannabis deliveries. In the "Procedure" section of the SOP, it states:

1. Prior to the scheduled delivery of medical cannabis, the supplier will call [Respondent] to confirm the plans for the delivery and to establish an approximation (within 30 minutes) of the time of delivery.
2. The [Respondent] staff will instruct delivery vehicles to pull into the back parking lot designated for employees. The [Respondent] authorized personnel will meet the delivery agent at the parking lot and then escort the delivery agent and deliverables into the secure vestibule of the dispensary.
3. Appropriate identification of the delivery agent will be recorded.
4. Once identification of the delivery agent has been established and verified, the delivery agent and deliverables will be escorted into the operation zone of the dispensary, by [Respondent] staff.
5. Within the inventory room the manifest of the delivery will be checked by a [Respondent] registered dispensary agent and contents of the delivery will be established by the [Respondent] registered dispensary agent to confirm the accuracy of the manifest. If the manifest is inaccurate the delivery will be refused until appropriate corrections are made by the supplier.
6. Once accuracy of the manifest, identifying the delivery contents, is confirmed the appropriate parts of the manifest will be signed by the [Respondent] registered dispensary agent, the receipt of the delivery contents will be incorporated into the [Respondent] inventory log. The deliverables will then be quarantined in the processing room for future use.

(Finding of Fact 13)

OD Buds - Black Raspberry and OD Buds - The Vision

On December 15, 2020, Respondent's employee signed a document confirming receipt of a delivery containing seven packages including about one pound of OD Buds - Black Raspberry and about one pound of OD Buds - The Vision. The document further stated that by signing, Respondent's employee was confirming "that the contents of this shipment match weight records entered above [...]" At some point, Respondent's inventory manager discovered that the OD Buds - Black Raspberry and OD Buds - The Vision were missing. On June 17, 2021, they emailed the supplier stating that the two pounds of cannabis flower were missing from the delivery.

The ALJ did not make a Finding of Fact concerning this delivery that would support a conclusion that the SOP was not followed. Accordingly, there is insufficient evidence surrounding this delivery to conclude whether Respondent's employees followed the SOP; Respondent is not required to maintain video from its surveillance system for more than 90 days and no video of the delivery could be obtained six months after the delivery occurred. MCA cannot make a finding that this incident constituted a violation of COMAR 10.62.34.02 based upon the facts as determined by the ALJ.

gSpot Buds

On September 9, 2021, Respondent accepted a delivery which contained 33 packages, including 224 grams of gSpot cannabis flower. The flower was pre-packaged into 64 "eighths"⁶. The delivery was made by an employee of a licensed cannabis grower. The delivery was not recorded on Respondent's visitor log. One of Respondent's employees signed a document acknowledging receipt of the delivery and that the weight of the flower matched that on the manifest.

On October 5, 2021, Respondent's inventory manager contacted the grower by email stating, "We only received 26 eighths out of the 64 eighths we were supposed to receive leaving us with 133 grams in METRC that we did not physically receive." Mr. Blair sent an MMCC investigator a copy of the October 5, 2021 email on October 14, 2021.

The MMCC conducted an unannounced inspection of Respondent's dispensary on October 29, 2021, and the MMCC investigators were able to view surveillance video of the September 9, 2021 delivery. The video was inconclusive as to whether the missing product was actually received by Respondent but showed Respondent's employee handling the packages delivered.

⁶ An "eighth" refers to an eighth of an ounce, or 3.5 grams.

As with the OD Buds - Black Raspberry and the OD Buds - The Vision, MCA cannot make the finding that Respondent failed to follow its SOP with respect to inspection of the delivery. As the video was inconclusive and no other facts as determined by the ALJ support the finding that the SOP was not followed on this occasion, MCA does not find that the SOP was not followed as regards the delivery receipt.

- 3. Violation of COMAR 10.62.18.02(A) for Respondent's failure to timely update METRC with accurate information concerning the OD Buds - Black Raspberry and OD Buds - The Vision, Respondent's failure to timely update METRC with accurate information concerning the Sour Papaya Trim, and Respondent's failure to timely update METRC with accurate information concerning the Grape GG Trim. The maximum penalty is a \$5,000 fine per incident and/or revocation of the license.**

MCA has identified three instances that constitute violations of this COMAR 10.62.18.02(A): Respondent's failure to update METRC upon discovery of discrepancies between METRC records and Respondent's inventory in a timely manner with regard to 1) the OD Buds - Black Raspberry and OD Buds - The Vision, 2) Sour Papaya Trim, and 3) and Grape GG Trim. The ALJ's findings of fact do not support a determination that Respondent's other conduct constitutes violations of this regulation.

While these violations were not immediately discovered by MMCC,⁷ Respondent's failure to update METRC in a timely manner contributed to MMCC's inability to promptly investigate the incidents and make an independent determination concerning the events. The requirement that each licensee maintain accurate and timely records in METRC is paramount to MCA's ability to regulate the legal cannabis market. Respondent's conduct in these violations - repeatedly delaying updates to METRC upon the discovery of variances - constitutes a pattern of non-compliance. For these reasons, MCA imposes the maximum fine for each violation (\$5,000), totalling \$15,000.

- 4. Violation of COMAR 10.62.27.09(A) for Respondent's failure to log a delivery driver as a visitor to its licensed premises. The maximum penalty is a \$500 fine per incident.**

The maximum penalty for violation of COMAR 10.62.27.09(A) is \$500 and appropriate given the context of the violation, discussed above. MCA imposes a penalty of \$500 for this violation.

ORDER

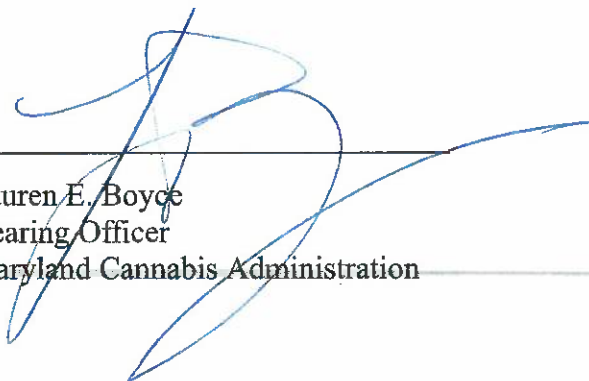
⁷ Respondent was not charged with violating COMAR 10.62.28.06, which requires a report to MMCC upon the discovery of evidence of theft or diversion. However, the Administration would likely find that, where a licensee's records are insufficient to account for the dispensing of two pounds of cannabis previously recorded in inventory, that constitutes prima facie evidence of diversion such that a report to MCA would be required by a licensee.

Based on the foregoing discussion and the Findings of Fact and Conclusions of law adopted by MCA, it is hereby

ORDERED the Respondent shall pay the fines described above, totalling \$21,500; and it is further

ORDERED that Respondent must pay the fine within 3 months of the date of this Order.

May 3, 2024
Date



Lauren E. Boyce
Hearing Officer
Maryland Cannabis Administration

RIGHT TO APPEAL

Pursuant to COMAR 14.17.22.10(C), this Final Determination and Order exhausts all administrative remedies. COMAR 14.17.22.12 grants any party the right to appeal this determination to the Circuit Court for Anne Arundel County if done so within 30 days of receipt of this Order.

Copies to:

Francesca Gibbs, Esq.
Counsel for MCA
Office of the Attorney General
300 W. Preston St, Ste. 302
Baltimore, MD 21201

Justin Tepe, Esq.
Counsel for Respondent
Baker, Donelson, Bearman, Caldwell, & Berkowitz, PC
100 Light Street
19th Floor
Baltimore, MD 21202

IN THE MATTER OF

BLAIR WELLNESS CENTER, LLC,

RESPONDENT

*
*
*
*
*
*
*
*

BEFORE THE

MARYLAND CANNABIS

ADMINISTRATION

OAH No: MDH-MMCC-173-22-21298

* * * * *

* * * * *

EXHIBIT 1

NATALIE M. LAPRADE	* BEFORE KATHLEEN A. CHAPMAN,
MARYLAND MEDICAL CANNABIS	* ADMINISTRATIVE LAW JUDGE
COMMISSION,	* THE MARYLAND OFFICE
STATE	* OF ADMINISTRATIVE HEARINGS
v.	*
IN RE: THE MATTER OF	*
BLAIR WELLNESS CENTER, LLC,	* OAH No.: MDH-MMCC-173-22-21298
RESPONDENT	* MMCC No.: 21-00391

* * * * *

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
STIPULATIONS
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
PROPOSED ORDER
APPENDIX: FILE EXHIBIT LIST

STATEMENT OF THE CASE

On October 21, 2020, the Natalie M. LaPrade Maryland Medical Cannabis Commission (MMCC or Commission), an independent Commission within the Maryland Department of Health (MDH, Department, or State),¹ filed administrative charges against Blair Wellness Center, LLC (Respondent or Dispensary), a Maryland dispensary² under license number D-18-

¹ The Natalie M. LaPrade Maryland Medical Cannabis Commission Act (hereinafter referred to as the “Act”) was codified at Md. Code Ann., Health-Gen. §§ 13-3301 to 13-3316 (2019 & Supp. 2021). All references to the Health-General Article are to the 2019 replacement volume and identified as “Health-Gen.” unless otherwise noted.

² “Dispensary” means “an entity licensed under this subtitle that acquires, possesses, transfers, transports, sells, distributes, dispenses, or administers cannabis, products containing cannabis, related supplies, related products containing cannabis including edible cannabis products, tinctures, aerosols, oils, or ointments, or education materials for use by a qualifying patient or caregiver.” Health-Gen. § 13-3301(f) (Supp. 2021).

00028,³ for failure to meet the standards for licensure as set forth by the Commission. Code of Maryland Regulations (COMAR) 10.62.34.02. Specifically, the Commission charged the Respondent with allegedly violating sections 13-2207 (dispensary license requirements) and 13-3316 (regulations) of the Health-General Article; COMAR 10.62.18.02 (Shipment of Products Between Licensees – Electronic Manifest System); COMAR 10.62.18.03 (Shipment of Products Between Licensees – Creation of Manifest); COMAR 10.62.25.07 (Issuance of License); COMAR 10.62.26.03 (Registered Dispensary Agent); COMAR 10.62.27.09 (Visitor to a Non-Public Area of the Premises); COMAR 10.62.28.02 (Standard Operating Procedures); COMAR 10.62.28.03 (Receipt of Products Containing Cannabis); COMAR 10.62.28.06 (Theft or Diversion); COMAR 10.62.30.06 (Dispensing Controls); COMAR 10.62.32.02 (Licensee Records); COMAR 10.62.34.01 (Operational Failure Risking Diversion or Endangering Health); and COMAR 10.62.34.02 (Pattern of Deviation from Standard Operating Procedure). The Commission also advised the Respondent that if the charged violations were substantiated, it may impose penalties or rescind the license of the dispensary. Health-Gen. § 13-3307. A Case Resolution Conference was held on December 8, 2021, which failed to resolve the matter.

The Commission's Delegation to the OAH

On August 10, 2022, the Commission transmitted the matter to the Office of Administrative Hearings (OAH) with the following delegation: for the Administrative Law Judge “to conduct an evidentiary hearing and prepare proposed findings of fact and proposed conclusions of law related to the Commission’s administrative charges against both Respondents on October 21, 2021.”⁴

³ Since the filing of charges, the Respondent’s license number has changed – it is now DB-23-0026.

⁴ According to the referral and charging document, there is only one respondent listed in this case, *i.e.*, the dispensary. The second respondent refers to Matthew Blair. As a consequence, I orally ruled in favor of Matthew Blair, in response to his Motion for Judgment (Motion), that he is not a proper party to the present action. In addition to this decision, I am also issuing a separate written ruling on the Motion.

Pre-hearing Proceedings

On November 9, 2022, I conducted a pre-hearing conference (Conference) via the Webex audiovisual platform.⁵ COMAR 28.02.01.17; COMAR 28.02.01.20B(1). Francesca Gibbs, Assistant Attorney General, appeared on behalf of the Department. Justin Tepe, Esquire, Baker, Donelson, Bearman, Caldwell & Berkowitz,⁶ appeared on behalf of the Respondent. Howard Wittbecker, Investigator, MMCC, was also present. Both parties filed pre-hearing conference statements prior to the Conference.

At the Conference, the Respondent argued for a Motion to Disqualify. This was prompted by my October 11, 2022 correspondence to the parties wherein I disclosed that a family member was previously licensed by the Commission as a processor agent, and he worked as a lab technician for two separate Maryland-based medical cannabis dispensaries (*not* the Blair Wellness Center, LLC). I further indicated that he was no longer employed in the industry in this or any other state. After the parties researched whether the company that the family member worked for was one of the testing labs that produced products which were sold at the Respondent's dispensary, and learning it was not, I denied the motion during the Conference. COMAR 28.02.01.11C(2)(b)(1).

On January 24, 2023, I held a second Conference to confirm new hearing dates. On January 13, 2023, Mr. Tepe filed a request for postponement of the originally scheduled hearing dates (April 24-28, 2023 and May 1-5, 2023) necessitated by his key witness, Matthew Blair's unavailability. On that same date, I granted the postponement for good cause. Based on Mr.

⁵ On September 8, 2022, the OAH scheduled an in-person pre-hearing conference to be held on October 20, 2022. On October 5, 2022, counsel for the Respondent filed a consent motion to postpone the pre-hearing conference on the basis of a documented conflict in his schedule. On October 11, 2022, I granted the request and reset the pre-hearing conference to be held remotely on November 9, 2022.

⁶ At the time of the pre-hearing conference, Mr. Tepe was with the firm Goodell, DeVries, Leech & Dann, LLP. On July 18, 2023, Mr. Tepe updated his contact information.

Blair's anticipated release date from federal prison, Mr. Tepe's vacation plans, as well as my vacation plans, the agreed-upon hearing dates were rescheduled for August 14-18, 21-25, 2023.

Merits Hearing

I held an evidentiary hearing on the merits on August 14, 15, 17, 18, 21, 22, and 23 2023. Assistant Attorney General Gibbs appeared on behalf of the Commission. Mr. Tepe appeared on behalf of the Respondent.

Post-hearing Memorandum

At my request, the parties submitted legal memoranda. *See* COMAR 28.02.01.11B(9). On September 1, 2023, the Respondent submitted a Post-Trial Bench Memorandum, with attachments. On September 15, 2023, the State submitted a Reply to Respondent's Post-Trial Bench Memorandum. And, on September 22, 2023, the Respondent submitted a Bench Memorandum Sur-reply. Each of these filings shall be included in the official case record. COMAR 28.02.01.22B(1).

*Statutory and Regulatory Authority*⁷

The contested case provisions of the Administrative Procedure Act, the procedures for hearings conducted by the Department Secretary and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021)⁸; COMAR 10.62.34.05; COMAR 10.01.03; COMAR 28.02.01.

⁷ In 2023, the MMCC was renamed the Maryland Cannabis Administration (MCA), an independent State agency, that oversees all licensing, registration, inspection, and testing measures pertaining to Maryland's medical and adult-use cannabis industry and provides relevant program information to patients, adult consumers, providers, growers, processors, dispensaries, independent testing laboratories, and ancillary businesses. Moreover, since the time the violations were alleged to have occurred in this matter, the MDH repealed the regulations governing medical cannabis pursuant to the Cannabis Reform Act. On June 23, 2023, the Joint Committee on Administrative, Executive, and Legislative Review approved emergency regulations that took effect on July 1, 2023. They were printed in the Maryland Register on July 14, 2023. <https://mmcc.maryland.gov/Pages/aboutus> (last viewed on October 7, 2023). As a result, the substantive regulations that were in effect at the time of the alleged violations will be applied.

⁸ All references to the State Government Article and are to the 2021 replacement volume as "State Gov't".

ISSUES

The parties agreed that the subject of the hearing shall be in accordance with the Commission's delegation, as quoted above. More specifically, the mixed issues of fact and law to be determined are:

1. Whether Matthew Blair's guilty plea for violating the Anti-Kickback Statute as an owner of Blair Compounding Pharmacy is a crime of moral turpitude and thus makes him no longer qualified to serve as a dispensary agent for a medical cannabis dispensary, pursuant to COMAR 10.62.26.03D?⁹
2. Whether the dispensary failed to create and enter timely and accurate data into a perpetual inventory control system that identifies and tracks the licensee's inventory of medical cannabis as required by COMAR 10.62.28.02A(2) on more than twenty occasions?
3. Whether the Respondent has demonstrated a repeated operational failure and risk of diversion on at least twenty occasions during a four-month period, resulting in the inability to account for 609 grams of medical cannabis, a Schedule 1 controlled substance, in addition to missing forty vape cartridges and approximately two pounds of product during the same period, in violation of COMAR 10.62.34.02A?

Finally, the legal issues to be determined are:

1. Whether the Respondent failed to adhere to its own Standard Operating Procedure (SOP) on multiple occasions, specifically for the missing two pounds of product as described in the Charges, in violation of COMAR 10.62.34.02A?

⁹ The Ruling on the Motion for Judgment resolves this issue. Accordingly, it will not be addressed in this proposed decision.

2. Whether the Respondent violated COMAR 10.62.28.02 by failing to receive, create and enter accurate data into a perpetual inventory control system?
3. Whether the Respondent created a risk of diversion by failing to maintain a perpetual inventory system and by failing to precisely account for all product delivered to its dispensary, in violation of COMAR 10.62.34.01A and 10.62.32.02?
4. Whether the Respondent violated COMAR 10.62.27.09A by failing to properly log visitors, such as a delivery driver, into its visitor logbook?

SUMMARY OF THE EVIDENCE

Exhibits

A complete list of exhibits offered and admitted into evidence is attached to this Decision as an Appendix.¹⁰

Testimony

The State presented testimony from the following three witnesses:

- Howard Wittbecker, Investigator, MMCC
- Lori Dodson, MS,¹¹ MT¹² (ASCP¹³), Senior Advisor, MMCC, who was accepted as an expert witness in Maryland's regulatory and compliance processes for cannabis cultivation, testing, processing and retail sale, as well as METRCTM¹⁴
- Matthew Blair

The Respondent presented testimony from the following three witnesses:

- Justin Jones, Greener Consulting Group, who was accepted as an expert witness in the field of cannabis cultivation, processing in the retail market, and use of METRC

¹⁰ The exhibits in the Appendix are as shown in the parties' respective exhibit lists.

¹¹ Master of Science

¹² Medical Technologist

¹³ American Society for Clinical Pathology

¹⁴ "[METRCTM] stands for Marijuana Enforcement, Tracking, Reporting and Compliance." State Ex. 24, p. 110. All future references are to the trademark known as METRC.

- Matthew Blair
- Howard Wittbecker, Investigator, MMCC

STIPULATIONS¹⁵

1. The Respondent stipulates that its registered dispensary agents¹⁶ failed to ensure the proper receipt of products containing medical cannabis, in violation of COMAR 10.62.28.03E(3)(d), specifically as follows:

On December 19, 2020, one of the Respondent's dispensary agents accepted receipt of two one-pound bags of medical cannabis flower by signing the manifest for the same and entering the products into the State's electronic manifest system without verifying the accuracy, contents or weight of the shipment, only to later remove the packages from the Respondent's electronic inventory on June 28, 2021 (*see Charges Under the Medical Cannabis Commission Act*, §§ 39-45).

2. The Respondent stipulates that on May 27, 2021, the Respondent's dispensary agent, Christopher Blair reconciled the dispensary's inventory using improper adjustment reasons in METRC on at least twenty-one occasions. The State stipulates that using improper adjustment reasons in METRC is not in itself a violation of any provision of COMAR.

3. The Respondent stipulates that on multiple occasions, its registered dispensary agents failed to contemporaneously enter green waste into the States's electronic system, METRC.

4. The Respondent stipulates to having violated COMAR 10.62.34.03 (*see Charges Under the Medical Cannabis Commission Act*, §§ 15-61).

¹⁵ See Joint Exhibit 1. I made minor, non-substantive, edits to the wording.

¹⁶ A "dispensary agent" means "an owner, a member, an employee, a volunteer, an officer, or a director of a dispensary." Health-Gen. § 13-3301(g) (Supp. 2021).

PROPOSED FINDINGS OF FACT

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

METRC¹⁷

1. METRC serves as “a chain of custody.”¹⁸ Hrg. Tr. vol. 1, 60; Hrg. Tr. vol. 2, 313.
2. METRC is the Medical Marijuana (Cannabis/Marijuana) Seed-to-Sale Tracking System for the regulation of legalized medical marijuana, including the ability to track patients purchases against the control limits to record any adverse reactions to the medicine (product), including RFID¹⁹ Unique Identifiers integrated inside the METRC software.
3. The METRC tracking system is an integral part of the MCA’s responsibility to ensure that medical and adult-use cannabis products will be safely monitored prior to sale throughout the State of Maryland. Every MCA licensee is required to participate in the statewide tracking system program.
4. METRC is responsible for implementation of the technical and operational components of the tracking system. The MCA is responsible for overall program management, compliance, and enforcement of the statutory and regulatory state framework of Maryland’s cannabis program.

Cannabis

5. A cannabis plant is like a “leach,” it takes up what is in the environment around it. Hearing Tr. vol. 2, 254. Moreover, a cannabis flower has a high-water content and water

¹⁷ See <https://www.metro.com/partner/maryland/> (last viewed on October 7, 2023).

¹⁸ See COMAR 10.62.18.02 (“A licensee shall install an electronic manifest system to record the chain of custody for the shipment of products containing medical cannabis”).

¹⁹ Radio frequency identification.

activity. Hrg. Tr. vol. 2, 255. When the plant is harvested, it goes through a “dry cure phase.”

Id.

6. “Dispensaries do not have the ability to test moisture content and water activity. That’s not something that’s done there.” Hrg. Tr. vol. 2, 271. The only way to monitor loss on drying at the retail-sale level is to weigh the product upon receipt and confirm the value against the manifest values. *Id.* Moreover, any unopened product sitting in backstock must be weighed again to ascertain whether drying has occurred. *Id.*

7. Temperature and humidity conditions will also impact loss on drying. Hrg. Tr. vol. 2, 271. “As a product sits, it’s got a dry environment, naturally evaporation will happen. If moisture inside of a package is exposed to a dryer environment, water is going to escape. That’s basic.” Hrg. Tr. vol. 2, 294.

Respondent dispensary

8. In 2015, the MMCC granted Matthew Blair a dispensary license, under license number D-18-00028.²⁰ Hrg. Tr. vol. 6, 1069.

9. The cannabis dispensary is a retail store. It is a forward customer facing entity. The dispensary procures cannabis products from growers and processors, and takes bulk products, such as bulk flower, and repackages it for resale. Hrg. Tr. vol. 6, 1065 – 1066.

10. Deliveries occur Monday through Friday, during normal business hours. Hrg. Tr. vol. 6, 1077.

11. The Respondent is required to maintain an around-the-clock motion activated video surveillance recording system. Of import, a camera shall be located in the area where medical cannabis is packaged, stored, or dispensed. All recordings must be retained for a minimum of ninety calendar days.

²⁰ See note 3.

12. Should a dispensary find evidence of theft or diversion, the dispensary is required to report the theft or diversion to the MMCC and the Maryland State Police within one business day, and within thirty days of discovering the theft or diversion, the licensee shall conduct an investigation and send a report to the MMCC.

Receipt of cannabis deliveries

13. The Respondent's SOP for receipt of cannabis deliveries is outlined in SOP No. 5.05, as follows:

Responsibility:

It is important that the Clinical Director and all personnel be well-trained and participate in understanding and enacting the steps required when the [Respondent] dispensary receives a delivery of medical cannabis.

Purpose:

The purpose of this [SOP] is to establish appropriate guidelines for enacting the steps required when [the Respondent] dispensary receives a delivery of medical cannabis.

Procedure:

1. Prior to the scheduled delivery of medical cannabis, the supplier will call [the Respondent] to confirm the plans for delivery and to establish an approximation (within 30 minutes) of the time of delivery.
2. The [Respondent] staff will instruct delivery vehicles to pull into the back parking lot designated for employees. The [Respondent] authorized personnel will meet the delivery agent at the parking lot and then escort the delivery agent and deliverables into the secure vestibule of the dispensary.
3. Appropriate identification of the delivery agent will be recorded.
4. Once identification of the delivery agent has been established and verified, the delivery agent and deliverables will be escorted into the operation zone of the dispensary, by [Respondent] staff.
5. Within the inventory room the manifest of the delivery will be checked by a [Respondent] registered dispensary agent and contents of the delivery will be established by the [Respondent] registered dispensary agent to confirm the accuracy of the manifest. If the manifest is inaccurate the

delivery will be refused until appropriate corrections are made by the supplier.

6. Once accuracy of the manifest, identifying the delivery contents, is confirmed the appropriate parts of the manifest will be signed by the [Respondent] registered dispensary agent, the receipt of the delivery contents will be incorporated into the [Respondent] inventory log.
7. The deliverables will then be quarantined in the processing room for future use.

State Ex. 19, pp. 101 – 102.

14. When the product is initially received at the Dispensary, METRC registers the product as under the control of the dispensary. Thus, making the dispensary responsible for the product. Hrg. Tr. vol. 6, 1074.

15. The product, however, does not immediately go into the point-of-sale system, it sits in back stock, inside the vault²¹ where it is placed in a locked bin with padlocks, until it is moved into inventory. Hrg. Tr. vol. 6, 1082. Once it is moved into inventory, that's the moment the point-of-sale system acknowledges or records that the product is on the sales floor. Hrg. Tr. vol. 6, 1074.

16. Thereafter, when a sale takes place through the point-of-sale system, the product is automatically subtracted from the inventory shown in METRC as well as the inventory shown in the Respondent's point-of-sale system. Hrg. Tr. vol. 6, 1073.

17. As it pertains to pre-packaged products, such as vape cartridges, the product is shipped in boxes with a RFID label. *See* Resp. Ex. 5, pp. 28 – 29, 32; Hrg. Tr. vol. 7, 1101.

18. As it pertains to bulk flower, from 2020 to 2021, the Respondent would document bulk flower packages by weighing them at the time of delivery.²² Hrg. Tr. vol. 6, 1083. The bulk package is weighed in its sealed package, then locked up and secured in back stock. *See*

²¹ *See* COMAR 10.62.27.04 (refers to a vault as a "secure room").

²² Growers have since began identifying the "tare weight" on the bags. Hrg. Tr. vol. 6, 1087.

Resp. Ex. 5, pp. 30 – 31; Hrg. Tr. vol. 6, 1087. The package would be cut open once it was ready to be processed and repackaged. Hrg. Tr. vol. 6, 1089. At this moment, the dispensary subtracts the bag weight and registers the exact amount of product it received. *Id.*

19. The Dispensary utilizes a “Processor Bulk Flower Accountability Log” that details the date and time the product is received; the manager’s initials who is filling out the log; flower strain; grower information; last nine digits of the RFID number; total package start weight, including bag, in grams; date and time the product is processed; the processor’s initials who is filling out the log; total package start weight, excluding bag, in grams; number of 8th’s, unless otherwise specified; shake²³ in grams; waste²⁴ in grams; bag weight in grams, manager initials, and scale variance²⁵ in grams. Resp. Ex. 14.

20. The log must be accurate and up to date to capture all changes that are made to the product while in the custody of the dispensary. Hrg. Tr. vol. 1, 18.

Previous inspections (August 26, 2019, May 24, 2020, and August 5, 2020)

21. On August 26, 2019, Investigators Christopher Umlauf and Shalawda Suggs, MMCC, conducted an unannounced inspection at the Dispensary. Among the various violations noted, the investigators found that “[t]he Licensee failed to account for all of the items in storage[,]” in violation of COMAR 10.62.28.02A(2). State Ex. 41, p. 8.

22. On May 24, 2020, Investigator Ebony Cates-Brown, MMCC, conducted an unannounced inspection at the Dispensary. Among the various violations noted, Investigator

²³ Shake is when a piece of a bud naturally falls off. “[I]t’s part of the flower, but not – it would be like crumbs of a bread falling off. That’s shake.” Hrg. Tr. vol. 2, 256.

²⁴ See State Ex. 12, p. 71.

²⁵ A scale variance occurs when the bulk flower is repackaged into smaller quantities. “[A]n eighth exactly will weigh 3.5 [grams].” Hrg. Tr. vol. 1, 95. However, the dispensary can, in its discretion, create one-eighth packages that go to 3.58 grams with more product inside. It is a business decision to make the patient happy because “a lot of times, patients go home and weigh the packages to make sure they’re not getting ripped off[.]” *Id.*

Cates-Brown indicated that she was unable to locate the binder of delivery logs in violation of COMAR 10.62.27.09A(1). State Ex. 42, Investigator Notes.

23. On August 5, 2020, Investigator Louis Hendricks, III, MMCC, conducted an unannounced inspection at the Dispensary. Investigator Hendricks found the Dispensary in violation of COMAR 10.62.28.02A(2) for discrepancies in the green waste log, writing, “[w]hile reviewing the green waste log, I noticed on 8/3/2020 7 entries totaling 216.5 grams and on 8/4/2020 1 entry totaling 95.5 grams for a total of 312 grams. When I weighed the waste 151.187 with a difference of 160.813 grams missing.” State Ex. 43, Exit Briefing.

Emails from the Respondent to the MMCC seeking a policy clarification regarding SOP 5.05 after the August 26, 2019 and August 5, 2020 inspections

24. In response to an inspection that took place on August 26, 2019,²⁶ during which two MMCC investigators told the Dispensary that it was required to weigh all product at the time of delivery, on September 2, 2019, Matthew Blair emailed William Tilburg, Executive Director, MMCC, seeking clarification regarding that policy. Resp. Ex. 7, pp. 37 – 38. Mr. Blair wrote:

Upon closer inspection of the precise COMAR language, and after consultation with other dispensary owners who advise that they do not weigh product upon delivery for the same reasons cited above [i.e., drying and exposing the product to loss in the transfer process], BWC has questions which it would like the MMCC to address. As we read COMAR 10.62.28.03, it is the “packing” that must be inspected for accuracy, not the contents of the package. Since this matter is of extreme importance to dispensary owners and patients, and will ultimately impact labor costs and the cost of products, and since the protocol which was described is not currently being followed by all dispensaries, BWC believes that the cannabis community will be well served by receiving the formal MMCC position on whether or not COMAR 10.62.28.03 requires the opening and pre-weighing of product deliveries. Thank you in advance for any guidance which you and the MMCC can provide.

Resp. Ex. 7, pp. 37 – 38.

²⁶ Mr. Blair erroneously listed the date of inspection as August 15, 2019 in his email. The Investigation Report found at State Exhibit 41 clearly notes the date of inspection as August 26, 2019.

25. In response to the inspection that took place on August 5, 2020, during which MMCC investigator Louis Hendricks told the Dispensary that it was required to weigh all product at the time of delivery, on August 19, 2020, Matthew Blair forwarded his September 2, 2019 email to Mr. Hendricks, seeking a response to the inquiry. Resp. Ex. 6, p. 33.

26. On October 21, 2021, Matthew Blair forwarded both his September 2, 2019 and August 19, 2020 emails to Todd Liddick, Regional Director Office of Compliance and Regulation, MMCC, seeking a response to the inquiry. Resp. Ex. 7, p. 36.

27. The MMCC never replied to Matthew Blair's emails.

January 18, 2021 Inspection

28. The MMCC conducted an inspection on January 18, 2021. On this date, no violations were observed. Resp. Ex. 10, p. 46.

Forty missing Tangie 1.0g Elite Botanical vape cartridges²⁷

29. On August 31, 2020, the Respondent received a delivery from HMS Processing, LLC, containing twenty-three packages, including forty "Tangie 1.0g Elite Botanical" vape cartridges (RFID ending in #13559). State Ex. 6, p. 46.

30. Inventory Manager Taylor Ciganek signed Manifest #0000418301 confirming receipt of the shipment. State Ex. 6, p. 53. In doing so, she "confirm[ed] that the contents of this shipment match weight records entered above, and I agree to take custody of those portions of this shipment *not* circled above. Those portions circled were returned to the individual delivering this shipment." *Id.* (emphasis in original).

31. No items on the manifest were circled.

²⁷ A vape cartridge is usually a small container that holds a liquid product derived from cannabis with an attached power source, such as a battery, to heat the product to vaporize for the end user to smoke, as opposed to lighting the product with a match. Hrg. Tr. vol. 1, 68.

32. Contemporaneous in time to accepting receipt of shipment pursuant to Manifest #0000418301, the Respondent paid HMS Processing \$21,380.12 in cash for the twenty-three packages contained in manifest. State Ex. 6, p. 56. Of that amount, \$1,800.00 was paid for the forty Tangie 1.0g Elite Botanical vape cartridges. *Id.*, p. 54.

33. A new trainee, Kamille Jones,²⁸ moved the vape cartridges into inventory. Hrg. Tr. vol. 7, 1276 – 1277. The Respondent trained Ms. Jones to simply count the number of boxes contained on the manifest. In other words, if there were twenty-three boxes, she was supposed to confirm that twenty-three boxes were received without checking the contents of each box. Hrg. Tr. vol. 7, 1276 – 1280.

34. METRC shows no activity between receipt until May 18, 2021, when Ms. Ciganek made a METRC entry taking the forty vape cartridges out of the Dispensary's inventory by attributing it to an "Entry Error," noting "Training Error." State Ex. 1, p. 4. In METRC, this is known as a package adjustment.²⁹

35. The Dispensary did not produce a written report, contemporaneous in time to when Ms. Ciganek made a package adjustment, showing that an investigation was conducted.

36. No one at the Dispensary notified the Commission or Maryland State Police within one business day regarding the missing inventory.

37. The Respondent did not take any disciplinary action against an employee for this error. Hrg. Tr. vol. 7, 1275 – 1276.

²⁸ In the hearing transcript, Ms. Jones' first name is spelled Camille; however, in Respondent Exhibit 17, her first name is spelled Kamille.

²⁹ "Adjustments to a package are available when something has occurred to a package that causes the package to be in a state that conflicts with what has been recorded in METRC." State Ex. 24, p. 246.

Missing flower (Black Raspberry and The Vision)

38. On December 15, 2020, an employee of Cultra, LLC moved two packages, known as OD Buds – Black Raspberry and OD Buds – The Vision, from Cultra’s vault for shipping and created a Marijuana Transportation Manifest (Manifest) #0000506915 containing both packages. State Ex. 9, p. 68; State Ex. 10, p. 69.

39. The Cultra shipment was expected to be delivered to the Respondent on December 16, 2020. Hearing Tr. vol. 2, 311. However, the shipment did not occur as planned and, on December 16, 2020, a different Cultra employee returned the two aforementioned packages to the Cultra vault. State Ex. 9, p. 68; State Ex. 10, p. 69.

40. On December 18, 2020, a Cultra employee moved two packages, known as OD Buds – Black Raspberry and OD Buds – The Vision, from Cultra’s vault for shipping and created a Manifest #0000511012 containing both packages. *Id.*

41. On Saturday, December 19, 2020, at approximately 11:50 a.m., the Respondent received a delivery from Cultra containing seven packages, from Manifest #0000511012, including:

OD Buds – Black Raspberry (RFID ending in #25251)..... 453.5000 grams³⁰

OD Buds – The Vision (RFID ending in #25252).....453.5000 grams

State Ex. 5, pp. 44 – 45.

42. Respondent employee Sean Katz signed Manifest #0000511012 confirming receipt of the shipment. State Ex. 5, p. 45. In doing so, he “confirm[ed] that the contents of this shipment match weight records entered above, and I agree to take custody of those portions of this shipment *not* circled above. Those portions circled were returned to the individual delivering this shipment.” *Id.* (emphasis in original).

³⁰ 453.500 grams equals roughly one pound of cannabis flower. *See generally* State Ex. 28.

43. No items on the manifest were circled.

44. Contemporaneous in time to accepting receipt of shipment pursuant to Manifest #0000511012, the Respondent paid Culta \$10,270.00 in cash for the seven packages contained in the manifest. State Ex. 3, p. 8. Of that amount, \$3,200.00 was paid for the OD Buds – Black Raspberry and \$2,500.00 was paid for the OD Buds – The Vision. *Id.*, p. 54.

45. On December 19, 2020, Inventory Manager Ciganek moved the packages into the Respondent's inventory via METRC. Hrg. Tr. vol. 2, 313; State Ex. 9, p. 68; State Ex. 10, p. 69.

46. METRC shows “no activity between receipt and documentation of the package” with regard to OD Buds – Black Raspberry (RFID ending in #25251) and OD Buds – The Vision (RFID ending in #25252) until June 28, 2021. Hrg. Tr. vol. 2, 321.

47. On June 17, 2021, Ms. Ciganek wrote an email to Jared Miller, a Culta employee, seeking clarity regarding an inventory discrepancy involving Manifest #0000511012, writing:

Blair Wellness Center has run into an inventory discrepancy and we were hoping that you may be able to help us out.

On December 19th we received a delivery that we believe was a huge error – the manifests are not correctly signed or dated, we are missing invoices, and the product is not adding up. There are two pounds of flower – Black Raspberry RFID – 25251, and The Vision Outdoor 25252 – missing from our inventory.

This delivery happened during a COVID outbreak which means we were already working with a skeleton crew. So far our investigation shows that we were expecting this delivery on December 16th, due to inclement weather the delivery was delayed until Saturday, 12/19. We believe the on duty managers may have made a mistake during the intake. As we can tell the manifests were not signed and we do not have the invoices we are sure exactly what happened. Can you offer me any guidance? Did you have these strains in your inventory? Was there a mix up that you can speak to on your end?

State Ex. 11, p. 70 (syntax errors contained in original).

48. On June 28, 2021, Ms. Ciganek made a METRC entry removing the two entries out of the Dispensary's inventory attributing the missing items to “Entry Error,” noting “Training

Error. Delivery came on a weekend during snow/COVID incidents, and a non-inventory team member accepted delivery incorrectly.” State Ex. 9, p. 68; State Ex. 10, p. 69. In METRC, this is known as a package adjustment.

49. The Dispensary did not produce a written report, contemporaneous in time to when Ms. Ciganek made a package adjustment, showing that an investigation was conducted.

50. No one at the Dispensary notified the Commission or Maryland State Police within one business day regarding the missing inventory.

51. The Respondent did not take any disciplinary action against an employee for this error. Hrg. Tr. vol. 7, 1275 – 1276.

Sour Papaya Trim

52. On October 26, 2020, the Respondent received 2,939 grams of Sour Papaya Trim from package number 35683. State Ex. 7, p. 57.

53. METRC shows that the Respondent repackaged the Sour Papaya Trim into over 600 smaller packages (sold in sizes of 3.5 grams, 7 grams, 10.5 grams, 14 grams, 21 grams, or 28 grams) for individual sale to patients. State Ex. 7, pp. 57 – 65.

54. The first sales transaction occurred on January 2, 2021 and the last sales transaction occurred on February 16, 2021. State Ex. 7, pp. 57, 65.

55. On May 27, 2021, Dispensary Manager Christopher Blair made a package adjustment in METRC in the amount of 50.5 grams of product and attributed this missing product to “drying.”³¹ State Ex. 7, p. 65.

³¹ Cannabis flower is dried and cured before being released by the grower for distribution. “Drying” refers to a process through which excess moisture is removed from the flower to ensure that the flower is combustible as well as shelf stable. Product sealed in airtight containers in a temperature-controlled environment should not lose significant weight after being received by the dispensary. Charges Under the Medical Cannabis Commission Act, note 3.

56. The Respondent never disciplined Christopher Blair for using improper adjustment reasons in METRC. Hrg. Tr. vol. 7, 1284.

Grape GG Trim

57. On January 5, 2021, the Respondent received 1,843 grams of Grape GG Trim from package number 28725. State Ex. 8, p. 66.

58. METRC shows that the Respondent repackaged the Grape GG Trim into over 107 smaller packages (sold in sizes of 14 grams, 28 grams, 56 grams, or 70 grams) for individual sale to patients. State Ex. 8, pp. 66 – 67.

59. The first sales transaction occurred on February 8, 2021 and the last sales transaction occurred on March 14, 2021. State Ex. 8, pp. 66 – 67.

60. On May 27, 2021, Dispensary Agent Christopher Blair made a package adjustment in METRC in the amount of 67.42 grams of product and attributed this missing product to “API Adjustment Error.” State Ex. 8, p. 67.

61. The Respondent never disciplined Christopher Blair for using improper adjustment reasons in METRC. Hrg. Tr. vol. 7, 1284.

August 31, 2021 Inspection

62. On August 31, 2021, MMCC Investigators Howard Wittbecker and Andrew Smith conducted an unannounced inspection at the Dispensary. State Ex. 1.

63. Prior to the inspection, Investigator Wittbecker reviewed the Respondent’s Packages Adjustments³² report in METRC for the period from April 1, 2021 to August 11,

³² “Package adjustments are for multiple reasons.” Hrg. Tr. vol. 1, 65. An adjustment may be due to a scale variance during the repackaging process, drying, waste, spoilage, or when a patient returns a package (which is referred to as green waste). *Id.*

2021.³³ State Ex. 1, p. 3; *see also* State Ex. 4. He randomly selected dates from the Packages Adjustment report to analyze. Hrg. Tr. vol. 1, 61 – 62.

64. For the period from April 1, 2021 to August 11, 2021, the Dispensary registered a total of 1,642 adjustments. State Ex. 4, p. 11.

65. Of that number, Respondent agents entered significant weight adjustments into METRC for twenty-one bulk packages. These adjustments ranged from 12.42 grams to 453.5 grams, and nearly all of them were made on May 27, 2021 by Christopher Blair. State Ex. 2; State Ex. 39.

66. Of particular interest, Investigator Wittbecker discovered Ms. Ciganek's May 18, 2021 adjustment for the forty vape cartridges and June 28, 2021 adjustment for the OD Buds – Black Raspberry (RFID ending in #25251) and OD Buds – The Vision (RFID ending in #25252), as well as Christopher Blair's May 27, 2021 adjustment for the Sour Papaya Trim (RFID ending in #35683) and May 27, 2021 adjustment for Grape GG (RFID ending in #26782).

67. Of concern to Investigator Wittbecker was that the reconciliation entries occurred several months after METRC showed the products already in the custody of the Respondent suggesting that the Respondent was not timely and accurately entering data in the perpetual inventory control system. State Ex. 39. Investigator Wittbecker further noticed that Christopher Blair did not offer any additional "notes" in METRC to explain or clarify the various adjustments. State Ex. 1.

68. Due to the time that had expired between the date product was received and the inspection, Investigator Wittbecker was not able to view any recording of security video surveillance for the forty missing "Tangie 1.0g Elite Botanical" vape cartridges (RFID ending in

³³ In METRC, Investigator Wittbecker printed a "Packages Adjustments" report.

#13559), and two pounds of missing flower identified as OD Buds – Black Raspberry (RFID ending in #25251) and OD Buds – The Vision (RFID ending in #25252).

69. As a result, Investigator Wittbecker cited the Respondent for violating COMAR 10.62.28.02A(1), (2) (Standard Operating Procedure); COMAR 10.62.28.06A (Theft or Diversion); three counts of COMAR 10.62.34.01A (Operational Failure Risking Diversion or Endangering Health); and three counts COMAR 10.62.34.02A (Pattern of Deviation from Standard Operating Procedure).

Exit Briefing

70. In an Exit Briefing, the MMCC notified the Respondent of the aforementioned COMAR violations and instructed the Respondent to submit documentation of corrective action in writing within fourteen days. State Ex. 40.

71. The Exit Briefing also informed the Respondent of the following, in bold lettering:

This document is not a final report.

...

Documentation of corrective action submitted in writing to the inspector/investigator within 14 days of the inspection/investigation may be considered for mitigation should the sanction imposed result in the issuance of a notice proposing a civil penalty. However, any documented corrective action would not eliminate or preclude the initiation of a civil penalty proceeding, a finding of violation, or assessment of a civil penalty.

State Ex. 40.

72. On September 12, 2021, the Respondent responded in writing to the Exit Briefing. As it pertained to the forty cartridges, the Respondent blamed Kamille Jones for an error during the inventory audit, writing:

In August of 2020, the new manager, Taylor Ciganek, and her assistant, Kamille Jones, processed a reported delivery of 40 vape cartridges. Ms. Jones was responsible for inventory audits and counts and signed the invoice. She reported the receipt of the cartridges to Ms. Ciganek who, based on these representations, then signed the manifest indicating the receipt of the cartridges.

Several months later a full inventory of the Company's cannabis supply was undertaken. That inventory, which took several months to accomplish, revealed that Ms. Jones had reported receipt of 40 Tangie 1 gram Elite Botanical Vape Cartridges on August 31, 2020, but that none was found in inventory. The Company was unable to determine with any degree of probability that a diversion or theft occurred, as opposed to a simple mistake in the delivery and receipt process. An adjustment to the Company's inventory records was then made on May 18, 2021.

State Ex. 40.

73. As it pertained to the two pounds of missing flower identified as OD Buds – Black Raspberry (RFID ending in #25251) and OD Buds – The Vision (RFID ending in #25252), the Respondent blamed Culta for any irregularities that occurred, writing:³⁴

Historically, the Company had always scheduled delivery of cannabis product during weekdays when Inventory staff is on site in order to accomplish the required reporting process. ...

Due to inclement weather on the 16th, the delivery was postponed by Culta and they decided to deliver the order on a Saturday, the 19th, without a call to the dispensary to confirm plans for and the timing of delivery.

In December of 2020, the Company was in the midst of a COVID outbreak which had caused it to suspend operations while the premises were disinfected and require employees to obtain and present negative COVID tests before returning to work. As a result, at the time of the Culta delivery, the Company was operating with a skeleton crew. Since Culta delivered the product on a Saturday, there were no inventory personnel on duty at the time of the delivery, and so, the intake was handled by a non-inventory, patient advisor employee.

Inventory staff directed to periodically conduct full inventory audits eventually discovered a discrepancy between Culta invoices and inventory counts with respect to RFID 25251 – Black Raspberry flower and RFID 25252 – The Vision Outdoor flower. This discrepancy led to an inquiry made of Culta with respect to the Saturday, December 19 delivery to see if the product had actually been delivered to [the Respondent] or whether or not a theft or diversion may have occurred. (See Attachment A [State Ex. 11, p. 70]). Initially, it was reported to [the Respondent] management that no manifests or invoices had been left with [the Respondent] at the time of delivery. The response to the inquiry with Culta stated that Culta did have a copy of a manifest signed by an employee at the dispensary and an acceptance in METRC, but otherwise failed to confirm or deny the fact that the delivery of these products was actually made or that it conducted

³⁴ Footnotes contained in the letter were removed, as well as a reference to an attachment.

any inquiry with its transportation agent. Culta concluded, "I really don't know what else we can do. We don't have that product anymore."

State Ex. 40 (internal footnotes omitted, as well as a reference to an attachment).

Missing gSpot buds

74. On September 9, 2021, the Respondent received a delivery from Green Leaf Medical, LLC (gLeaf) containing thirty-three packages, from Manifest #0000720015, including 224.0000 grams of gSpot (buds) (RFID ending in #42109). State Ex. 15, p. 84.

75. gLeaf employee Robert Matussek, a licensed grower facility employee (ID no. G-003992), delivered the product to the Dispensary. State Ex. 15, p. 81; *see also* State Ex. 20.

76. The Respondent did not record Mr. Matussek's delivery on the visitor log for September 9, 2021. State Ex. 21.

77. Respondent employee Coleman Eldridge signed Manifest #0000720015 confirming receipt of the shipment. State Ex. 15, p. 86. In doing so, he "confirm[ed] that the contents of this shipment match weight records entered above, and I agree to take custody of those portions of this shipment *not* circled above. Those portions circled were returned to the individual delivering this shipment." *Id.* (emphasis in original).

78. No items on the manifest were circled.

79. Contemporaneous in time to accepting receipt of shipment pursuant to Manifest #0000720015, the Respondent paid gLeaf \$33,144.93 in cash. State Ex. 15, p. 89.

80. On September 10, 2021, Inventory Specialist Shawn Posey removed the gSpot bud from the vault and moved the product into the Respondent's inventory. This activity is captured on video. Resp. Ex. 2 (video); Resp. Ex. 16.

81. On October 5, 2021, Ms. Ciganek wrote an email to Melissa Beatty, a gLeaf employee, seeking clarity regarding an inventory discrepancy involving Manifest #0000720015, writing:

As we discussed on the phone, there was an error with the September 9th gLeaf delivery.

My assistant manager Greg Myers received the delivery in-store and in METRC without noticing that the gSpot from RFID 00042109 was a partial case. We only received 26 eighths out of the 64 eighths we were supposed to receive leaving us with 133 grams in METRC that we did not physically receive.

Should we adjust this on our end, and can you reimburse us for the flower that we did not receive?

State Ex. 14, p. 80 (syntax errors contained in original).

82. In response to Ms. Ciganek's email, on October 5, 2021, gLeaf credited the Respondent \$890.63 for the missing 133 grams of gSpot bud. State Ex. 16.

83. The Dispensary did not produce a written report, contemporaneous in time to when Ms. Ciganek made a package adjustment, showing that an investigation was conducted.

84. No one at the Dispensary notified the Commission or Maryland State Police within one business day regarding the missing inventory.

85. The Respondent did not take any disciplinary action against an employee for this error. Hrg. Tr. vol. 7, 1275 – 1276.

October 28, 2021 Inspection

86. On October 14, 2021, Matthew Blair forwarded Ms. Ciganek's October 5, 2021 email to Investigator Wittbecker regarding the 133 grams of missing gSpot (buds) (RFID ending in #42109) from the September 9, 2021 gLeaf delivery. State Ex. 14.

87. Investigator Wittbecker contacted gLeaf for a response. On October 15, 2021, Meagan Zaffaroni, Compliance Director, gLeaf, replied in an email, writing,

I am writing to follow up on our calls regarding [the Respondent's] inventory issue with a package of gLeaf flower 1/8's.

The gLeaf team investigated the packages and from what we can see, what was manifested to [the Respondent] is what physically left the facility. We referenced the parent package of 42109 to confirm the product packages that were created

from that lot and there were no small packages of 1/8's made from that parent. We have provided (attached) a manifest and invoice that were signed by a [Respondent] agent accepting the products on September 9th. Our delivery driver verified that when delivering to [the Respondent], there are typically 3-4 agents from [the Respondent] that assist with the check in process. The packages are brought in and cut open to be verified by the [Respondent] staff, our driver typically works with another staff member on payment collection while product is verified. Once product is verified, a [Respondent] agent accepts the manifest in METRC and signs the paper copy for our driver to return with. For this delivery he doesn't recall any deviation from the normal procedures described above.

To our knowledge what was manifested to [the Respondent] on Sept. 9, 2021, is what was physically delivered to and accepted by them. Our delivery manager did receive a call from a [Respondent] agent the week of October 11, 2021, stating that package 42109 was short 38 units. They told him that they had already adjusted the package to correct the issue and they requested a credit for the "missing" units. Our delivery manager obliged taking the [Respondent] agent at their word since they have been a good customer.

State Ex. 17, p. 90 (syntax errors contained in original).

88. On October 28, 2021, Investigator Wittbecker and Regional Director Todd Liddick conducted an unannounced inspection at the Dispensary. State Ex. 13. As part of the investigation, Investigator Wittbecker viewed videos showing the handling of the gLeaf product at both the Respondent and gLeaf facilities. State Ex. 13, p. 76; State Exs. 22, 23. The tapes were inclusive to discern whether gLeaf failed to ship the proper number of grams or what product Mr. Posey was handling. *Id.*

89. In pertinent part, Investigator Wittbecker cited the Respondent for violating COMAR 10.62.28.02A(1), (2) (Standard Operating Procedure); COMAR 10.62.34.02A (Pattern of Deviation from Standard Operating Procedure); and COMAR 10.62.27.09A (Visitor to a Non-Public Area of the Premises). State Ex. 13, pp. 74 – 75.

90. In November 2021, Ms. Ciganek resigned. Hrg. Tr. vol. 7, 1275 – 1276.

91. At some point, during the course of his investigation, Investigator Wittbecker learned of Matthew Blair's felony conviction. Hrg. Tr. vol. 1, 122.

United States (U.S.) v. Matthew Blair, Criminal No. ELH-19-410

92. On December 3, 2021, Matthew Blair entered a guilty plea, on charges brought by the U.S. Attorney, to one count of paying illegal remunerations to independent marketers to induce them to refer business to Blair Pharmacy, particularly in order to receive reimbursement from TRICARE, a federal health care benefits program which provides benefits to members of the U.S. military and their families. State Ex. 26.

93. Mr. Blair acted knowingly and willfully. State Ex. 26.

94. Mr. Blair was ordered to pay restitution in the amount of \$3,176,470.83, and agreed to be excluded from the TRICARE health benefit program as an Authorized Provider for twenty-five years. State Ex. 26.

95. Mr. Blair faced a maximum sentence of five years, State Exhibit 26, but was "sentenced to a year and a day." Hrg. Tr. vol. 1, 122.

June 30, 2022 Inspection

96. Since the August 31, 2021 and October 28, 2021 inspections, the MMCC conducted an inspection on June 30, 2022. On this date, no violations were observed. Resp. Ex. 10, p. 42.

DISCUSSION

Burden and Standard of Proof

The Commission may issue charges against a cannabis licensee and seek disciplinary sanctions against it, including penalties as well as the suspension or revocation of a license.

COMAR 10.62.34. COMAR 10.62.03.16B(3), (4) expressly allocates the burden of proof in this matter to the Department.³⁵

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence. State Gov't § 10-217. To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

Legislative Background

In 2013, the Maryland General Assembly established the Commission as an independent commission within the Department. Health-Gen. § 13-3302(b) (2019); *see also* Chapter 403, Acts of 2013. Initially, the Commission was to request proposals from academic medical centers to operate medical cannabis compassionate use programs. In 2014, however, its charge was expanded to make medical cannabis available beyond those original targeted patients. *See* Chapters 240 & 256, Acts of 2014. Through its implementation of a medical cannabis program in Maryland, the Commission was tasked with "develop[ing] policies, procedures, guidelines, and regulations to implement programs to make medical cannabis available to qualifying patients in a safe and effective manner." Health-Gen. § 13-3302(c).

³⁵ .16 Burden of Going Forward and Persuasion.

A. When, by specific statute or regulation, the burden of going forward or the burden of persuasion rests upon a certain party, this regulation does not shift those burdens.

B. Except as provided in §A of this regulation:

...
(3) In a proceeding following notice by the Department of an intent to revoke or suspend a permit or license, the Department bears the burden of going forward to establish a prima facie case as to the existence of grounds for revocation or suspension and the burden of persuasion that the license or permit should be revoked or suspended;

(4) In a proceeding to impose a civil penalty or to issue an order, the Department bears the burden of going forward to establish a prima facie case as to existence of the grounds for imposition of a civil penalty or issuance of an order and the burden of persuasion that the civil penalty should be imposed or order issued[.]

Effective May 3, 2023, pursuant to the Cannabis Reform Act, found at Section 36-201 of the Alcoholic Beverages & Cannabis Article, a new statutory compilation of the Annotated Code of Maryland, as well as COMAR 10.26, the Commission was replaced by the Maryland Cannabis Administration (MCA). Throughout the hearing, the parties interchangeably referred to the MMCC as the MCA.

Applicable Law

The Commission is responsible for the licensure of dispensaries. Health-Gen. § 13-3307(a). Prior to being awarded a license, 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.”³⁶ *Id.* § 13-3307(h). One such procedure is the maintenance of an electronic manifest system “to record the chain of custody³⁷ for the shipment of products containing medical cannabis.” COMAR 10.62.18.02A. Similarly, the dispensary licensee “shall maintain, independent of the inventory control, a searchable, secure, tamper-evident record of each distribution” of cannabis product to a recipient. COMAR 10.62.32.02A. Another is the establishment of a standard operating procedure (SOP) which addresses “all aspects of the receipt, storage, packaging, labeling, handling, tracking, and

³⁶ According to the METRC Industry Generic User Guide, “the [METRC] Compliance Management System allows a licensee to track all the Marijuana inventory grown, processed, transferred, and sold for either medical or recreational use.” State Ex. 24, p. 110.

³⁷ See COMAR 10.62.18.03B.

dispensing of products containing medical cannabis and green waste[.]”³⁸ COMAR

10.62.28.02A(1).

Moreover, the dispensary licensee is required to

[c]reate and enter timely and accurate data into a perpetual inventory control system that identifies and tracks the licensee’s stock of medical cannabis from the time it is delivered or produced to the time it is delivered to another licensee, a licensed grower,³⁹ or a qualifying patient or caregiver[.]

COMAR 10.62.28.02A(2). Finally, the dispensary licensee must train all of its registered dispensary agents to understand and implement the SOP. COMAR 10.62.28.02A(3).

Equally important, “[a] licensee ... may not substantially deviate or demonstrate a pattern of deviation from the [SOPs] or the terms set forth in the license.” COMAR 10.62.24.02A.

Furthermore, “[a] licensee, registrant, agent, or employee may not divert or contaminate medical cannabis, or otherwise risk the health of a patient or any other individual.” COMAR

10.62.24.01A.

To ensure compliance with the statute, the Commission may inspect licensed dispensaries. Health-Gen. § 13-3307(i).

³⁸ COMAR 10.62.30.08 (formerly COMAR 10.62.30.09) “requires licensed dispensaries to either return green waste to a licensed grower or processor or dispose of green waste in accordance with an approved waste disposal plan.” State Ex. 12, p. 0071 (Bulletin: 2019 – 017; effective date: January 6, 2020). “Cannabis Green Waste includes:

- Waste from processing or repacking that is deemed non-usable, including stems and buds;
- Contaminated cannabis;
- Damaged, deteriorated, adulterated, improperly or accidentally opened products;
- Returned products in any condition;
- Expired cannabis products;
- Un-identifiable cannabis products;
- Un-labeled or mislabeled products;
- Cannabis identified in a recall by a licensed grower or processor, of the Commission;
- Unattended cannabis products discovered at a dispensary facility;
- Sample items; and
- Display items housed in “sniff jars.”

Id.

³⁹ “Grower” means “an entity licensed under this subtitle that: (1) Cultivates or packages medical cannabis; and (2) Is authorized by the Commission to provide cannabis to a processor, dispensary, or independent testing laboratory.” Health-Gen. § 13-3301(j) (Supp. 2021).

This includes “announced and unannounced inspections of the facilities of ... licensed dispensaries ... subject to the Commission’s regulation, mission, and function, to determine compliance with statute and regulations.” COMAR 10.62.33.04A.

During an inspection, the Commission may:

...

- (1) Review and make copies of all records;
- (2) Enter any place, including a vehicle, in which medical cannabis is held, dispensed, sold, produced, tested, delivered, transported, manufactured or otherwise disposed of;
- (3) Inspect all equipment, raw and processed material, containers and labeling, and all things therein including:
 - (a) Records;
 - (b) Files;
 - (c) Financial data;
 - (d) Sales data;
 - (e) Shipping data;
 - (f) Pricing data;
 - (g) Employee data;
 - (h) Research;
 - (i) Papers;
 - (j) Processes;
 - (k) Controls; and
 - (l) Facilities;
- (4) Inventory any medical cannabis;
- (5) Inspect any equipment, instruments, tools or machinery used to process:
 - (a) Medical cannabis;
 - (b) Medical cannabis concentrate; or
 - (c) Medical cannabis-infused product; and
- (6) Question personnel present at the location and any agent of the licensee.

COMAR 10.62.33.04C.

The State’s Contentions

The State expressed great concern as well as a lack of confidence in the Respondent’s record-keeping practices over the course of fourteen months, from August 2020 to October 2021. Additionally, the State suspected diversion. The State arrived at this epiphany following two separate unannounced inspections, on August 31, 2021 and October 21, 2021, performed by Investigator Wittbecker.

During the first inspection, Investigator Wittbecker discovered three instances of potential diversion when the then-Inventory Manager, Taylor Ciganek, made three separate inventory adjustments for product the Respondent claimed it never received including forty vape cartridges, and two pounds of missing flower. In addition, Investigator Wittbecker found an unusually high number of reconciliation entries on May 27, 2021 by Dispensary Manager Christopher Blair several months after METRC showed the products already in the custody of the Respondent and after which the Respondent presumably sold all quantities. Investigator Wittbecker also discovered that there was a dearth of reasoning for the entries.

Prior to the second inspection, that took place on October 21, 2021, the Respondent reported to Investigator Wittbecker another instance of potential diversion when Ms. Ciganek could not account for a gLeaf delivery of sixty-four eighths of gSpot.

The culmination of these events prompted the State to file administrative charges against the Respondent, consisting of sixty-one allegations of fact and eight violations of the Act. Although the charging document did not specify an exact sanction the State was seeking, under the caption "Notice of Possible Sanctions," it reads:

If, after a hearing, the Commission finds that there are grounds for disciplinary action pursuant to Health-Gen. §§ 13-3307 and 13-3316, as well as the various provisions of COMAR 10.62 as set forth herein, the Commission may impose disciplinary sanctions against the Respondent's license, including imposing penalties or rescinding the license.

Charges Under the Medical Cannabis Commission Act, at 16.

On that last date of hearing, the State recommended the Respondent's license be suspended for a period of six months, the dispensary undergo a six-month comprehensive audit, and a fine totaling \$150,000.00. Hrg. Tr. vol. 7, 1321.

The Respondent's Response

While the Respondent readily acknowledged that the dispensary had a “breakdown in record keeping,” it took umbrage with the State’s characterization that its operations was “a pervasively defective dispensary.” Hrg. Tr. vol. 7, 1322. Furthermore, to this point, the Respondent asserted that the State failed to show any credible evidence of diversion or theft. Instead, the Respondent suggested the credible evidence only shows that “[t]his was a handful of aberrations in a human industry.” *Id.*

Analysis

Medical cannabis is a highly regulated area. The Act is concerned with protecting public health and public safety by ensuring that only certifying patients have safe access to medical cannabis, a substance otherwise illegal to possess or consume under federal and State law. *See generally* Health-Gen. § 13-3301.1. For this reason, the MMCC holds its dispensary licensees to certain standards in the management and movement of products at the dispensary level. For instance, “[t]he 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.” Health-Gen. § 13-3307(b).

As noted above, paramount to meeting these standards for licensure is the requirement that a dispensary shall have a SOP that mirrors COMAR 10.62.28.02. The State does not contend that the Respondent failed in this regard; instead, it argues that the credible evidence demonstrates a pattern of practice where the Respondent simply failed to follow its own SOP. The Respondent’s mea culpa on this point is a bit of a mess, and raises as many questions as it answers. Notably, the Respondent failed on no less than three occasions to confirm the accuracy of a manifest against the delivery contents. The credible evidence found at State Exhibit 6 (forty missing vapes); State Exhibits 5, 9, 10 (two pounds of missing flower); and State Exhibit 15 (133

grams of missing gSpot bud) emphasizes this exact scenario where it is more likely so than not that Respondent employees ran afoul of its SOP by not “identifying the delivery contents” of packages, State Exhibit 19, p. 101, before signing the manifest, in pertinent part, “confirm[ing] that the contents of this shipment match weight records entered above[.]” State Ex. 5, p. 45; State Ex. 6, p. 53; and State Ex. 15, p. 86.

The Respondent’s expert witness, Justin Jones, testified to industry standards that require dispensaries to check packages; count everything; ascertain whether a product is damaged or not; if not damaged, check the package into the inventory system; and if damaged, reject the package.⁴⁰ By all accounts, Mr. Jones’s testimony handedly eviscerated the Respondent’s position, by and through Mr. Blair’s testimony, that to be compliant with COMAR 10.62.28.03E, “it is the ‘packing’ that must be inspected for accuracy, not the contents of the package.” Resp. Ex. 7, pp. 37 – 38.

In addition, I find the Respondent’s position untenable when viewed through the lens of what occurred on each of the questioned shipments as well as the plain meaning of the regulations. During the August 31, 2020 delivery of forty Tangie 1.0g Elite Botanical vape cartridges, Ms. Jones had a total of *twenty-three* packages to check against the manifest. And after the count was verified, the Respondent paid HMS Processing \$21,380.12 in cash for the twenty-three packages contained in the manifest. State Ex. 6, p. 56. Of that amount, \$1,800.00 was paid for the forty vape cartridges. *Id.*, p. 54. For the Respondent’s explanation that a training error occurred to be believed, I must dispel reality. It is incredulous Ms. Jones miscounted the number of packages received and/or erroneously read the RFID number on one of the boxes. Presumably this was done with another inventory team member present. The

⁴⁰ I did not have a copy of volume 4 of the hearing transcript to provide an exact quote or reference to Mr. Jones’ testimony.

Respondent did not discover this error for 260 days (August 31, 2020 to May 18, 2021).

Moreover, the Respondent did not alert the MMCC or HMS Processing that they had received a different product in place of forty vape cartridges, to explain how it was they still received twenty-three packages if the vape cartridges were not contained in one of the boxes. There was also no suggestion that there was an empty, unaccounted box sitting in the vault.

During the December 19, 2020 delivery of the OD Buds – Black Raspberry (RFID ending in #25251) and OD Buds – The Vision (RFID ending in #25252), Mr. Katz had only seven packages to check against the manifest. Accepting for the moment that Mr. Katz was a non-inventory, patient advisor employee and unfamiliar with SOP 5.05, and the delivery occurred unannounced on a Saturday, the Respondent’s penchant for blaming Cultra for the unaccountability of these products is incredulous. There were only seven packages to count. The credible evidence shows that Ms. Ciganek was aware of the delivery because she moved the product to METRC that same day. As inventory manager, she had the ability to counsel Mr. Katz on proper delivery procedures and protocol or alternatively instruct him to reject the delivery altogether due to the irregular nature of the delivery. Neither occurred. Moreover, contemporaneous in time to the delivery of the package, the Respondent paid Cultra \$10,270.00 in cash for the seven packages contained in the manifest lending credibility that the shipment was received as billed. State Ex. 3, p. 8. Of that amount, \$3,200.00 was paid for the OD Buds – Black Raspberry and \$2,500.00 was paid for the OD Buds – The Vision. *Id.*, p. 54. Further underscoring the blameworthiness point, after its own internal investigation, the Respondent told the MMCC that it “was unable to determine with any degree of probability that a diversion or theft occurred, as opposed to a simple mistake in the delivery and receipt process.” State Ex. 40. Finally, the Respondent did not discover this error for 180 days (December 19, 2020 to June 17, 2021).

During the September 9, 2021 delivery of gSpot bud, Mr. Eldridge had *thirty-three* packages to check against the manifest. Unlike the two previous examples, the Respondent began processing the packages the next day and learned of the presumed shortage in approximately thirty days. This allowed plenty of time for the MMCC to check the records and video surveillance tapes to discern what may have occurred. Unfortunately, the investigation was inclusive as to the cause of the shortage.

These stories readily rebut the Respondent's explanation that the dispensary must only count the packages. That step only accounts for one of the many prongs outlined in COMAR 10.62.28.03E, on the process for taking custody of a shipment; they are:

- E. An agent of the receiving licensee shall:
 - (1) Log into the electronic manifest;
 - (2) Take custody of a shipment of products containing cannabis;
 - (3) Confirm that:
 - (a) The agent who delivers the shipment is carrying appropriate identification;
 - (b) The packaging is secure, undamaged, and appropriately labeled;
 - (c) Each package in the shipment is labeled as described in the electronic manifest; and
 - (d) The contents of the shipment are as described in the electronic manifest;
 - (4) Record the confirmations in the electronic manifest;
 - (5) Obtain in the electronic manifest the signature or the identification number of the agent who delivers the shipment;
 - (6) Record in the electronic manifest the date and time the receiving agent takes custody of the shipment;
 - (7) Enter the products containing cannabis into the inventory control system;
 - (8) Segregate the items in the shipment from the inventory until the item can be inspected;
 - (9) Inspect each item to ensure that the packaging of each item is undamaged, accurate and complete; and
 - (10) Upon determining the item passes inspection, release the item into the inventory.

Moreover, and more importantly, none of the aforementioned stories touch upon the reasoning the Respondent gave to the MMCC in Matthew Blair's September 2, 2019 email to William Tilburg, Executive Director, MMCC, seeking clarification regarding this policy. Resp. Ex. 7, pp. 37 – 38. None of the packages necessarily involved opening bulk flower packaging.

Though it was evident from both parties' expert and fact witnesses, a dispensary ought to be careful as to not indiscriminately expose any bulk flower product to the risk of contamination or loss on drying, Mr. Jones testified that the industry standard nevertheless required dispensaries to weigh bulk flower to verify it, then move the package into inventory.

Accordingly, as is evident from the exhaustive list of facts outlined above and, in many instances, stipulated by the Respondent, *see* Joint Exhibit 1, the Respondent violated COMAR 10.62.28.02 by failing to adhere to its own SOP.

Entering accurate data into a perpetual inventory control system is no different. The State contends that the Respondent failed to create and enter accurate data into a perpetual inventory control system that identifies and tracks the licensee's inventory of medical cannabis, as required by COMAR 10.62.28.02A, which reads as follows:

- A. A licensee shall install an electronic manifest system to record the chain of custody for the shipment of products containing medical cannabis.
- B. An electronic manifest system shall include a chain of custody that records:
 - (1) The name and address of the shipping licensee;
 - (2) The shipping licensee's shipment identification number;
 - (3) The weight and description of each individual package that is part of the shipment, and the total number of individual packages;
 - (4) The name of the registered grower agent, processor agent, or dispensary agent that prepared the shipment;
 - (5) The name and address of the receiving licensee or other receiving party if applicable; and
 - (6) Any handling or storage instructions.

In its Post-Trial Bench Memorandum, the Respondent asserts that this language is inapposite and certainly does not equate with METRC. More bluntly, the Respondent charges that since the phrase "perpetual inventory control system" is not defined in the MMCC's

regulations or statute, it could easily be “paper logs of bulk package weights, adjustments, and green waste[.]” Post-Trial Bench Memorandum, at 11. Without specifically saying so, I believe the paper log the Respondent is referring to is the Processor Bulk Flower Accountability Log.

I am not persuaded by the Respondent’s very myopic reading of the regulations. As described in COMAR 10.62.18.02, .03 and expanded upon by COMAR 10.62.28.02, the perpetual inventory control system “identifies and tracks the licensee’s stock of medical cannabis from the time it is delivered or produced to the time it is delivered to another licensee, a licensed grower, or a qualifying patient or caregiver[.]” The Respondent’s inhouse paper logs simply do not suffice for this purpose. As mentioned throughout the regulations and expanded upon by the States’ expert, METRC is the “chain of custody” from seed-to-sale.

The credible evidence shows that the Respondent routinely failed to keep and maintain timely and accurate data in METRC. The example of Christopher Blair’s twenty-one adjustments on May 27, 2021, to reconcile the dispensary’s inventory by using improper adjustments, underscores this point. The State’s expert, Lori Dodson, also offered an exhaustive review of countless records in METRC that caused her to question the practices of the Respondent, warranting an impression that the Respondent repeatedly failed to keep and maintain proper records. While I found the Respondent’s presentation, utilizing the Processor Bulk Flower Accountability Log, to be illuminating in that it helped explain many of the irregularities Ms. Dodson discovered when she researched the records, it nevertheless failed to explain why Christopher Blair needed to make mass adjustments over the course of one day to reconcile products in stock against METRC.

This gets us to diversion. In pertinent part, on pages 4 and 5 of this decision, the State identified two separate issues requiring resolution on the topic of diversion, they included:

Whether the Respondent has demonstrated a *repeated operational failure and risk of diversion* on at least twenty occasions during a four-month period, resulting in the inability to account for 609 grams of medical cannabis, a Schedule 1 controlled substance, in addition to missing forty vape cartridges and approximately two pounds of product during the same period, in violation of COMAR 10.62.34.02A?

and

Whether the Respondent *created a risk of diversion* by failing to maintain a perpetual inventory system and by failing to precisely account for all product delivered to its dispensary, in violation of COMAR 10.62.34.01A and 10.62.32.02?

(emphasis added).

As demonstrated by the aforementioned issues, there is no question from the State's presentation that it conflated the SOP and perpetual inventory control system violations to mean the Respondent created a *risk* of diversion. Consequently, the Respondent asserts that the State is wrong in its interpretation of the regulations on these two issues. The regulations on point concerning diversion are COMAR 10.62.28.06 (theft or diversion), adopted effective May 18, 2020, and COMAR 10.62.34.01 (operational failure risking diversion or endangering health), adopted effective August 12, 2019.

As highlighted in the facts, I found it curious that in each instance where the Respondent could not locate the products, which by all accounts had been delivered, the Respondent never reduced to writing its findings from an internal investigation. I specifically asked Matthew Blair if he had emails, notes, minutes, etc. capturing the investigatory steps in writing, and he said no. Hrg. Tr. vol. 7, 1266. It was the impression of Mr. Blair that the Respondent was not required to prepare a written compendium of what was learned from their internal investigations particularly when, in their opinion, there was no evidence of theft or diversion.

Upon closer review of COMAR 10.62.28.06, the Respondent's understanding of the regulations appears to be accurate. The regulation only requires the licensee to submit a written report after *discovering* theft or diversion. Moreover, the written report is only triggered "[i]f the licensee finds *evidence* of theft or diversion[.]" COMAR 10.62.28.06A (emphasis added). The Respondent clearly maintained throughout the hearing that its investigations never supported a finding that theft or diversion occurred. Likewise, Investigator Wittbecker was unable to confirm whether the missing products had indeed been delivered to the Dispensary. Hrg. Tr. vol. 1, 220-221. Ms. Dodson, too, could not confirm diversion only that certain products were unaccounted for. Hrg. Tr. vol. 3, 521. According to Black's Law Dictionary, the term "evidence" means "something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact[.]" *Black's Law Dictionary* 697 (11th ed. 2019).

For its part, the State asserts that the Agency's interpretation of the term "diversion" is "an act which redirects product from its legitimate channels of going to a registered patient or caregiver or is *unaccounted* for in the State's seed-to-sale system, is consistent with the purpose of the Act[.] State's Reply to Respondent's Post-Trial Bench Memorandum, at 3 (emphasis added). Moreover, the State suggests that "[a] proscribed definition of diversion is not necessary in order for this tribunal to reach a finding that unaccounted for products have been diverted," by drawing a reasonable inference that "the products were obviously not directed to legitimate channels." *Id.*, at 4. As discussed in its Post-Trial Bench Memorandum, however, the Respondent astutely points out that neither the statute nor the regulations define the term diversion. After a fairly exhaustive analysis of the legislative history, case law, and secondary sources, the Respondent came to conclude that diversion means "diversion of drugs from legitimate channels to illegitimate channels." Citing *U.S. v. Moore*, 423 U.S. 135 (1975).

Finally, in its Bench Memorandum Sur-reply, the Respondent contends the parties' respective positions are not that dissimilar but for the State's assertion that reasonable inferences may be made to treat unaccounted products to mean diversion.

I found the Respondent's argument to be persuasive. COMAR 10.62.34.02A provides "[a] licensee or registrant may not divert or contaminate medical cannabis, or otherwise risk the health of a patient or any other individual." In essence, the licensee may not move cannabis products from legitimate channels to illegitimate channels. This falls in line with the definition of "theft" which means "[t]he wrongful taking and removing of another's personal property with the intent of depriving the true owner of it; larceny." *Black's Law Dictionary* 1780 (11th ed. 2019). By contrast, if the operative phrase is "risk of diversion," as the State suggests, then a wholly different meaning occurs. According to *Black's Law Dictionary*, the term "risk" means "[t]he uncertainty of a result, happening, or loss; the chance of injury, damage, or loss; esp., the existence and extent of the possibility of harm <many feel that skydiving is not worth the risk>." *Black's Law Dictionary* 1589 (11th ed. 2019).

The final issue to be resolved is whether the Respondent failed to properly log visitors into a visitor logbook in violation of COMAR 10.62.27.09A. The credible evidence demonstrates that the Respondent had indeed failed to record Mr. Matussek's delivery on the visitor log for September 9, 2021. State Ex. 21.

Penalties

Should a dispensary violate any of the terms and conditions of licensure, "the Commission may impose penalties or rescind the license of a dispensary." Health-Gen. § 13-3307(k).

Those penalties are outlined in the regulations as follows:

B. A licensee, registrant, agent, or employee who violates § A⁴¹ of this regulation is subject to a fine of up to \$10,000 per violation. The licensee, registrant, agent, or employee may:

(1) Elect to pay the imposed fine; or

(2) Request a hearing not later than 30 days after receipt of notice of the fine.

C. In accordance with the hearing provisions of Regulation .05 of this chapter, the Commission may deny, suspend, or revoke the license or registration of a licensee, registrant, agent, or employee who violates § A of this regulation.

COMAR 10.62.34.01 (Operational Failure Risking Diversion or Endangering Health). And,

B. A licensee, registrant, agent, or employee who violates § A⁴² of this regulation is subject to a fine of up to \$5,000 per violation. The licensee, registrant, agent, or employee may:

(1) Elect to pay the imposed fine; or

(2) Request a hearing not later than 30 days after receipt of notice of the fine.

C. In accordance with the hearing provisions of Regulation .05 of this chapter, the Commission may deny, suspend, or revoke the license or registration of a licensee, registrant, agent, or employee who violates § A of this regulation.

COMAR 10.62.34.02 (Pattern of Deviation from SOP). And, finally,

A. A licensee, registrant, agent, or employee may not violate a requirement of this subtitle or Health-General Article, §§ 13-3301 – 13-3316, Annotated Code of Maryland.

B. A licensee, registrant, agent, or employee who violates § A of this regulation is subject to a fine of up to \$5,000 per violation. The licensee, registrant, agent, or employee may:

(1) Elect to pay the imposed fine; or

(2) Request a hearing not later than 30 days after receipt of notice of the fine.

C. In accordance with the hearing provisions of Regulation .05 of this chapter, the Commission may deny, suspend, or revoke the license or registration of a licensee, registrant, agent, or employee who violates § A of this regulation.

COMAR 10.62.34.02 (Violation of Requirements).

⁴¹ Section A provides that “[a] licensee, registrant, agent, or employee may not divert or contaminate medical cannabis, or otherwise risk the health of a patient or any other individual.” COMAR 10.62.24.01A (emphasis provided).

⁴² Section A provides that “[a] licensee or registrant may not substantially deviate or demonstrate a pattern of deviation from the standard operating procedures or the terms set forth in the license.” COMAR 10.62.34.02A.

Furthermore, in determining the proper fine, COMAR 10.62.34.09 provides that any fine imposed “shall comply with the fine schedule adopted by the Commission and posted on the Commission’s website.”⁴³

The credible evidence demonstrates that as a result of the August 31, 2021 and October 28, 2021 inspections, the Commission properly found that the Respondent committed a multitude of violations. Specifically, the Respondent failed to (1) create and enter timely and accurate data into a perpetual inventory control system that identifies and tracks the licensee’s inventory of medical cannabis as required by COMAR 10.62.28.02A(2) on more than twenty occasions; (2) adhere to its own SOP on multiple occasions, specifically for the missing two pounds of product as described in the Charges, in violation of COMAR 10.62.34.02A; (3) receive, create and enter accurate data into a perpetual inventory control system in violation of COMAR 10.62.28.02; and (4) to properly log visitors, such as a delivery driver, into its visitor logbook, in violation of COMAR 10.62.27.09A.

In applying the fine schedule to these facts, I arrive at a fine of \$57,500.00, calculated as follows:

COMAR reference	Description	Fine Amount	Total
COMAR 10.62.28.02A(2)	Failure to create and enter timely and accurate data into a perpetual inventory control system that identifies and tracks the licensee’s inventory of medical cannabis.	\$2,000.00	\$40,000.00
COMAR 10.62.34.02A	Failure to adhere to its own SOP on multiple occasions, specifically for the missing two pounds of product. ⁴⁴	\$5,000.00	\$15,000.00

⁴³<https://www.maryland.gov/pages/search.aspx?q=finest&site=2anxdoehstu&name=Maryland%20Medical%20Cannabis%20Commission> (last viewed on October 10, 2023).

⁴⁴ This refers to the forty missing vapes, the two pounds of missing flower, and 133 grams of missing gSpot bud.

COMAR 10.62.28.02	Failure to receive, create and enter accurate data into a perpetual inventory control system. ⁴⁵	\$2,000.00	\$2,000.00
COMAR 10.62.27.09A	Failure to properly log visitors, such as a delivery driver, into its visitor logbook.	\$500.00	\$500.00
			TOTAL: \$57,500.00

Obviously, this amount is far less than the \$150,000.00 fine sought by the State. The difference is due, in large part, to the lack of any credible COMAR 10.62.34.01 (Operational Failure Risking Diversion or Endangering Health) violations.

In addition to the fines, the State also recommended a six-month suspension of the Respondent's dispensary license. According to COMAR 10.62.34.02, a suspension is a permissible sanction when there are documented patterns of deviation from the SOP. Because of the deviations from the SOP, neither the State nor the Respondent was able to pinpoint how it was the Respondent could not account for forty missing vapes, the two pounds of missing flower, and 133 grams of missing gSpot bud. While I understand and appreciate that the Respondent has had no subsequent violations since the October 2021 investigation, the pause in operations is warranted in light of the record before me and it will give the Respondent and the Commission time to perform a thorough audit to reconcile the Respondent's inventory against METRC. In *Bash v. Maryland State Board of Physicians*, No. 1441, 2022 WL 2903255, at *12 (Md. Ct. App. July 22, 2022) (unreported) (citations omitted), the Maryland Appellate Court has explained:

“When an agency is acting in a discretionary capacity, such as when it fashions a sanction, then the standard is more deferential than either substantial evidence or de novo review. An agency's discretion in fashioning a sanction should only be overturned if the decision is arbitrary or capricious. The arbitrary or capricious standard is ‘highly deferential.’”

⁴⁵ While the record was replete with examples of failure to receive, create and enter accurate data into a perpetual inventory control system, the State did not delineate a specified number of violations it believed the Respondent had committed.

This Court will not substitute its own judgment for that of the agency and will affirm decisions as long as we “can reasonably discern the agency’s reasoning.”

Here, the Board noted that it had “serious concerns” about Dr. Bash’s potential to mislead and take advantage of ill-informed and disadvantaged veterans. Accordingly, it refused to “ignore its deterrent function in this case,” and imposed the maximum \$50,000 fine. Thus, the Board did give a reason for its decision, and it stayed within the guidelines in COMAR. The sanction, then, is not arbitrary or capricious.

PROPOSED CONCLUSIONS OF LAW

Based upon the foregoing Proposed Findings of Fact and Discussion, I conclude as a matter of law that the record supports the Commission’s conclusion that the Respondent failed to:

1. adhere to its own Standard of Procedure on the multiple occasions, COMAR 10.62.34.02A;
2. receive, create, and enter accurate data into a perpetual inventory control system, COMAR 10.62.28.02;
3. create and enter timely and accurate data into a perpetual inventory control system that identifies and tracks the licensee’s inventory of medical cannabis, COMAR 10.62.28.02A(2); and
4. properly log visitors such as the gLeaf driver referenced herein into its visitor logbook, COMAR 10.62.27.09A.

I further conclude as a matter of law that the record does not support the Commission’s conclusion by a preponderance of the evidence that the Respondent:

1. created a risk of diversion by failing to maintain a perpetual inventory system and by failing to precisely account for all product delivered to its dispensary, in violation of COMAR 10.62.34.01A and COMAR 10.62.32.02; and
2. demonstrated a repeated operational failure and risk of diversion on at least twenty occasions during a four month period, resulting in the inability to account for 609 grams of medical cannabis, a Schedule I controlled substance, in addition to missing forty vape cartridges and approximately two pounds of product during the same period, in violation of COMAR 10.62.34.02A.

I further conclude as a matter of law that the record supports the Commission's conclusion that it may impose a fine and discipline. Md. Code Ann., Health-Gen. § 13-3307(k) (2019).

RECOMMENDED ORDER

I **RECOMMEND** that the Natalie M. LaPrade Maryland Medical Cannabis Commission, or alternatively the Maryland Cannabis Administration, **ORDER:**

That the following Charges against the Respondent be **UPHELD:**

- The Respondent has failed to adhere to its own Standard of Procedure on the multiple occasions, specifically for the missing two pounds of product as described herein, which is a violation of COMAR 10.62.34.02A;
- The Respondent has violated COMAR 10.62.28.02 by failing to receive, create and enter accurate data into a perpetual inventory control system;
- The Respondent failed to create and enter timely and accurate data into a perpetual inventory control system that identifies and tracks the licensee's inventory of medical cannabis as required by COMAR 10.62.28.02A(2) on more than twenty occasions; and
- The Respondent violated COMAR 10.62.27.09A by failing to properly log visitors such as the gLeaf driver referenced herein into its visitor logbook.

That the following Charges against the Respondent be **DISMISSED:**

- The Respondent created a risk of diversion by failing to maintain a perpetual inventory system and by failing to precisely account for all product delivered to its dispensary, in violation of COMAR 10.62.34.01A and COMAR 10.62.32.02; and
- The Respondent demonstrated a repeated operational failure and risk of diversion on at least twenty occasions during a four-month period, resulting in the inability to account for 609 grams of medical cannabis, a Schedule I controlled substance, in addition to missing forty vape cartridges and approximately two pounds of product during the same period, in violation of COMAR 10.62.34.02A.

That the Respondent dispensary be suspended for a period of six months; and

That the Respondent pay a monetary penalty of \$57,500.00.

October 10, 2023
Date Order Mailed

KAC/sh
#206991v1A

Kathleen A. Chapman

Kathleen A. Chapman
Administrative Law Judge

RIGHT TO FILE EXCEPTIONS

The Maryland Cannabis Administration (Administration) is the successor entity to the Natalie M. LaPrade Medical Cannabis Commission (Commission). COMAR 14.17.02.01A. The Administration has decision making authority on administrative charges issued under COMAR 10.62.01-10.62.37 by the Commission. COMAR 14.17.02.01B-C. The Administration delegated the Administration determination to the Office of Administrative Hearings (OAH). COMAR 14.17.22.04D. Any party adversely affected by these Proposed Findings of Fact and Conclusions of Law has the right to file written exceptions with the Administration within twenty-one days of receipt of this decision. Md. Code Ann., State Gov't §§ 10-216(a), 10-220 (2021). The Administration or the Administration's designee will review timely exceptions before rendering the final Administration decision. Md. Code Ann., State Gov't §§ 10-216(a), 10-220 (2021). The OAH is not a party to any review process.

Copies Mailed To:

Blair Wellness Center, LLC
5806 York Road
Baltimore, MD 21212

Justin Tepe, Esquire
Baker, Donelson, Bearman, Caldwell & Berkowitz
100 Light Street, 19th Floor
Baltimore, MD 21201

Francesca Gibbs, Assistant Attorney General
Office of the Attorney General
300 W. Preston Street, Suite 302
Baltimore, MD 21201

William Tilburg, Executive Director
Maryland Medical Cannabis Commission
849 Interational Drive Suite 450
Linthicum, MD 21090

NATALIE M. LAPRADE * BEFORE KATHLEEN A. CHAPMAN,
MARYLAND MEDICAL CANNABIS * ADMINISTRATIVE LAW JUDGE
COMMISSION, * THE MARYLAND OFFICE
STATE * OF ADMINISTRATIVE HEARINGS
v. *
IN RE: THE MATTER OF *
BLAIR WELLNESS CENTER, LLC, * OAH No.: MDH-MMCC-173-22-21298
RESPONDENT * MMCC No.: 21-00391

* * * * *

APPENDIX: FILE EXHIBIT LIST

STATE'S EXHIBITS

	Exhibit Description	Page No(s).	Admitted (Y/N)
A	Process Server Affidavit for service of T. Ciganek		Y
1	Report of Investigation - Case No. 21-000312, 8/31/21	0001-0006	Y
2	Blair Wellness – Sample of Package Adjustments at Blair Wellness	0007	N
3	Invoice from Cultra, Delivery Manifest, and Payment for Package Nos. – 25251 and 25252	0008-0010	N
4	METRC Package Adjustments Report for Blair Wellness, 4/1/21 - 8/11/21	0011-0043	Y
5	Transportation Manifest for Package Nos. -25251 and -25252, 12/18/20	0044-0045	Y
6	Transportation Manifest & Invoice for Package No. -13559, 8/28/20	0046-0056	Y
7	Sales History for Package No. –35683 (Sour Papaya), 1/02/21-2/16/21	0057-0065	Y
8	Sales History for Package No. –26782 (Grape GG Trim), 1/5/21 - 5/7/21	0066-0067	Y
9	Sales History for Package No. – 25251 (OD Buds Blackberry), 12/15/20 – 6/28/21	0068	Y
10	Sales History for Package No. – 25252 , 12/15/20 – 6/28/21	0069	Y
11	Email from Taylor Ciganek at Blair Wellness to Cultra Regarding Missing Product, 8/17/21	0070	Y

	Exhibit Description	Page No(s).	Admitted (Y/N)
12	MMCC Green Waste Bulletin 2019-017, Effective Date: 1/3/20	0071-0073	Y
13	Report of Investigation – Case No. 21-000391, 10/21/21	0074-0079	Y
14	Email from Taylor Ciganek to Gleaf, 10/05/21	0080	Y
15	Blair Wellness Signed Manifest 0000720015	0081-0088	Y
16	Credit Memo-7694 from Green-Leaf Medical, LLC, 10/18/22	0089	Y
17	Green Leaf follow-up Memo, 10/18/21	0090-0092	Y
18	Signed Blair Manifest 0000720015, 09/09/2021	0093-0100	Y
19	Blair Wellness SOP No. 5.05	0101-0102	Y
20	Delivery Driver ID	0103	Y
21	Visitor Log, 9/09/21 to 09/24/21	0104-0105	Y
22	Video Interior Dock from GLeaf, 9/9/21	Video	Y
23	Video Right Vault GLeaf, 9/9/21	Video	Y
24	METRC Manual	0106-0286	Y
25	METRC Supplemental Guide	0287-0401	Y
26	U.S. v. Blair, Criminal No. ELH-19-410 Plea Agreement 12/03/21 and Attachment A Stipulation of Fact	0402-0435	Y
27	Lori Dodson's CV	0436-0440	Y
28	Leafy A Visual Guide to Cannabis Quantities	441	Y
29	<i>The Science of Cannabis Drying Rooms</i> , Josh Stabach, 01/01/23	0442-0445	Y
30	<i>Comparative analysis of freshly harvested cannabis plant weight and drive cannabis plant weigh</i> Marcus L. Warner, et. al.	0446-0451	Y
31	<i>Water Activity Cannabis Testing Guide</i> , Brad Newbold, Moderator	0452-0478	Y
32	T. Ciganek Package Adjustments, 1/01/21-4/01/21 all adjustments by her	0479-0487	Y
33	T. Ciganek Package Adjustments, 4/04/21-8/01/21 all adjustments by her	0488-0511	Y
34	T. Ciganek Package Adjustments, 8/01/21-12/31/21 all adjustments by her	512	Y
35	C. Blair Package Adjustments, 1/01/21-12/31/21 regarding shake/trim only	0513-0515	Y
36	Sampling of other Trim Packages on Manifest No. – 475843 (same as Sour Papaya manifest)	0516-0532	Y
37	Package Adjustments of Shake/Trim A-D from a Sampling of Dispensaries, 04/01/2021-08/21/2021	0533-0542	Y
38	Package Adjustments from Dispensaries E-G (per Respondent's Request), 04/01/2021-08/21/2021	0543-0545	Y

	Exhibit Description	Page No(s).	Admitted (Y/N)
39	C. Blair Adj Report		Y
40	Exit Briefing, 8/31/2021		Y
41	Inspection Report, 8/15/2019		Y

RESPONDENT'S EXHIBITS

	Exhibit Description	Page No(s).	Admitted (Y/N)
1.	Email Correspondence, 9/2/2019	0001-0003	Y
2.	Video Footage Blair Wellness Center, 9/10/2021	Video	Y
3.	BWC METRC Adjustment Log, 2/28/2023 – 6/30/2023	0004-0014	Withdrawn
4.	BWC METRC Adjustment Log 4/1/2022-8/11/2022	0015-0027	Withdrawn
5.	Photographs	0028-0032	Y
6.	Email correspondence with Louis Hendricks, 9/2020	0033-0035	Y
7.	Email correspondence with Todd Liddick, 10/2021	0036-0038	Y
8.	Email correspondence with Mitch Casto, 10/5/2021	0039-0040	Y
9.	Email correspondence with Howard Wittbecker, 11/1/2021	0041	Y
10.	MMCC Exit Briefings from 2021 - 2023	0042-0049	Y
11.	Certificate of Analysis: Package 26782	0050-0053	Y
12.	Certificate of Analysis: Package 35683	0054-0057	Y
13.	METRC Package Logs	0058-0334	Withdrawn, duplicative of Resp. Ex. 14
14.	METRC Package Logs & BWC Processing/Waste Logs (found in a separate binder)	0335-0696	Y
15.	BWC Summary "Cheat Sheet" for Exhibit 14		Y
16.	BWC Stock Movement Report for RFID 42109		Y
17.	BWC Plan of Correction, 9/12/2021		Y

JOINT EXHIBIT

	Exhibit Description	Page No(s).	Admitted (Y/N)
1.	STIPULATIONS		Y
