

TITLE 442. OKLAHOMA MEDICAL MARIJUANA AUTHORITY

CHAPTER 1. ADMINISTRATIVE OPERATIONS

442:1-1-1. Purpose

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

442:1-1-2. Notice

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

442:1-1-3. Record of hearing

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

442:1-1-4. Duty of disclosure

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

442:1-1-5. Appearance of parties

All parties to a proceeding must enter an appearance or may be determined to have waived their right to appear. Corporate entities, limited liability companies, other business entities, and governmental units or entities may appear only by an attorney licensed to practice law in Oklahoma or by an out-of-state attorney admitted to practice before the Agency pursuant to the rules of the Oklahoma Bar Association.

442:1-1-6. Failure to appear

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

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

- (a) If the Executive Director or assigned administrative law judge finds that the public health, safety, or welfare requires emergency action and incorporates such finding to that effect in any Order, summary suspension of any licensee may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly initiated and held as provided in the Administrative Procedures Act, 75 O.S., §§ 301 through 326.
- (b) A licensee whose license has been summarily suspended may make a written request for a hearing on the summary suspension not later than ten (10) days after the license was summarily suspended.
- (c) The Executive Director or assigned administrative law judge shall conduct a hearing on the summary

suspension promptly and in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling with the burden on the licensee to show good cause why the suspension should be set aside.

442:1-1-8. Pleadings

(a) Pleadings shall be filed with the Authority and include appeals, applications, petitions, answers, complaints, exceptions, replies and motions. Submissions received after 5:00 p.m., CST or CDT, shall be deemed filed on the next regular business day.

(b) A request for discovery or a response to a request for discovery is not a pleading and is not a part of the administrative record of a contested case unless the request or response is offered into evidence.

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

(d) An objection to a defect, omission or fault in the form or content of a pleading must be specifically stated in a motion filed not later than seven (7) days before the date of the hearing. A party who fails to timely file an objection under this subsection waives the objection.

(e) The assigned administrative law judge shall decide any motion or application without hearing based upon the written submissions of the parties unless the assigned administrative law judge determines that an evidentiary hearing is necessary for a proper resolution of the issue(s) submitted.

(f) The tribunal may resolve any dispute or controversy by full or partial summary adjudication when the tribunal is satisfied that there is no reasonable dispute as to a material fact, or the reasonable inferences that may be drawn from material facts, or if only questions of law are involved. If the tribunal's summary adjudication and resolution does not dispose of all the issues pending in the action then it must recite the issues remaining for determination in its decision granting partial summary relief.

(g) Confidential information filed with or submitted to the Authority or administrative law judge in conjunction with any proceeding pursuant to the 63 O.S. §§ 420 et seq., the Oklahoma Medical Marijuana and Patient Protection Act at 63 O.S. §§ 427.1 et seq., Medical Marijuana Waste Management Act, 63 O.S. §§ 428 et seq and the Oklahoma Administrative Code ("OAC") 442, shall not constitute a public record and shall be sealed by the Court.

442:1-1-9. Failure to comply

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

442:1-1-10. Discovery

Discovery shall not be commenced unless a scheduling order is entered in the case and the tribunal determines that discovery is necessary for the resolution of the issues. Discovery shall be completed in accordance with the scheduling order entered in the case. The tribunal may set the total permitted number of written discovery including interrogatories, requests for production and requests for admission based on the needs of the case. The tribunal may limit the frequency, scope, and manner of depositions based on the needs of the case.

442:1-1-11. Emergency actions

When the Executive Director or an assigned administrative law judge finds that the public health, safety or welfare requires that action be taken immediately and when such a finding is incorporated in an order, emergency action may be ordered. Such order shall be served on every named party by certified mail or by

personal service at an address listed on Agency records. If a party is being represented by an attorney, service may be made on the attorney instead of on the party. The knowing failure of a party to accomplish service in accordance with this subsection is grounds for the Authority to strike the pleading from the record.

442:1-1-12. Summary order for destruction

(a) Any marijuana or marijuana product not properly logged in the inventory tracking system or untraceable product required to be in the system, altered or improperly packaged, or illegally held in violation of the Oklahoma Medical Marijuana and Patient Protection Act, any other laws of this state, or any rules promulgated by the Executive Director may be seized, destroyed, confiscated, embargoed, or placed on an administrative hold.

(b) If the Executive Director or assigned administrative law judge finds that the public health, safety, or welfare requires emergency action and incorporates such finding to that effect in any Order, a summary Order for destruction of marijuana or marijuana products may be issued.

(c) A licensee who owns or possesses marijuana or marijuana product that is the subject of a summary Order for destruction may make a written request for a hearing on the summary Order for destruction not later than ten (10) days after the Order is served.

(d) The Executive Director or assigned administrative law judge shall conduct a hearing on the summary Order for destruction promptly and in the same manner as other disciplinary hearings. At a hearing on a summary Order for destruction, the sole issue is whether the licensee's marijuana or marijuana product that is the subject of the Order should be destroyed with the burden on the licensee to show good cause why the summary Order should be set aside.

442:1-1-13. Appeal of adverse credential determination

(a) If the third-party vendor determines that an employee of a medical marijuana business does not meet the minimum statutory requirements for a credential, the applicant or employee shall have no recourse against the third-party vendor but may appeal such adverse determination to the Authority.

(b) An applicant for an employee credential whose application has been denied may make a written request for a hearing on appeal not later than thirty (30) days after the Authority provided notice to the applicant of the adverse determination.

(c) Notice of an adverse determination shall be sent to the applicant in the same method the application was submitted to the Authority.

(d) At a hearing on the appeal of an adverse credential determination, the sole issue is whether the application submitted by the applicant for an employee credential met the minimum statutory requirements for a credential at the time of submission.

(e) No evidence, other than what is contained in the application for an employee credential, shall be introduced, offered, or referenced by any party.

442:1-1-14. Declaratory rulings

(a) Pursuant to 75 O.S. § 307, the OMMA Executive Director or their duly authorized agent may issue declaratory rulings, as to the applicability of any rule, principle of law, and/or order of OMMA. OMMA licensees and the OMMA shall be the only parties with standing to seek a declaratory ruling.

(b) A petition for a declaratory ruling must be made in writing and filed with the OMMA pursuant to OAC 442:1-1-8.

(c) A petition for a declaratory ruling must specifically state:

- (1) That a “declaratory ruling is requested pursuant to OAC 442:1-1-14”;
- (2) The name of the licensee to whom the facts presented in the petition for declaratory ruling applies;
- (3) The physical address of the licensee to whom the facts presented in the petition for declaratory ruling applies;
- (4) The mailing address of the licensee to whom the facts presented in the petition for declaratory ruling

- applies;
- (5) The license number of the licensee to whom the facts present in the petition for declaratory ruling applies;
 - (6) The physical address of the licensee;
 - (7) The issue(s) on which declaratory ruling is requested, stated clearly, concisely, and with particularity;
 - (8) A complete, clear, and concise statement of all relevant facts on which the declaratory ruling is requested;
 - (9) Whether the issue, as it regards the petitioner, is presently the subject of administrative action before OMMA;
 - (10) The petitioner's desired result and the legal basis for that result, including reference to all applicable statutes, rules, regulations, and case law;
 - (11) The signature of the individual appearing on the petitioner's behalf pursuant to OAC 442:1-1-5.
- (d) In conjunction with the submission of the petition for declaratory relief, the petitioner may submit a proposed declaratory ruling granting the relief sought in the declaratory petition.
- (e) OMMA may require additional information from the petition as deemed necessary to issue a declaratory ruling. Failure by petition to provide the requested information shall result in denial of the petition to issue the declaratory ruling.
- (f) A declaratory ruling shall have the following effect:
- (1) The declaratory ruling shall apply only to the particular fact situation stated in the declaratory ruling petition;
 - (2) The declaratory ruling shall apply only to the petitioner;
 - (3) The declaratory ruling shall bind OMMA, its duly authorized agents, and representatives as to the petitioner only prospectively;
 - (4) The declaratory ruling may be revoked, altered, or amended by OMMA at any time.
- (g) The declaratory ruling shall cease to be binding if:
- (1) A pertinent change is made in the applicable law;
 - (2) A pertinent change is made in the OMMA's rules;
 - (3) A pertinent change in the interpretation of the law is made by a court of law or by an administrative tribunal; or
 - (4) OMMA determines the actual facts are materially different from the facts set out in the petitioner's declaratory ruling petition;
- (h) OMMA may in its sole discretion decline to issue a declaratory ruling for the following reasons:
- (1) The petition does not comply with the information required by this Section;
 - (2) The petition involves hypothetical situations or alternatives;
 - (3) The petition requests OMMA make a determination as to whether a statute or rule, or application thereof, is constitutional under the Oklahoma Constitution or the United States Constitution;
 - (4) The fact(s) or issue(s) presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue a declaratory ruling;
 - (5) The issue(s) about which the declaratory ruling is requested is primary one of fact;
 - (6) The issue is presently being considered in the rulemaking proceeding or the issue is the subject of investigation, audit, administrative proceedings, or litigation;
 - (7) The issue cannot be reasonably resolved without additional legislative changes or rulemaking;
 - (8) The petitioner is the subject of an investigation, audit, or administrative proceeding or litigation as it relates to the issue(s).
 - (9) The petitioner is not identified or is anonymous;
 - (10) In the opinion of the OMMA, the issue(s) are not ripe or fit for declaratory ruling.
- (i) The petitioner may withdraw its petition for a declaratory ruling, in writing, prior to the issuance of the declaratory ruling. Where the petitioner's license expires or is surrendered during the pendency of the

declaratory proceeding, the declaratory petition shall be dismissed as moot.

(j) A petition for declaratory ruling shall not be utilized to appeal, reopen, or reconsider an administrative matter in which a final agency order has been issued.

442:1-1-15. Emergency cease and desist

If the Authority finds that an emergency exists requiring immediate action in order to protect the health or welfare of the public, the Authority may issue an order, without providing notice or hearing, stating the existence of said emergency and requiring that action be taken by the commercial licensee as the Authority deems necessary to meet the emergency. Such action may include, but is not limited to, ordering the commercial licensee to immediately cease and desist operations. The order shall be effective immediately upon issuance and commercial licensees shall immediately comply with the provisions of the order. The Authority may assess a penalty not to exceed ten thousand dollars (\$10,000.00) per day of noncompliance with the order. In assessing such penalty, the Authority shall consider the seriousness of the violation and efforts taken by the commercial licensee to comply with applicable requirements. Upon application to the Authority, the licensee shall be offered a hearing within ten (10) days of issuance of the order.

DRAFT