

**STATE OF VERMONT
CANNABIS CONTROL BOARD**

RULE 4: COMPLIANCE AND ENFORCEMENT

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4 Rule 4: Compliance and Enforcement

4.1 Section 1: General Provisions

4.1.1 Authority

The Cannabis Control Board adopts this rule pursuant to 7 V.S.A. §§ 863, 864, 881, 882, 32 V.S.A. § 7906, and other applicable law.

4.1.2 Scope and Purpose

The Board is charged with implementing and regulating a legal market for Cannabis in Vermont. This rule provides for enforcing compliance with the Board's rules.

4.1.3 Definitions

All definitions in 7 V.S.A. §§ 861 and 951 shall apply to this rule. The following definitions shall also apply:

- (a) "Board designee" means a person designated by the Board to act as its agent for the purpose of executing the Board's responsibilities. This may be an employee of the Board or of another government agency.
- (b) "Cannabis Licensed Agent" means a person employed by a Cannabis Establishment who is designated by the establishment to transport Cannabis or Cannabis Products between Cannabis Establishments.
- (c) "Caregiver" means a person who is at least 21 years of age, has met eligibility requirements as determined by the Board in accordance with this rule, and has agreed to undertake responsibility for managing the well-being of a Patient with respect to the use of cannabis for symptom relief.
- (d) "Corrective action plan" means a required set of actions imposed by the Board upon a Cannabis Establishment or dispensary for the purpose of curing a violation of Board Rules or of 7 V.S.A. chapter 33, 35, 37, or 39.

- (e) “Inventory Tracking System” means a method implemented by the Board for tracing all Cannabis and Cannabis Products grown, manufactured, and sold in Vermont.
- (f) “Licensee” means a person who has been issued a license pursuant to Board Rule 1 or Board Rule 3. A licensee does not include a person who has been issued a provisional license.
- (g) “Notice of Violation” means a document in which the Board informs a licensee or a person engaged in the transfer or sale of Cannabis or Cannabis Product that they are the subject of an enforcement action by the Board and includes such other information as required by this rule.
- (h) “Patient” means a resident of Vermont who has been issued a registration card by the Board, identifying the person as having a qualifying medical condition pursuant to the provisions of this rule.
- (i) “Pesticide” shall have the same meaning as “economic poison” as defined in 6 V.S.A. § 911(5).
- (j) “Physical site of operations” means:
 - i. a cultivator’s grow site,
 - ii. a wholesaler’s product storage facility,
 - iii. a manufacturer’s site of manufacture,
 - iv. a retailer’s store location, or
 - v. a testing laboratory’s testing facility.

4.1.4 Applicability

This rule applies to persons who engage in the sale or transfer of Cannabis or Cannabis Products, including sales or transfers related to cultivating, manufacturing, wholesaling, or retailing Cannabis or Cannabis Products. This rule also applies to those who provide testing services to persons who engage in the sale or transfer of Cannabis or Cannabis Products.

4.1.5 Time

- (a) In computing any time period, measured in days, that is established or allowed by this rule or by order of the Board or Chair:
 - (1) the day of the act or event that triggers the period shall be excluded;
 - (2) every day, including intermediate Saturdays, Sundays, and legal holidays shall be counted;
 - (3) the last day of the period shall be counted, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (b) A “legal holiday” means:
 - (1) any day declared a holiday by the President or Congress of the United States; and
 - (2) any day declared a holiday by the State of Vermont.

4.2 Complaints and Investigations

4.2.1 Investigations

The Board shall be empowered to conduct investigations of all persons who engage in the sale or transfer of Cannabis or Cannabis Products to ensure compliance with Board rules or of 7 V.S.A. chapter 33, 35, 37, or 39. The Board shall further be empowered to conduct investigations of those who provide testing services to persons who engage in the sale or transfer of Cannabis or Cannabis Products. Such investigations may include undercover investigations. Investigations shall be carried out by Board designees.

4.2.2 Complaints

The Board may accept complaints from any person regarding compliance with these rules, provided that a complaint without further corroboration will not comprise the basis for disciplinary action by the Board. Anyone may file a complaint in a manner determined by the Board and made readily available to the public. Complainants do not have a right to receive updates on disciplinary actions.

4.3 Duty to Cooperate

4.3.1 General Duty

Licensees shall cooperate with the Board and Board designees who are conducting investigations relevant to the enforcement of the Board's rules and related law.

4.3.2 Cooperation with Inspections

Licensees shall cooperate with the Board and Board designees who are conducting inspections and shall give the Board and Board designees immediate access to facilities and records upon request, including access to their physical site of operations.

4.4 Violations and Penalties

4.4.1 Violations Generally

Any violation may be the subject of an enforcement action by the Board. The Board will assess the penalty and the severity of the penalty as provided in this rule.

4.4.2 Penalties

One or more of the following penalties may be imposed for a violation in accordance with the categories defined in section 4.5 of this rule:

- (a) Requirement to produce or comply with a corrective action plan.
- (b) Fine.
- (c) Suspension of a license.
- (d) Revocation of a license.

4.5 Categories of Violations and Associated Penalties

The Board will levy fines and penalties in accordance with the following categories, provided that the maximum fines for Tier I cultivators and Tier II manufacturers shall be half the amount provided for in the categories.

To the extent a violation is not listed in this section the Board shall have discretion to assign the violation to an appropriate category and issue a penalty accordingly.

4.5.1 Category I Violations and Penalties

Category I violations are of a severity that could make a person ineligible to receive, renew, or maintain a license and include, but are not limited to:

- (a) Operating without all required permits, Board approvals, certificates, registrations and/or licenses;
- (b) Making an intentionally false statement to the Board or a Board designee;
- (c) Intentionally destroying or concealing evidence of a violation;
- (d) Failure to abide by a corrective action plan;
- (e) Failure to pay taxes to the Department of Taxes;
- (f) Knowingly permitting unlawful activity on the premises of a Cannabis Establishment or dispensary, or during transportation of Cannabis or Cannabis Product, that results in death or serious physical injury;
- (g) Operating a Cannabis Establishment or dispensary while the license for the Cannabis Establishment or dispensary is suspended or revoked;
- (h) Attempting to change ownership or assign a license to another entity without prior approval of the Board in accordance with Rule 1.15.2;
- (i) Transporting cannabis outside of the boundaries of this State;
- (j) Making verbal or physical threats to the Board or a Board designee;
- (k) Failing to immediately admit a Board designee into the premises of a Cannabis Establishment or dispensary upon request;
- (l) Refusing to allow an inspection or obstructing a Board designee from performing his or her official duties;
- (m) Purchasing or selling cannabis that has not passed the required analysis by a cannabis independent testing laboratory;
- (n) Labeling Cannabis or Cannabis Products with potency limits that do not match independent laboratory test results;
- (o) Purchasing, manufacturing, selling or otherwise utilizing Cannabis or Cannabis Products from a source that is not a licensed Cannabis Establishment or dispensary;
- (p) Purchasing, manufacturing, selling or otherwise utilizing Cannabis or Cannabis Products from a Cannabis Establishment or dispensary whose license has been suspended or revoked;
- (q) Purchasing or selling cannabis not found in the Inventory Tracking System;
- (r) Failure to properly collect taxes; or

- (s) Transporting or storing cannabis from an unlicensed source or diversion of cannabis or cannabis products.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category I violations. In no event shall a Category I penalty be greater than those permitted in this section.

For a category I violation which is the:

- (t) First violation in the immediately preceding 3 years, a civil penalty of not more than \$20,000, or a suspension for not more than 60 days, or revocation of a license or Cannabis Establishment identification card.
- (u) Second or subsequent violation in the immediately preceding 3 years, a suspension of license or cannabis establishment identification card for a length of time to be determined by the Board, or revocation of a license or Cannabis Establishment identification card.

4.5.2 Category II Violations and Penalties

Category II violations are violations of a severity that create a threat to public health or safety and include, but are not limited to:

- (a) Making an unintentional false statement or representation of fact to the Board or Board designee;
- (b) Unintentionally destroying or concealing evidence of a violation;
- (c) Failing to verify the age of, or selling or otherwise providing Cannabis or Cannabis Products to, a person who is less than 21 years, provided that patients with registry cards may enter dispensary retail operations in accordance with Board Rule 3 and 7 V.S.A. chapters 35 and 37;
- (d) Allowing a person to enter or remain in a Cannabis Establishment, dispensary, or transport vehicle who is less than 21 years of age, provided that Patients with registry cards may enter dispensary retail operations in accordance with Board Rule 3 and 7 V.S.A. chapters 35 and 37;
- (e) Permitting employment or otherwise accepting work by a person without a Cannabis Establishment identification card or temporary work permit;
- (f) Allowing a person who is less than 21 years of age to work at a Cannabis Establishment or dispensary;
- (g) Failure to separate medical cannabis sales from adult use retail sales;
- (h) Unlawful transfer of Cannabis or Cannabis Product from a dispensary into the adult use market;
- (i) Selling Cannabis or Cannabis Product in excess of transaction limits;
- (j) Failing to maintain required security systems;
- (k) Any intentional variance from approved procedures in a testing laboratory;
- (l) Failing to notify the Board of theft of Cannabis or Cannabis Products as required by Rule 2.2.17;

- (m) Using unauthorized pesticides, soil amendments, fertilizers or other crop production aids;
- (n) Transferring, moving, or disturbing Cannabis or Cannabis Product which has been placed on stop sale or quarantined by the Board without Board approval; or
- (o) Failing to destroy or selling Cannabis or Cannabis Product that has been ordered destroyed by the Board, or that has been adulterated or contaminated without successful remediation.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category II violations. In no event shall a Category II penalty be greater than those permitted in this section.

For a category II violation which is the:

- (p) First violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$15,000, or a suspension for not more than 20 days of a license or Cannabis Establishment registration card.
- (q) Second violation in the immediately preceding 3 years, a civil penalty of not more than \$20,000 or a suspension for not more than 30 days of a license or Cannabis Establishment identification card.
- (r) Third or subsequent violation in the immediately preceding 3 years, a suspension of license or cannabis establishment identification card for a length of time to be determined by the Board, or revocation of a license or Cannabis Establishment identification card.

4.5.3 Category III Violations and Penalties

Category III violations are violations of a severity that create a potential threat to public health or safety and include, but are not limited to:

- (a) Allowing consumption by any person of alcohol, Cannabis, or other intoxicants on the premises of the Cannabis Establishment or dispensary, or in areas adjacent to the premises of the Cannabis Establishment or dispensary that are under the licensee's control, except as authorized by the Board;
- (b) Failing to keep any required records, including updating the Inventory Tracking System;
- (c) Failing to respond to a Notice of Violation or failing to pay fines;
- (d) Knowingly permitting any activity on the premises of the Cannabis Establishment or dispensary, or during the transport of Cannabis or Cannabis Products from the premises, that violates Vermont law and that the licensee or an employee has knowledge of;
- (e) Selling or transferring unauthorized products or using unauthorized ingredients;
- (f) Failing to notify the Board of a modification or expansion of the facilities of the Cannabis Establishment or dispensary;
- (g) Violating packaging or labeling requirements, provided that the person or licensee who created the nonconforming label, and any retailer who allows the nonconforming label to be available for sale to a consumer, may both be liable for a violation under this subsection;
- (h) Violating advertising regulations;

- (i) Storing or delivering an unauthorized Cannabis Product or a Cannabis Product outside the Inventory Tracking System;
- (j) Failing to meet requirements for the disposal of cannabis waste;
- (k) Violating restrictions on sampling;
- (l) Exceeding maximum serving requirements for Cannabis or Cannabis Products;
- (m) Failing to comply with requirements for employee hygiene;
- (n) Failing to maintain a reasonably sanitary Cannabis Establishment or dispensary in line with industry standards or applicable regulations;
- (o) Failing to maintain adequate food safety standards, where relevant;
- (p) Selling or failing to dispose of Cannabis, Cannabis Products or food items that are spoiled;
- (q) Failing to properly update the licensee's point of contact with the Board;
- (r) Failure to maintain quality assurance/quality control program in a testing laboratory; or
- (s) Failure to maintain current standard operating procedures, where relevant.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category III violations. In no event shall a Category III penalty be greater than those permitted in this section.

For a category III violation which is the:

- (t) First violation in the immediately preceding 3 years, a corrective action plan or a civil penalty of not more than \$10,000.
- (u) Second violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$15,000, or a suspension for not more than 10 days of a license or Cannabis Establishment identification card.
- (v) Third violation in the immediately preceding 3 years, a civil penalty of not more than \$20,000 and/or a suspension for not more than 20 days of a license or Cannabis Establishment identification card.
- (w) Fourth or subsequent violation in the immediately preceding 3 years, a civil penalty of not more than \$20,000 and/or a suspension of license or cannabis establishment identification card for a length of time to be determined by the Board, or a revocation of license or Cannabis Establishment identification card.

4.5.4 Category IV Violations and Penalties

Category IV violations create a climate which is conducive to abuses associated with the sale or production of cannabis or cannabis products and include, but are not limited to:

- (a) Failing to have in the immediate possession of each Cannabis Establishment or dispensary employee, while on the premises of a Cannabis Establishment or dispensary, a Cannabis Establishment identification card or temporary work permit;
- (b) Removing, altering or covering any required notice or sign;
- (c) Failing to post any required signs;
- (d) Failure to meet employee training and supervision requirements;

- (e) Improper storage of Cannabis, Cannabis Products, or other foods;
- (f) Failure to take reasonable steps to address pest infestations;
- (g) Lack of compliance with the statutory and regulatory requirements for the operation of a Cannabis Establishment or dispensary in another jurisdiction;
- (h) Violating Cannabis and Cannabis Product transportation regulations.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category IV violations. In no event shall a Category IV penalty be greater than those permitted in this section.

For a category IV violation which is the:

- (i) First violation in the immediately preceding 3 years, a corrective action plan or a civil penalty of not more than \$5,000.
- (j) Second violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$10,000, or a suspension for not more than 10 days of a license or Cannabis Establishment identification card.
- (k) Third violation in the immediately preceding 3 years, a civil penalty of not more than \$15,000, or a suspension for not more than 20 days of a license or Cannabis Establishment identification card.
- (l) Fourth or subsequent violation in the immediately preceding 3 years, a civil penalty of not more than \$20,000 or a suspension for not more than 30 days of a license or Cannabis Establishment identification card.

4.5.5 Category V Violations and Penalties

Category V violations are inconsistent with the orderly regulation of the sale or production of cannabis or cannabis products and include, but are not limited to:

- (a) Failing to notify the Board of any change in Cannabis Establishment or dispensary contact information;
- (b) Making a payment with a check returned for insufficient funds;
- (c) Failing to properly submit reports required by the Board; or
- (d) Failure to pay for costs involved in screening or testing related to required testing within 60 days.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category V violations. In no event shall a Category V penalty be greater than those permitted in this section.

For a category V violation which is the:

- (e) First violation in the immediately preceding 3 years, a corrective action plan or a civil penalty of not more than \$2,500.
- (f) Second violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$5,000, or a suspension for not more than 5 days of a license or Cannabis Establishment identification card.

- (g) Third violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$10,000, or a suspension for not more than 10 days of a license or Cannabis Establishment identification card.
- (h) Fourth or subsequent violation in the immediately preceding 3 years, a civil penalty of not more than \$15,000 or a suspension for not more than 20 days of a license or Cannabis Establishment identification card.

4.6 Health and Safety Orders

4.6.1 Health and Safety Orders Generally

The Board may issue one or more of the following health and safety orders for a violation related to public health and safety. These orders may be issued in addition to Rule 4.4.2 penalties.

- (a) Stop-sale order.
- (b) Quarantine of Cannabis or Cannabis Product.
- (c) Destruction and, if necessary, the prohibition of Cannabis or Cannabis Product.
- (d) Cease and desist order.

4.6.2 Limitations on Health and Safety Orders

The Board may issue health and safety orders only when there is a threat or potential threat to health and safety.

4.6.3 Disposal, Quarantine, and Assignment of Costs

- (a) Licensees who are required to destroy Cannabis or Cannabis Product must dispose of it in accordance with applicable regulations in Board Rule 2.
- (b) The Cannabis Establishment or dispensary in possession of Cannabis or Cannabis Product that the Board orders destroyed or quarantined is responsible for the destruction or quarantine. The Board shall not be a tribunal for determining any potential assignment of costs among licensees for such destruction or quarantine.

4.7 Mitigating and Aggravating Factors

The Board may consider mitigating and aggravating factors when considering the severity of a penalty. Factors may include, but are not limited to:

- (a) Any prior violations that the Licensee has admitted to or was found to have engaged in.
- (b) Whether the violation impacted public health and safety.
- (c) Whether the violation is ongoing or has stopped.
- (d) Good faith measures by the Licensee to prevent the violation, including but not limited to the following:
 - i. Proper supervision;
 - ii. Consistent and documented employee training; and

- iii. Standard operating procedures established prior to the Board's investigation that include procedures directly addressing the conduct for which imposition of a penalty is being considered.
- (e) Licensee's history of success or failure with compliance checks or prior corrective action plans.
- (f) Corrective action(s) taken by the Licensee related to the current violation or prior violations.
- (g) Willfulness and deliberateness of the violation.
- (h) Circumstances surrounding the violation.
- (i) The size of the licensee or operation.
- (j) The revenues of the licensee or operation.
- (k) Licensee self-reporting the violation(s).
- (l) Owner or management personnel is the violator or has directed an employee or other individual to violate these rules or the law.

4.8 Issuance of a Notice of Violation

4.8.1 Notice of Violation

If the Board finds that a person has violated any board rule or related law, the Board may issue a Notice of Violation.

4.8.2 Content of A Notice of Violation

A Notice of Violation shall contain the following:

- (a) A concise statement of the nature of the violation.
- (b) The factual basis for the violation.
- (c) The penalty or penalties to be imposed.
- (d) Health and safety orders, if necessary.
- (e) Information about how to contest the violation, pay a waiver penalty if applicable, and submit a corrective action plan if applicable.

4.8.3 Waiver Amount

If the Board assesses a fine penalty, the amount assessed on the Notice of Violation shall be the waiver amount. Paying the waiver amount will constitute acceptance of the Board's fine penalty.

4.8.4 Sufficiency of Service

- (a) The Board may accomplish service of a Notice of Violation by delivering the notice using certified mail to a licensee's business address provided in accordance with Board Rule 1.

- (b) A Board designee may also accomplish service of a Notice of Violation through hand delivery to a Cannabis Establishment identification card holder working at a physical site of operations, to a person who controls a licensee, or to a person operating in violation of Board rules or of 7 V.S.A. chapter 33, 35, 37, or 39.
- (c) The Board shall also deliver a Notice of Violation by electronic mail provided pursuant to Board Rule 1, provided that this shall not constitute service unless a licensee chooses to accept service of a Notice of Violation by electronic mail.

4.9 Process for Notices of Violation Without Immediate Effect

Except as provided in section 4.10 of this rule, penalties imposed by a Notice of Violation will not take effect until the Board has rendered a final decision in accordance with the following process:

- (a) Within 15 days after service of a Notice of Violation, a person may contest the violation and/or the penalty to the Board by filing a response in writing. The response must specifically identify each issue and fact in dispute and state the position of the person, the pertinent facts to be determined by the Board, and the reasons supporting the person's position.
- (b) A failure to contest the violation within 15 days will constitute an admission of the violation and acceptance of the penalty.
- (c) The Board shall consider the person's response and issue a final decision in writing within 15 days after receiving the licensee's response.
- (d) A licensee who faces suspension or revocation of their license may request a hearing before the Board. The hearing shall take place within 20 days of the Board receiving the request for a hearing unless the licensee waives the timeline. Evidence may be introduced at the hearing in accordance with 3 V.S.A. § 810. The Board may issue a final decision on the record at the hearing or may issue a final decision in writing within 15 days after the hearing is complete.
- (e) The Board's final decision may uphold its original Notice of Violation, may revise the penalty or penalties to be less severe, or may dismiss the Notice of Violation.
- (f) A person who is aggrieved by the Board's final decision may appeal in accordance with 7 V.S.A. 847.

4.10 Process for Notices of Violation with Immediate Effect

Suspensions, revocations, or health and safety orders imposed by Notices of Violation will have immediate effect if they are accompanied by a written finding that the licensee's violation poses an imminent threat to public health, safety, or welfare.

If a fine or a requirement to produce a corrective action plan accompanies a penalty imposed with immediate effect, the fine or corrective action plan will not take effect until the conclusion of the process provided for in this section.

- (a) The Board's initial Notice of Violation will plainly state that the penalty takes effect immediately. The Board will confirm the Notice of Violation and penalty within 7 days.
- (b) Within 15 days of service of such a violation, a person may contest the violation and/or the penalty to the Board by filing a response in writing. The response must specifically identify each issue and fact in dispute and state the position of the licensee, the pertinent facts to be determined by the Board, and the reasons supporting the licensee's position.
- (c) A failure to contest the violation within 15 days will constitute an admission of the violation and acceptance of the penalty.
- (d) The Board shall consider the licensee's response and issue a final decision in writing within 10 days after receiving the licensee's response.
- (e) A licensee who faces suspension or revocation of their license may request a hearing before the Board. The hearing shall take place within 10 days of the Board receiving the request for a hearing unless the licensee waives the timeline. Evidence may be introduced at the hearing in accordance with 3 V.S.A. § 810. The Board may issue a final decision on the record at the hearing or may issue a final decision in writing within 10 days after the hearing is complete.
- (f) The Board's final decision may uphold its original Notice of Violation, may revise the penalty or penalties to be less severe, or may dismiss the Notice of Violation.
- (g) A licensee who is aggrieved by the Board's final decision may appeal in accordance with 7 V.S.A. 847.

4.11 Extensions and Consolidations

- (a) The Board may extend a deadline contained in section 4.9 or section 4.10 of this rule only for good cause. The Board must give written notice of the finding of good cause to the licensee who is the subject of the Notice of Violation prior to the expiration of the relevant deadline.
- (b) The Board may consolidate decisions and hearings for multiple licensees to the extent that the disputed issues in the Notices of Violations relate to substantially similar facts.

4.12 Health and Safety Notices

4.12.1 Purpose of a Health and Safety Notice

The Board may find that, even without finding a violation by a person or license holder, the Board must act to protect public health and safety.

4.12.2 Content of a Health and Safety Notice

If the Board finds that Cannabis or a Cannabis Product is or may be unsafe to the public, it may issue a Health and Safety Notice to any Cannabis Establishment and include within it a health and safety order, as provided for in section 4.6 of this rule.

The Health and Safety Notice will contain the following:

- (a) The identity of the Cannabis or Cannabis Product at issue and a concise statement of the nature of the threat to public health.
- (b) The factual basis for the threat to public health.
- (c) The health and safety order(s) to be imposed.
- (d) Information about how to contest the Health and Safety Notice.

4.12.3 Process for a Health and Safety Notice

All Health and Safety Notices will have immediate effect. Licensees may contest the notice pursuant to the process established by section 4.10 of this rule.

4.13 Letter of Warning

The Board may issue a letter of warning to a licensee instead of a Notice of Violation or other order. Letters of warning will notify a licensee of a concern with their compliance or operating standards and will be a part of the licensee's record with the Board. No penalty will be associated with a letter of warning.

4.14 Confidentiality

The Board will keep confidential information to the extent required by 7 V.S.A. §§ 901(h), 952(c), and 973(b).