

3796:5-7-01Advertising.

(A) For purposes of this rule, "advertisement" means any written or verbal statement, illustration, or depiction created to induce sales through the use of or a combination of letters, pictures, objects, lighting effects, illustrations, or other similar means. An "advertisement" includes brochures, promotional and other marketing materials. An advertisement with a high likelihood of reaching persons under the age of eighteen is prohibited.

(B) The state of Ohio has a compelling interest in ensuring that any advertisement or marketing campaigns related to or involving medical marijuana does not encourage, promote, or otherwise create any impression that marijuana is legal or acceptable to use in a manner except as specifically authorized by Chapter 3796. of the Revised Code or the rules promulgated in accordance with Chapter 3796. of the Revised Code, or that recreational marijuana use has any potential health or therapeutic benefits, or that recreational marijuana use or possession is somehow not illegal.

(C) A cultivator, processor, or testing laboratory shall not use a name, logo, sign, or other advertisement unless the name, logo sign, or other advertisement has been submitted to the department and the applicable advertisement fee has been paid. Materials submitted to the department shall include, but are not limited to, the following:

(1) A brief description of the format, medium, and length of the distribution;

(2) A verification that an actual patient is not being used on the advertisement;

(3) Verification that an official translation of a foreign language advertisement is accurate;

(4) Annotated references to support statements related to effectiveness of treatment; and

(5) A final copy of the advertisement, including a video where applicable, in a format acceptable to the department.

(D) Until September 8, 2019, the department shall have 15 business days to review materials submitted under paragraph (C) of this rule. Beginning September 9, 2019, the department shall have 10 business days to review materials submitted under paragraph (C) of this rule.

(1) After the department has reviewed the proposed advertisement submitted in accordance with paragraph (C) of this rule, the department may do any of the following:

(a) Require a specific disclosure be made in the advertisement in a clear and conspicuous manner if the advertisement would be false or misleading without such disclosure;

(b) Make recommendations with respect to changes that are necessary to protect the public health, safety and welfare; or

(c) Prohibit the use of the advertisement.

(2) If the department does not complete one of the actions permitted under paragraph (D)(1) of this rule within the applicable review period, the submitted materials may be used in accordance with this chapter. However, failure by the department to act within the applicable review period does not constitute a waiver of its authority to undertake any of the actions permitted by this rule and the rules promulgated pursuant to Chapter 3796. of the Revised Code, if it is subsequently determined that the submitted material violates any provision of this chapter.

(E) No cultivator, processor, or testing laboratory shall place or maintain, or cause to be placed or maintained, an advertisement of medical marijuana or medical marijuana products, including paraphernalia, in any of the following ways:

(1) Within five hundred feet of the perimeter of a prohibited facility, a game arcade where admission is not restricted to persons aged twenty-one years or older, or a business where the placement of the advertisement targets or is attractive to children, as determined by the department;

(2) On a billboard;

(3) On a radio or television broadcast, including a system for transmitting visual images and sound that are reproduced on screens, and includes broadcast, cable, on-demand, satellite, or internet programming.

(4) On any handheld or other portable sign;

(5) With respect to public places, on a handbill, leaflet or flyer directly handed, deposited, fastened, thrown, scattered, cast, or otherwise distributed to any person;

(6) Left upon any private property without the consent of the property owners;

(7) On or in a vehicle, public transit vehicle, or public transit shelter; or

(8) On or in a publicly-owned or operated property.

(F) An advertisement for a cultivator, processor, or testing laboratory, regardless of the medium, shall not:

(1) Include any image bearing a resemblance to a cartoon character, fictional character whose target audience is children or youth, or pop culture icon;

- (2) Market, distribute, offer, sell, license, or cause to be marketed, distributed, offered, sold, or licensed, any apparel or other merchandise related to the sale of medical marijuana, to an individual under eighteen years of age;
- (3) Suggest or otherwise indicate that the product or entity in the advertisement has been approved or endorsed by the department, the state of Ohio or any person or entity associated with the state of Ohio;
- (4) Advertise in a manner that is inconsistent with the medicinal and approved use of medical marijuana;
- (5) Encourage the use of medical marijuana for a condition other than a qualifying medical condition; or
- (6) Contain any statement, design, representation, picture, or illustration that is:

 - (a) False or misleading;
 - (b) A departure from the medical marijuana registered name, including marijuana leaves, slang terms, and similar references;
 - (c) Disparaging to a competitor's products;
 - (d) Obscene or indecent; or
 - (e) Related to the safety or efficacy of medical marijuana, unless supported by substantial evidence or substantial clinical data.
- (G) A cultivator, processor, or testing laboratory may develop a website or otherwise establish a web presence advertising the name, business address, contact information, and services provided by a cultivator, processor, or testing laboratory. A cultivator, processor, or testing laboratory operating a website shall require age affirmation of at least eighteen years of age by the user before access to the website is granted. A cultivator, processor, or testing laboratory that establishes any type of web presence shall not:

 - (1) Allow for direct engagement between consumers or user-generated content or reviews;
 - (2) Provide a medium for website users to transmit website content to individuals under the age of eighteen;
 - (3) Target a consumer group with a high likelihood of reaching individuals under the age of eighteen;
 - (4) Display or otherwise post content that has not been submitted to the department

under paragraph (C) of this rule:

- (5) Transact business or otherwise facilitate a sales transaction to consumers or businesses; or
- (6) Maintain a web presence that would otherwise violate rule 3796:5-7-01 of the Administrative Code.

(H) A cultivator, processor, or testing laboratory shall not do any of the following:

- (1) Display external signage larger than sixteen inches in height by eighteen inches in width that is not attached to the entity's permanent structure;
- (2) Illuminate a sign advertising a medical marijuana product or strain at any time;
- (3) Sell or otherwise distribute clothing, apparel or wearable accessories, unless such sale or distribution is to an employee for purposes of identification while at the licensed facility;
- (4) Advertise medical marijuana brand names or utilize graphics related to medical marijuana on the exterior of the building in which the cultivator, processor, or testing laboratory is operating; and
- (5) Display medical marijuana, medical marijuana products, or medical marijuana paraphernalia that is visible from the exterior of the facility.
- (6) This rule, as it pertains to advertisements, does not apply to noncommercial message.

Effective: 05/06/2017

Five Year Review (FYR) Dates: 05/06/2022

CERTIFIED ELECTRONICALLY

Certification

04/24/2017

Date

Promulgated Under: 119.03
Statutory Authority: R.C. 3796.03
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