



Memorandum of Response

To: Ethan Wittkorn, Regulatory Policy Advocate
Common Sense Initiative

Cc: Carrie Kuruc, Director
Common Sense Initiative

From: Cameron McNamee, Director of Policy and Communications
State of Ohio Board of Pharmacy

Date: January 14, 2021

Re: CSI Review – Medical Marijuana (OAC 3796:7-1-01, 3796:7-2-01, 3796:7-2-04, 3796:7-3-01, 3796:8-1-01, 3796:8-2-03, 3796:8-2-04, and 3796:8-2-06)

Thank you for your review of the rule package received by the Board of Pharmacy on November 18, 2020.

Based on your approval of the package, the State of Ohio Board of Pharmacy will continue its rule filing process with the Joint Committee on Agency Rule Review (JCARR) for the following rules: 3796:7-1-01, 3796:7-2-01, 3796:7-2-04, 3796:7-3-01, 3796:8-1-01, 3796:8-2-03, and 3796:8-2-06.

The Board will continue to review rule 3796:8-2-04 and the recommendation provided by the Common Sense Initiative. The Board will file a second Memorandum of Response.





Comment Response Memo

To: Ethan Wittkorn, Regulatory Policy Advocate
Common Sense Initiative

Cc: Sean McCullough, Director
Common Sense Initiative

From: Cameron McNamee, Director of Policy and Communications
State of Ohio Board of Pharmacy

Date: July 16, 2021

Re: CSI Review – Dispensaries- Updated (OAC 3796:6-2-06, 3796:6-2-07, 3796:6-2-08, 3796:6-2-10, 3796:7-2-01, and 3796-7-2-04)

Thank you for your review of the rule package received by the Board of Pharmacy on July 15, 2021.

Based on your approval of the package, the State of Ohio Board of Pharmacy will continue its rule filing process with the Joint Committee on Agency Rule Review (JCARR).

The Board made a grammatical change for rules 3796:6-2-06, 3796:6-2-07, and 3796:6-2-08. The change is highlighted in the rules included in this memo.



3796:6-2-06 Final inspection and certificate of operation for medical marijuana dispensaries.

(A) A ~~provisional~~ dispensary ~~with a provisional license~~ licensee shall notify the board once it is capable of operating in accordance with Chapter 3796. of the Revised Code and this division, and before dispensing any medical marijuana. ~~A dispensary must name a designated representative, in compliance with rule 3796:6-3-05 of the Administrative Code and attest that fingerprint impressions for a criminal background check pursuant to rule 3796:6-2-07 of the Administrative Code have been submitted, before~~ Before such notification., the provisional dispensary licensee must:

- (1) Name a designated representative, in compliance with rule 3796:6-3-05 of the Administrative Code and attest that fingerprint impressions for a criminal background check pursuant to rule 3796:6-2-07 of the Administrative Code have been submitted;
- (2) Comply with the representations made in the application submitted by the provisional dispensary licensee that was awarded the provisional dispensary license.

(B) Within ~~fourteen~~thirty calendar days of notification an inspection of the dispensary shall be conducted in order to confirm that the dispensary is capable of operating in accordance with Chapter 3796. of the Revised Code and this division.

(C) After receiving notice of a satisfactory final inspection from the state board of pharmacy, the dispensary shall submit to the state board of pharmacy: payment of the fee required under rule 3796:6-5-01 of the Administrative Code for a certificate of operation. The initial certificate of operation shall be effective from the date the certificate ~~was~~ is issued until the expiration date of the first day of July of each odd-numbered year. Initial certificates of operation awarded on or after the first day of April of each odd-numbered year shall receive an expiration date of the first day of July of the next odd-numbered year.

~~(1) An intent to operate form in accordance with section 3796.04 of the Revised Code;~~

~~(2) A copy of the dispensary's final inspection; and~~

~~(3) Payment of the fee for a two-year certificate of operation.~~

(D) A dispensary may begin ~~dispensing~~purchasing medical marijuana to be dispensed only after receipt of a medical marijuana dispensary ~~license~~certificate of operation issued by the state board of pharmacy.

(E) If a satisfactory final inspection is not issued by the state board of pharmacy, the dispensary will be notified of necessary corrective actions. Such corrections must be made within thirty calendar days of receipt of notification of necessary corrections. ~~Failure to correct within thirty calendar days may result in forfeiture of a provisional license.~~

(F) A certificate of operation shall allow the licensed dispensary to operate at a single location. No owner, as defined under rule 3796:6-2-03 of the Administrative Code, shall be issued more than five dispensary certificates of operation at any time, unless authorized by the state board of pharmacy~~after an analysis supporting the licensing of greater than sixty dispensaries pursuant to rule 3796:6-2-05 of the Administrative Code.~~

(G) A ~~dispensary~~ certificate of operation is valid only for the collective owners, as defined under rule 3796:6-2-03 of the Administrative Code, premises and name designated on the certificate of operation and location for which it is issued. A dispensary ~~licensee~~ may not transfer or assign a certificate of operation, except as otherwise provided in this division.

3796:6-2-07 Licensing of medical marijuana dispensary associated key employees and dispensary key employees.

(A) An applicant for a dispensary associated key employee or key employee license shall ~~submit, with the dispensary license application or renewal application, a completed associated key employee application form in accordance with section 3796.12 of the Revised Code, which can be accessed by visiting www.medicalmarijuana.ohio.gov:~~

- (1) Comply with all requirements set forth in Chapter 3796. of the Revised Code and the rules adopted thereunder;
- (2) Comply with the criminal records check requirements in this rule;
- (3) Be twenty-one years of age or older; and
- (4) Submit a complete application, in a manner determined by the board, that includes all the following:
 - (a) The name and license number of the dispensary employing the applicant;
 - (b) A copy of the applicant's unexpired driver's license, identification card issued by the Ohio bureau of motor vehicles (BMV) or the equivalent issued by another state, or United States passport or United States passport card, or other identification approved by the board of pharmacy;
 - (c) An acknowledgement that the applicant has not been convicted of a disqualifying offense in any jurisdiction;
 - (d) The required fee; and
 - (e) Any additional information or documentation required by the state board of pharmacy.

~~(B) Each person seeking to be licensed as a dispensary key employee shall submit a completed dispensary key employee application form in accordance with section 3796.12 of the Revised Code, which can be accessed by visiting www.medicalmarijuana.ohio.gov.~~

~~(C) The following must be included with a dispensary associated key employee or key employee license application:~~

- ~~(1) A head and shoulders photograph captured within the previous six months, which shall be two inches tall by two inches wide;~~
- ~~(2) The name of the dispensary employing the applicant;~~
- ~~(3) A copy of the applicant's unexpired driver's license, identification card issued by the Ohio bureau of motor vehicles (BMV) or the equivalent issued by another state, or United States passport or United States passport card;~~
- ~~(4) The applicant's full residential address;~~
- ~~(5) A sworn, notarized statement that the applicant has not been convicted of a disqualifying offense in any jurisdiction;~~
- ~~(6) The applicant's social security number;~~
- ~~(7) Required fee. Any person applying for an initial associated key employee license, shall pay the required fee no later than thirty days after the award of a provisional license to the dispensary applicant to which the person is associated; and~~

~~(8) Any additional information required by the state board of pharmacy in the licensing process.~~

(B) Any person applying for an initial associated key employee license shall pay the required fee no later than thirty days after the award of a provisional dispensary license to the provisional dispensary applicant to which the person is associated.

~~(D)~~(C) Pursuant to division (B)(1) of section 3796.12 of the Revised Code, ~~prospective~~ dispensary associated key ~~employees~~employee and ~~prospective~~ dispensary key ~~employees~~employee applicants must submit fingerprint impressions to the bureau of criminal identification and investigation (BCI&I) for a criminal records check of the applicant.

~~(E)~~(D) Pursuant to division (B)(2) of section 3796.12 of the Revised Code, the person subject to the criminal records check shall submit both a BCI&I criminal records check and a federal bureau of investigation (FBI) criminal records check.

~~(F)~~(E) BCI&I shall send the results of the BCI&I and FBI criminal records checks directly to the state board of pharmacy. The state board of pharmacy requires that the criminal records check:

- (1) Be based on electronic fingerprint impressions that are submitted directly to BCI&I from a "WebCheck" provider agency located in Ohio. The state board of pharmacy may accept the results of a criminal records check based on ink impressions from a "WebCheck" provider agency only if readable electronic fingerprint impressions cannot be obtained, or if submission of ink impressions is otherwise authorized by BCI&I.
- (2) Results will only be considered valid if the fingerprint impressions were obtained within the twelve-month period immediately preceding the application date.

~~(G) An applicant may submit fingerprint impressions for a criminal records check any time after he or she has submitted a licensure application on a form in accordance with section 3796.12 of the Revised Code and paid the requisite fee to the state board of pharmacy.~~

~~(H) After the board receives the results from both required criminal records checks, the licensing process will proceed. Criminal records check results received by the state board of pharmacy within three months after the submission of a completed application will not be considered abandoned.~~

~~(I)~~(F) If a dispensary associated key employee or key employee license has ~~lapsed~~expired, the applicant shall submit to a criminal records check that meets the criteria prescribed in this rule.

~~(J)~~(G) Every applicant for a dispensary associated key employee license shall comply with Chapter 3796. of the Revised Code and this division and be included on the dispensary license application or renewal application. A dispensary wishing to add a dispensary associated key employee who is not included in the dispensary license application or renewal application, or who did not submit with the dispensary application the required items under this rule, shall apply for a change of ownership pursuant to rule 3796:6-2-12 of the Administrative Code and remit the required fee.

~~(K)~~(H) Applicants acting in compliance with this rule who meet the requirements of Chapter 3796. of the Revised Code and this division, who do not have a disqualifying offense on their record, and who remit the required fee ~~will~~shall be issued the applicable dispensary associated key or dispensary key employee ~~card~~license. Any license issued pursuant to this rule shall be effective from the date the license was issued until the expiration date of the

first day of July of each odd-numbered year. Initial licenses issued on or after the first day of April of each odd-numbered year shall receive an expiration date of the first day of July of the next odd-numbered year.

~~(I)~~(I) Except as authorized under paragraph (B) of rule 3796:6-2-09 of the Administrative Code, dispensary associated key employee and dispensary key employee licenses are non-transferrable and shall expire upon the occurrence of any of the following conditions:

(1) At the conclusion of the biennial term indicated on the dispensary ~~certificate of operation~~ associated key employee or key employee's license.

(2) When the associated key employee or the key employee is no longer employed by the licensed dispensary identified on the ~~key~~ employee's application; or

(3) When the licensed dispensary ceases to maintain its certificate of operation.

(J) A renewal application for an associated key employee or key employee license shall be submitted no later than the expiration date listed on the employee's biennial license. Renewal applications shall be accepted no earlier than ninety days prior to the expiration date on a date determined by the board's director of licensing.

~~(M)~~(K) ~~Dispensary~~ A dispensary associated key ~~employees~~employee or dispensary key employee seeking to renew their license shall ~~submit a~~ include all applicable information requested as part of the dispensary renewal application under rule 3796:6-2-10 of the Administrative Code. The following must be included with the renewal application, in a manner determined by the board, that includes all of the following:

~~(1) A head and shoulders photograph captured within the previous six months, which shall be two inches tall by two inches wide;~~

~~(2) The applicant's full residential address;~~

~~(3)~~(1) ~~A sworn, notarized statement~~An acknowledgement that the applicant has not been convicted of a disqualifying offense in any jurisdiction;

~~(4)~~(2) The required fee; and

~~(5)~~(3) Any additional information or documentation required by the state board of pharmacy ~~in the licensing process.~~

~~(N) At least thirty calendar days before the expiration of a dispensary key employee's biennial license, the key employee shall request, on a form in accordance with division (B)(2) of section 3796.12 of the Revised Code, the state board of pharmacy renew the key employee license. The following must be included with the renewal application:~~

~~(1) A head and shoulders photograph captured within the previous six months; (2) The applicants full residential address;~~

~~(3) A sworn, notarized statement that the applicant has not been convicted of a disqualifying offense in any jurisdiction;~~

~~(4) The required fee; and~~

~~(5) Any additional information required by the state board of pharmacy in the licensing process.~~

(L) A dispensary associated key employee or dispensary key employee license is valid until the expiration indicated on the employee's biennial license. A license that is not renewed by the expiration date is expired.

(M) A dispensary associated key employee or dispensary key employee who fails to renew their license in accordance with this rule is prohibited from engaging in the activities authorized by Chapter 3796. of the Revised Code and Chapter 3796. of the Administrative Code.

(N) A dispensary associated key employee or dispensary key employee with an expired license may apply to reinstate their license in accordance with this rule.

(O) If any information contained in the application or accompanying documents changes after being submitted to the state board of pharmacy, the applicant shall immediately notify the state board of pharmacy in writing and provide corrected information within fourteen days of the change.

3796:6-2-08 Licensing of medical marijuana dispensary support employees.

- (A) ~~Each person seeking to licensed as~~ An applicant for a dispensary support employee license shall ~~submit a completed dispensary support employee application form in accordance with section 3796.13 of the Revised Code, which can be accessed by visiting www.medicalmarijuana.ohio.gov.~~
- (1) Comply with all requirements set forth in Chapter 3796. of the Revised Code and the rules adopted thereunder;
- (2) Comply with the criminal records check requirements in this rule; (3) Be twenty-one years of age or older; and
- (4) Submit a complete application, in a manner determined by the board, that includes all the following:
- (a) The name and license number of the dispensary employing the applicant; (b) The printed name, license number, and signature of the designated representative of the dispensary employing the applicant;
 - (c) A copy of the applicant's unexpired driver's license, identification card issued by the Ohio bureau of motor vehicles (BMV) or the equivalent issued by another state, or United States passport or United States passport card, or other identification approved by the board;
 - (d) An acknowledgment that the applicant has not been convicted of a disqualifying offense in any jurisdiction;
 - (e) The required fee; and
 - (f) Any additional information or documentation required by the state board of pharmacy.
- (B) ~~The following must be included with a dispensary support employee license application:~~
- ~~(1) A head and shoulders photograph captured within the previous six months; (2) The name and license number of the dispensary employing the applicant;~~
 - ~~(3) The printed name, license number, and signature of the designated representative for the dispensary employing the applicant;~~
 - ~~(4) A copy of the applicant's unexpired driver's license, identification card issued by the Ohio bureau of motor vehicles (BMV) or the equivalent issued by another state, or United States passport or United States passport card;~~
 - ~~(5) The applicant's full residential address;~~
 - ~~(6) A sworn, notarized statement that the applicant has not been convicted of a disqualifying offense in any jurisdiction;~~
 - ~~(7) The applicant's social security number; and~~
 - ~~(8) Any additional information required by the state board of pharmacy in the licensing process.~~

~~(C)~~(B) Pursuant to section 3796.13 of the Revised Code, ~~prospective~~ dispensary support ~~employees~~employee applicants must submit fingerprint impressions to the bureau of criminal identification and investigation (BCI&I) for a criminal records check of the applicant.

~~(D)~~(C) Pursuant to section 4776.02 of the Revised Code, the criminal records check performed by BCI&I shall consist of both a BCI&I criminal records check and a federal bureau of investigation (FBI) criminal records check. BCI&I shall send the results of the BCI&I and FBI criminal records checks directly to the state board of pharmacy.

~~(E)~~(D) The state board of pharmacy requires that the criminal records check:

- (1) Be based on electronic fingerprint impressions that are submitted directly to BCI&I from a “WebCheck” provider agency located in Ohio. The state board of pharmacy may accept the results of a criminal records check based on ink impressions from a “WebCheck” provider agency only if readable electronic fingerprint impressions cannot be obtained, or if submission of ink impressions is otherwise authorized by BCI&I.
- (2) Results will only be considered valid if the fingerprint impressions were obtained within the twelve-month period immediately preceding the application date.

~~(F) An applicant may submit fingerprint impressions for a criminal records check any time after he or she has submitted a licensure application on a form in accordance with section 3796.13 of the Revised Code and paid the requisite fee to the state board of pharmacy.~~

~~(G) After the board receives the results from both required criminal records checks, the licensing process will proceed. Criminal records check results received by the state board of pharmacy within three months after the submission of a completed application will not be considered abandoned.~~

~~(H)~~(E) If a dispensary support employee license has ~~lapsed~~expired, the applicant shall submit to a criminal records check that meets the criteria prescribed in this rule.

~~(H)~~(F) Applicants under this rule who meet the requirement of Chapter 3796. of the Revised Code and this division, who do not have a disqualifying offense on their record, and who submit the required fee ~~will~~shall be issued a dispensary support employee ~~card~~license. Any license issued pursuant to this rule shall be effective from the date the license ~~was~~is issued until the expiration date of the first day of July of each odd-numbered year. Initial licenses issued on or after the first day of April of each odd-numbered year shall receive an expiration date of the first day of July of the next odd-numbered year.

(G) Except as authorized under paragraph (B) of rule 3796:6-2-09 of the Administrative Code, a dispensary support employee license is non-transferrable and shall expire upon the occurrence of any of the following conditions:

- (1) At the conclusion of the biennial term as indicated on the support employee's ~~identification card~~license.
- (2) When the support employee is no longer employed by the licensed dispensary identified on the support employee's application; or

(3) When the licensed dispensary identified on the support employee's application ceases to maintain its certificate of operation.

(H) A renewal application for a support employee license shall be submitted no later than the expiration date listed on the employee's biennial license. Renewal applications shall be accepted no earlier than ninety days prior to the expiration date on a date determined by the board's director of licensing.

~~(K)(1) At least thirty calendar days before the expiration of a~~ dispensary support ~~employee's~~employee biennial license, ~~the dispensary identified on the support employee's application shall request, on a form in accordance with division section 3796.13 of the Revised Code, the state board of pharmacy renew the support employee license. The following must be included with the~~submit a renewal application, in a manner determined by the board, that includes all the following:

~~(1) A head and shoulders photograph captured within the previous six months;~~

~~(2) The applicant's full residential address;~~

~~(3)(1) A sworn, notarized statement~~An acknowledgement that the applicant has not been convicted of a disqualifying offense in any jurisdiction;

~~(4)(2)~~ The required fee; and

~~(5)(3)~~ Any additional information or documentation required by the state board of pharmacy ~~in the licensing process.~~

(J) A dispensary support employee license is valid until the expiration indicated on the employee's biennial license. A license that is not renewed by the expiration date is expired.

(K) An individual who fails to renew their license in accordance with this rule is prohibited from engaging in the activities authorized by Chapter 3796. of the Revised Code and Chapter 3796. of the Administrative Code.

(L) A dispensary support employee with an expired license may apply to reinstate their license in accordance with this rule.

(M) If any information contained in the application or accompanying documents changes after being submitted to the state board of pharmacy, the applicant shall immediately notify the state board of pharmacy in writing and provide corrected information within fourteen days of the change.