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February 17, 2020

Marijuana Regulatory Agency
Legal Section
P.O. Box 30205
Lansing, MI 48909

Re: Comments to Proposed Combined Topic-Based Rule Sets

To Whom it May Concern:

As the chair of the Cannabis Law Practice at Dykema, I am writing to offer comments on the Michigan Marijuana Regulatory Agency's (the "MRA") proposed combined topic-based rule sets: Marijuana Licenses; Marijuana Licensees; Marijuana Operations; Marijuana Sampling and Testing; Marijuana Infused Products and Edible Marijuana Products; Marijuana Sale or Transfer; Marijuana Employees; Marijuana Hearings; Marijuana Disciplinary Proceedings; Industrial Hemp for Marijuana Businesses; and Medical Marijuana Facilities (Rescinded) (collectively referred to as the "Proposed Rules") being promulgated pursuant to the Medical Marihuana Facilities Licensing Act ("MMFLA") and the Michigan Regulation and Taxation of Marihuana Act ("MRTMA").

As you know, our attorneys and government policy advisors represent clients in all facets of the medical and adult use cannabis industry. Our comments are based on our collective experience and the experience and views of many of our clients. Pursuant to the rulemaking process and the request for public comments, please find below Dykema's comments and recommendations on the proposed rules.

1. General Global Comments

Although most of our comments are targeted to isolated provisions within the Proposed Rules, and are set forth below on a rule by rule basis, two of our comments implicate issues that are reflected by multiple proposed rules.

First, as a general matter, all provisions related to Labor Peace Agreements should be eliminated. A mandate to enter into Labor Peace Agreements as a condition of licensure violates the National Labor Relations Act ("NLRA") and exceeds the statutory authority given to the

Department. Additionally, Labor Peace Agreements effectively place the terms and conditions of employment in the hands of an arbitrator. In an industry that is just beginning to find its way, and where income and expenses already fluctuate wildly, requiring critical economic decisions to be made by a third party does nothing to protect the interests of the industry, patients, consumers, and the state. Therefore, all provisions related to Labor Peace Agreements should be removed in entirety from all rule sets.

Second, we believe that there should be significant rewrites of the testing provisions. We have already seen instances where MRA has imposed new standards and ordered hundreds of thousands of dollars of product to be destroyed, only to then realize that the standards were flawed or should be implemented differently, and reverse course. Producers who were ordered to destroy product that MRA later determined was not harmful have suffered significant economic harm with no recompense. We believe these concerns are best addressed by allowing greater flexibility when it comes to remediation and by broadening the concept of administrative holds beyond simply cases of rules violations, to also encompass product that has initially failed testing. This would provide producers the ability to contest the appropriateness or sufficiency of testing standards without having to destroy viable product.

Third, we believe that the MRA should exercise its authority to establish new license types to establish a license for receiver businesses. As we have learned from other states, we should expect significant business failures in this industry. Yet, cannabis businesses cannot avail themselves of federal bankruptcy protection. Additionally, MRA's rules provide for the suspension and revocation of licenses. In an industry where licensees may have product midstream in growth or production, or significant inventories, suspending operations can lead to significant loss, and jeopardize the interests of creditors. This can also incentivize product diversion. Having licensed receivers able to step in to operate or liquidate facilities serves numerous public interests.

2. Marijuana Licenses 2019-67 LR

<u>R 420.1(1)(c)—Definition of "Applicant"</u>

The term "indirect ownership interest," used in 420.1(1)(c)(i), comes directly from the MMFLA but was not defined by the Legislature, leading to confusion and inconsistent practice and advice from attorneys in the industry. The Proposed Rules should either define the term or state that MRA will provide guidance as to the MRA's interpretation. We often see what may be considered indirect interests arise through the provision of equity in only one license of an entity that possesses multiple licenses, or with respect to one product line. Today, it is not clear if an indirect interest of 10% should be calculated based on total equity, total revenues, or some other metric. MRA guidance would be useful.

Also, we appreciate the express permission for both financing arrangements and licensing agreements. Under 420.1(1)(c)(ii)(A) and (D), however, we recommend defining the terms "reasonable interest rate" and "reasonable payment," respectively. At a minimum, the rules should state that MRA will provide guidance to the industry with respect to these terms.

R 420.1(1)(l)—Definition of "Employee"

Under 420.1(1)(l), the definition of "Employee" excludes "individuals providing trade services who are not normally engaged in the operation of a marihuana business." Dykema suggests that the language read "Employee" does not include "individuals providing trade ***or professional*** services who are not normally engaged in the operation of a marihuana business.

R 420.3—Application procedure; requirements

Under 420.3(2), Dykema suggests allowing prequalification status for grow facilities currently under construction to extend beyond 1 year to avoid having to re-qualify grow facilities whose municipal approval process and construction schedule often extends far beyond that timeframe. This is especially problematic when a municipality requires prequalification status as a condition to local approval, and prequalification status could be temporarily lost. Dykema suggests providing that the MRA may request updated information from an applicant within 90 days prior to the expiration of prequalification status, and allow applicants with their facility under construction to maintain uninterrupted prequalification status so long as circumstances have not changed in a manner that affects suitability.

R 420.4—Application requirements; financial and criminal background

Under 420.4(2)(a)(i)(C), Dykema suggests amending the language "all loans" to read "all loan types specified by the Department," thus providing explicit authority for the MRA to exclude auto loans, credit cards, student loans or other loans that the MRA may find to be unnecessary to examine.

Under 420.4(13), while we understand the need to have adult-use licensees pass a facility inspection on a timely basis, we also believe that this requirement provides municipalities the ability to sidestep important MRTMA protections, at least insofar as MRA requires local certificates of occupancy as a condition for passing inspection. As you know, MRTMA provides municipalities the ability to opt out of allowing adult use businesses in their communities, but MRTMA also explicitly states that ineligibility of an applicant to receive a license on this basis must be tested as of the time the applicant files its application. MRTMA also expressly provides that a municipal ordinance may not prevent an applicant from operating certain types of adult-use establishments where the applicant already has an operating MMFLA facility. Despite the fact that MMFLA and MRTMA operations and impacts are identical in nature (indeed, for many

license types the only observable difference is the color of the Metrc tag), we have seen municipalities refusing to issue certificates of occupancy for adult-use purposes to existing medical facilities. A licensee should have the ability to demonstrate to MRA that a municipality is improperly withholding documentation, without being forced to suffer a license denial and then sue either the MRA or the municipality.

R 420.5—Application requirements; complete application

Under 420.5(4)-(5), Dykema suggests allowing more than 5 days for applicants to supply missing information or proof of corrected deficiencies to the agency, at least in the case of MMFLA applicants for whom there is no 90-day deadline for MRA decision making.

R 420.10—Proof of financial responsibility; insurance

Dykema suggests adding language to sections (1) and (4) that would require licensees to maintain $100,000 in liability insurance ***per location*** as opposed to per license.

R 420.11—Capitalization requirements; medical marihuana facilities licensing act

Dykema suggests amending section (1) to read "On its initial application for licensure under the medical marihuana facilities licensing act, an applicant shall disclose the sources and total amount of capitalization to operate and maintain a proposed marihuana facility." In other words, the capitalization requirements should not be applicable to the expansion of existing facilities.

R 420.12—Denial of a marihuana license; additional reasons

Dykema suggests that 420.12(2)(e) and (n) apply to adult-use applicants only, as they again stem from the MRA's need to more quickly process adult-use applications.

R 420.13—Renewal of state license

Under section (1)(a) and (2) the MRA is requiring spouses on renewal applications to be fingerprinted, and apparently treating a disqualified spouse as a basis to disqualify an entity on renewal. This applies new "applicant" language from 2018 statutory amendments to both initial applicants ***and*** renewals. We believe this is entirely contrary to legislative intent and to the language of the MMFLA.

The original set of amendments proposed by LARA/BMMR in 2018 made the definitional change equally applicable to those in the application process and those who had yet to file. This caused a particular concern by essentially retroactively changing the standard for

those who had already filed applications. More specifically, this caused specific concerns for applicants who worked with Rep. Kesto to ensure the changes would not be retroactively applied; this was the genesis of the language limiting the effectiveness of the change to only applications submitted "on or after January 1, 2019." To now include and enforce these standards on renewal to entities that applied before January 1, 2019, would completely subvert and undermine the Legislature's intent in adding the January 1, 2019, language.

Additionally, to add these requirements on renewal is inconsistent with the statutory language itself. The MMFLA, as amended, makes an express distinction between "Applicant" and "Licensee" under the MMFLA, as amended, along with a possible argument about MRA not properly exercising its deference when carrying out the MMFLA depending on its ultimate position. The MMFLA has specifically defined both "Applicant" and "Licensee" and references the various definitions based on whether the license is being applied for or whether it is being renewed. Thus, an "Applicant" is not a "Licensee" and a "Licensee" is not an "Applicant." Michigan courts have continuously held that "[w]hen interpreting a statute, our primary obligation is to ascertain and effectuate the intent of the Legislature. To do so, we begin with the language of the statute, ascertaining the intent that may be reasonably inferred from its language." *Lash v Traverse City*, 479 Mich 180, 187 (2007). "When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted." *Id*. The Michigan Supreme Court has further held that "ambiguity is a finding of last resort." *Stone v Williamson*, 482 Mich 144, FN 21 (2008).

The MMFLA defines "applicant" as "a person who applies for a state operating license." MCL 333. 27102(c). The statute further clarifies that applicant includes, "with respect to disclosures in an application, for purposes of ineligibility for a license under section 402, or for purposes of prior board approval of a transfer of interest under section 406, and only for applications submitted on or after January 1, 2019, a managerial employee of the applicant, a person holding a direct or indirect ownership interest of more than 10% in the applicant." *Id.* The MMFLA defines "Licensee" as "a person holding a state operating license." MCL 333.27102(j).

MCL 333.27402 provides that "[t]he board shall issue a license to an applicant who submits a complete application and pays both the nonrefundable application fee required under section 401(5) and the regulatory assessment established by the board for the first year of operation, if the board determines that the applicant is qualified to receive a license under this act." MCL 333.27402(1). Section 27402 further provides that "[a] license shall be issued for a 1-year period and is renewable annually. Except as otherwise provided in this act, the board shall renew a license if all of the following requirements are met: (a) The licensee applies to the board on a renewal form provided by the board that requires information prescribed in the rules; (b) The application is received by the board on or before the expiration date of the current license; (c) The licensee pays the regulatory assessment under section 603; and (d) The licensee meets the

requirements of this act and any other renewal requirements set forth in the rules." MCL 333.27402(9).

From the statutory language it is apparent that the Legislature intended to distinguish applicants (persons applying for a state license) and licensees (persons holding a state license). Section 27402 outlines the requirements for applicants to obtain a license, throughout the entire section pre licensure requirements are referred to by "applicant." However, provisions outlining the requirements for licensure renewal specifically reference the "licensee." Thus, the Legislature intended that the definition of applicant apply to only those seeking licensure, while the definition of licensee refer to holders of licenses.

Dykema suggests adding qualifying language to section (1)(a) and (2) carving out an exception for spouses of applicants and licensees whose original application was filed prior to January 1, 2019.

R 420.21—Designated consumption establishment license

Dykema suggests adding "***program or manual***" to section (2)(k) to read: "A documented employee training ***program or manual*** that addresses all components of the responsible operations plan."

R 420.27—Marihuana delivery business

Dykema recommends removing rule 420.27 in its entirety. Licensees who make significant investments in facility construction, inventory, and operating costs have a meaningful financial incentive to fully comply with statutory and regulatory obligations. A licensee who makes no such investment and has a role simply limited to delivering retail product does not have such incentives. This new license type simply presents too much risk.

3. Marijuana Licensees 2019-68 LR

R 420.108—Grower license

Under section (6), Dykema suggests defining "investor."

R 420.109—Processor license; exception for industrial hemp

Under section (1), Dykema suggests re-wording the section to read "A processor license authorizes purchase of marihuana only from a grower or another processor." Currently, the section allows the sale of marihuana from another processor but not the purchase. If the sale is authorized to another processor, it is inherent that the purchase would also be allowed. (We note

also that the title of this rule includes "exception for industrial hemp," yet the rule does not mention hemp.)

4. Marijuana Operations 2019-69 LR

R 420.201—Definitions

Under 420.201(1)(c), Dykema suggests extending the definition of Administrative Hold to include the failure to meet testing standards, and allow facilities having product that fails testing standards to hold the product during an investigation into alleged violations or sufficiency of testing standards.

Under 420.201(1)(e)(ii)(D), the MRA should define what is a "reasonable payment" under a licensing agreement.

R 420.203—Marihuana licenses; licensees; operations; general

420.203(2)(a) provides that "a marihuana business shall be partitioned from any other marihuana business or activity, any other business, or any other dwelling." While section (2)(a) provides an exception for operation of separate licenses at the same location and for operation of equivalent licenses at the same location, we believe that the current language does not fully contemplate the processing of industrial hemp. Section 7(1) of the Industrial Hemp Research and Development Act (the "Hemp Act") states that a processor licensed under the MMFLA may process industrial hemp. Therefore, we believe that language should be added at the end of section (2)(a) of proposed rule 420.203 to read "a marihuana business shall be partitioned from any other marihuana business or activity, any other business, or any other dwelling, ***other than activities in which marihuana businesses are entitled to participate, and provided further that growers and processors operated at the same location under R 420.204 shall not be required to partition.***" (This latter provision would eliminate the need for costly "mantraps" in co-located and integrated grower and processor facilities.)

Although the language of 420.203(2)(c) appears in the current rules, we believe that the MRA should remove the requirement that marihuana businesses must be contiguous. To date, MRA has allowed licensed activities to be in out-buildings on the same parcel as primary buildings (e.g., for grinding of waste). At a minimum, the MRA should at least define contiguous to mean structures located on one parcel.

Dykema suggests removing the prohibition against drive through operations in 420.203(2)(g).

R 420.204—Operation at same location

Dykema suggests amending 420.204(2)(d)(iii) to read "Have separate entrances, exits, inventory, record keeping, and point of sale operations ***other than for growers and processors at the same location***."

As noted above, in 420.204(2)(d)(ii) MRA should remove the requirement that marihuana businesses must be contiguous.

Dykema suggests adding a subsection (4)(d) under 420.204 that makes clear that a laboratory co-located with an existing non-marijuana testing laboratory must comply with all building security, design, and other MRA operational rules.

R 420.205—Equivalent licenses; operation at same location

Under 420.205(2)(c) to operate equivalent licenses at the same location, the operation cannot "circumvent a municipal ordinance or zoning regulation that limits the marihuana business under the acts." MCL 333.27956, however, provides that "[a] municipality may not adopt an ordinance that . . . prohibits a marihuana grower, a marihuana processor, and a marihuana retailer from operating within a single facility or from operating at a location shared with a marihuana facility operating pursuant to the medical marihuana facilities licensing act." Dykema suggest that this exact language be added to the end of (2)(c) after a "provided, however," in order to comply with the statutory requirements and prevent municipalities from sidestepping them.

R 420.206—Marihuana business; general requirements

Under 420.206(1)(b)(ii), cultivation may occur outdoors if "all drying, trimming, curing, or packaging of marihuana occurs inside the building meeting all the requirements under these rules." Dykema suggests adding "Provided, however, that marihuana may be transported to a grower or processor without drying, trimming, curing, or packaging of marihuana."

Under 420.206(8)(b), Dykema suggests defining the term "supervisory analyst."

Under 420.206(11), the term 'inactive ingredients' is a pharmaceutical product term. While the term and this requirement is sensible with respect to distillate blended with other products and intended for inhalation through vaping, to the extent that edibles or other supplements have ingredients that may be on the FDA inactive ingredient list, they are not intended to "facilitate the transport of marihuana in the body" and therefore the regulation makes no sense as applied to edible or ingestible marihuana products. As non-pharma products or supplements, such products should simply be required to list the ingredients pursuant to FDA labeling regulations (for food products).

420.206(14) requires marihuana businesses to comply with updated standards issued by the agency within 60 days of their adoption. However, for growers, 60 days does not provide enough time for a grow cycle to occur and product to be tested to comply with any changes. Therefore, Dykema suggests adding "Except in cases of public health emergencies, a lab must validate new tests within 60 days of adoption by the agency and growers and processors must meet the standards adopted by the agency within 150 days of adoption."

420.206(16)(a)-(b) quite simply amounts to a regulatory taking and must be removed. The agency has no statutory authority to force a sale of product to a third party "to ensure that all marihuana businesses are properly serviced." Such a regulation amounts to a regulatory taking and forces marihuana businesses to eliminate their competitive business advantage. By ***mandating*** sales in certain circumstances, it also puts the MRA itself in direct violation of the federal Controlled Substances Act, eliminating the defense to pre-emption challenges to the MMFLA (and, by extension, to MRTMA) relied upon by the Michigan Supreme Court in *Ter Beek v City of Wyoming*, 495 Mich 1 (2014). This step would thus threaten to undermine Michigan's entire statutory framework for the industry.

R 420.207—Marihuana delivery; limited circumstances

Under 420.207(3), Dykema suggests changing "shall establish procedures" to "***may*** establish procedures." (Otherwise, this could be read as mandating delivery for businesses that may choose not to engage in this practice.)

Under 420.207(4)(c), Dykema suggests amending the language to read: "All marihuana delivery employees meet the requirements in R 420.602 and are employees, ***as defined in R 420.601(1)(d)***, of the marihuana sales location.

R 420.208—Building and fire safety

Under 420.208(5), we believe that the MRA and Bureau of Fire Services needs to re-assess whether growers should be treated as an industrial use. This unique Michigan treatment has led to numerous requirements that are not present in any other state, including such absurdities as mandating sprinklers and specific paths and distances for marijuana planted outdoors under plastic high tunnels.

R 420.209—Security measures; required plan; video surveillance system

Under 420.209(3) Dykema suggests adding "***or other electronic or keypad access***" after "door locks." (The current mandate for commercial grade locks has been interpreted by some in MRA Enforcement to require low-tech deadbolt style locks, when electronic access controlled doors are more secure.)

5. Marijuana Sampling and Testing 2019-70 LR

R 420.301—Definitions

Under 420.301(1)(h) "Final Package" is defined as "the form a marihuana product is in when it is available for sale by a marihuana sales location." We believe the definition is ambiguous because it references the "form" of the product itself. The definition should reference the packaging, not the form of the product. Therefore, we suggest the definition be amended to read: "Final Package means the outermost container or box the marihuana product is house in when it is available for sale by a marihuana sales location."

R 420.303—Batch; identification and testing.

Dykema suggests that MRA clarify in 420.303(1) that each immature plant counts as one plant toward the grower plant count. As the MRA and others have determined, this is the count methodology required by the wording of the MMFLA. However, this provision for batch tagging in Metrc, while correct, continues to be misinterpreted, especially by new market entrants.

420.303(5) currently allows marihuana product that fails testing and is remediated to be sold or transferred once approved by the agency. We believe that agency approval should not be required for marihuana product that passes (under R 420.306) two subsequent re-tests following remediation.

Under 420.303(9), the MRA should change the language "anytime the marihuana product changes form" to read "anytime the marihuana product changes ***state***."

R 420.304—Sampling; testing

Under 420.304(2)(b)-(c), the MRA should amend section (2)(b) to read "The agency may publish sample sizes for other marihuana products being tested, ***and may provide for a maximum harvest batch size***." Additionally, the MRA should move the language at the end of section (2)(c) to the end of (2)(b) to now read "The laboratory must have access to the entire batch for the purpose of sampling and ***shall ensure that the sample increments are taken from throughout the batch***." (Sampling methodology should remain under the full control of the laboratory, not growers, and growers should not be held responsible for a laboratory's failure to take appropriate samples.)

In 420.304(2)(h), laboratories should be the parties responsible for uploading accurate data from the certificate of analysis into the statewide monitoring system. Certificates of analysis are not standardized, vary from lab to lab, and are commonly misunderstood.

Dykema suggests amending 420.304(2)(i) to read "This provision does not apply to a laboratory who engages another laboratory to perform certain safety tests on a subcontracted basis, ***or to a laboratory under common ownership***."

R 420.305—Testing; laboratory requirements

420.305(3) should be clarified so as to not interpret the section to mean a marihuana product needs to be tested every time it changes form (or state). Testing should be required before sale or transfer, but not when form changes due to processing.

420.305(10) currently sets a zero tolerance for chemical residue (pesticides). However, extremely low levels of pesticide residue is possible. We believe that chemical residue should have an action limit instead of a limit of quantification. Having an LOQ with a fail for even the slightest amount of chemical residue creates excess costs or production because potentially large batches must then be destroyed. At the very minimum we believe that R 420.306(3) should be amended to allow product that tests positive for chemical residue to be remediated to fall below the action limit allowable.

We believe that the accuracy thresholds for all licensed labs should be published by the department. This would allow other licensees to monitor and be aware of labs that are the most accurate.

The MRA should add a 420.305(2) stating that, "A marihuana business may have a failed batch R&D tested by a different laboratory to determine whether or not the laboratory that performed the initial test may have made an error. If an R&D test contradicts the failed result, the department will investigate the failed result and may have the item selected for random sampling by another licensed lab."

Finally, Dykema suggests adding a provision to Rule 420.305 that allows laboratories prelicensure possession of marihuana for the purpose of validating testing equipment. (With the passage of MRTMA, owners and operators of prelicensed laboratories have the legal authority to possess marijuana.)

R 420.306—Testing marihuana product after failed initial safety testing and remediation

Dykema suggests amending 420.306(2) to add a provision that prevents immediate destruction of product if the marihuana business is challenging the validity of testing. In this case, product would be required to be placed under an administrative hold as defined in R 420.501.

As discussed above, 420.306(3) is not ideal in practice. Currently, the rules propose a zero tolerance for chemical residue. However, ultra-low levels of chemical residue can be

attributable to accidental contamination rather than the use of a banned pesticide. Section (3) should be amended to allow processors to remediate the material to remove chemical residue. The implementation of the current section, as written, will result in exponential loses to licensees and a shortage of product for customers and patients. Growers are vulnerable to large losses as a result of accidental environmental contamination, while processors are vulnerable to large losses due to an accumulation of contamination during processing, even where no banned pesticide was utilized.

420.306(4) should be amended to specify that processors will be allowed to remediate any material that can be remediated. Additionally, this rule should allow processors to transfer material to another processor for remediation.

Finally, Dykema suggests amending section (4) to read "The agency ***shall*** publish a remediation protocol."

R 420.307—Research and Development

We believe that R&D testing should be allowed before or after final compliance testing.

6. Marijuana Infused Products and Edible Marijuana Product 2019-71 LR

R 420.403—Requirements and restrictions on marihuana-infused products; edible marihuana product

420.403(6) should be amended in accordance with our comment to R 420.206(11): The term 'inactive ingredients' is a pharmaceutical product term. To the extent non-medical marihuana products have ingredients which may be on the FDA inactive ingredient list, they are not intended to "facilitate the transport of marihuana in the body" and therefore the regulation makes no sense as applied to edible or ingestible marihuana products. As food or supplements, such products would be required to list the ingredients pursuant to FDA labeling regulations.

R 420.404—Maximum THC concentration for marihuana-infused products

420.404 should be amended to read "A marihuana sales location shall not sell or transfer marihuana infused products that exceed, ***by more than 15%***, the maximum THC concentrations established by the agency."

7. Marijuana Sale or Transfer 2019-72 LR

R 420.504—Marihuana product sale or transfer; labeling and packaging requirements

Under 420.504(1)(i), listing the name of the laboratory that performed ***any*** test, ***any*** associated batch number, and ***any*** test analysis date is very cumbersome and should be limited to certain laboratories, batch numbers, and analysis dates.

Under 420.504(1)(k)(iii), Dykema suggests amending the language to read: "For products being sold by a licensee under the medical marihuana facilities licensing act ***that exceed maximum THC levels allowed for products sold under MRTMA***, "For use by individuals 21 years of age or older only. Keep out of reach of children."

Additionally, under section (1)(k)(iv), Dykema suggests amending the language to read: "For ***all other*** products being sold by a licensee, "For use by individuals 21 years of age or older or registered qualifying patients only. Keep out of reach of children."

Together, the above changes would enable licensees to use the same labels for products that are allowed for both medical and adult-use customers, thereby reducing the costs incurred by growers and processors.

R 420.505—Sale or transfer; marihuana sales location

Dykema suggests amending section (1)(e) to read "A licensee ***selling marihuana product pursuant to*** the medical marihuana facilities licensing act."

R 420.507—Marketing and advertising restrictions

Under 420.507(6), Dykema suggests moving "under the medical marihuana facilities licensing act" to after "marihuana product" so that section (6) would read: "A marihuana product ***under the medical marihuana facilities licensing act*** must be marketed or advertised as 'medical marihuana' for use only by registered qualifying patients or registered primary caregivers."

Under 420.507(7), Dykema suggests moving "under the medical marihuana facilities licensing act" to after "marihuana product" so that section (7) would read: "A marihuana product ***under the medical marihuana facilities licensing act*** must not be marketed or advertised to minors aged 17 years or younger."

8. Marijuana Employees 2019-73 LR

R 420.602—Employees; requirements

Dykema suggests amending sections (6) and (7) to insert "***or professional***" after the word "trade".

9. Marijuana Hearings 2019-74 LR

R 420.706—Complaint by licensee

Dykema suggests adding a section that allows licensees to contest the standards set for testing.

10. Marijuana Disciplinary Proceedings 2019-75 LR

R 420.808—Citation

Dykema suggests amending section (7) to allow a licensee to provide "***a written response***" instead of limiting the response to one single page.

11. Industrial Hemp Rule for Marihuana Businesses 2019-88 LR

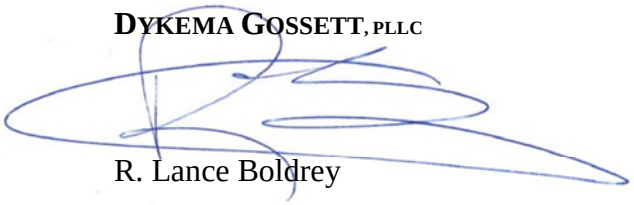
R 420.1003—Processing industrial hemp.

Sections (1), (2) and (5) of 420.1003 expressly require a medical or adult-use marijuana processor to comply with the Hemp Act and associated rules promulgated by the Michigan Department of Agriculture and Rural Development if the processor handles, processes, markets, or brokers industrial hemp. This would pose a serious compliance issue for marijuana processors that choose to process industrial hemp for several reasons. First and foremost, industrial hemp and marijuana are both defined as the plant Cannabis sativa L., with the only distinction between the two being the delta-9-tetrahydrocannabinol (THC) concentration of the plant. Under the Hemp Act, any cannabis in the processor's possession that exceeds .3% THC concentration would be considered non-compliant industrial hemp and would need to be destroyed. Thus, a marijuana processor that processes both industrial hemp and marijuana would not be in compliance with the Hemp Act because it would be processing and in the possession of cannabis with a THC concentration that exceeds the allowable limit under the Hemp Act. Similarly, a marijuana processor would be unable to use any industrial hemp-derived CBD or other ingredients in its finished marijuana products.

Therefore, the rule should be clarified to exempt marijuana processors from complying with the Hemp Act if and when the marijuana processor handles, processes, markets, or brokers cannabis with a delta-9-THC content greater than 0.3% on a dry weight basis.

Regards,

DYKEMA GOSSETT, PLLC



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