August 1, 2017

Sent via email

Jeff Wilson, Esq.
McAllister Garfield, P.C.
501 S. Cherry St., Ste. 480
Denver, CO 80246

Dear Mr. Wilson:

This letter is in response to your request for a Statement of Position pursuant to Rule R 104(A), 1 CCR 212-2, dated June 28, 2017. Your inquiry requested a Statement of Position from the Marijuana Enforcement Division ("Division") as to the following question:

"Specifically, I am asking for clarification on whether digital records immediately accessible from a licensed premises qualify as 'on premises' within the meanings of Rules R 901(A)(2)(a), 1 CCR 212-2 and M 901(A)(2)(a), 1 CCR 212-1. Would such determination depend on whether or not the licensee possesses a means of promptly providing the Division with copies of digital records upon demand, such as a printer, removable hard drive, cloud-based technology allowing electronic sharing of records with the Division, or other means?"

Electronic Business Records

The Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code each require that a licensee retain all books and records necessary to fully account for the business transactions conducted under its license(s) for the current year and three preceding calendar years. §§ 12-43.3-701(3) and 12-43.4-701(3), C.R.S. The Codes also require a licensee to provide the Division with access to these books and records for examination. §§ 12-43.3-701(2) and 12-43.4-701(2), C.R.S. *See also* Rules M 901(A), 1 CCR 212-1, and R 901(A), 1 CCR 212-2.

The Rules further specify that Medical Marijuana Businesses and Retail Marijuana Establishments must maintain on the Licensed Premises[1] at all times books and records for the preceding six months (or complete copies of such records). Rules M 901(A)(2)(a), 1 CCR 212-1 and R 901(A)(2)(a), 1 CCR 212-2.

Neither the Codes nor the Rules prohibit a licensee from maintaining records it is required to keep in an electronic format. *See* Rules M 901(B), 1 CCR 212-1 and R 901(B), 1 CCR 212-2;

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[1] Capitalized terms used but not otherwise defined herein shall have the definition as ascribed to them in the Medical Marijuana Code, 12-43.3-101, et seq., C.R.S., Retail Marijuana Code, 12-43.4-101, et seq., C.R.S., and rules promulgated thereto.

see also Rules M 901(A)(2)(a), 1 CCR 212-1 and R 901(A)(2)(a), 1 CCR 212-2 (providing that the on-premises record keeping requirement may be satisfied by maintaining a "complete copy" of required records).

Electronic Records Accessible from a Licensed Premises

Electronic records that are accessible from, but not physically located at, a licensee's Licensed Premises may satify Rules M and R 901(A)(2)(a)'s requirements. In order to be compliant, such electronic records must be available on-demand at the Licensed Premises to the Division and be in a format that is functionally accessible at the Licensed Premises to the Division. *See* Rules M 901(F), 1 CCR 212-1 and R 901(F), 1 CCR 212-2.

Further all business records must be maintained "in a format that is readily understood by a reasonably prudent business person." Rules M 901(A)(1), 1 CCR 212-1, and R 901(A)(1), 1 CCR 212-2. As such, whether maintained in hard copy or electronically, the format of any records provided to the Division must be a format that would be readily understood by a reasonably prudent business person.

Finally, please also note that, pursuant to Rules M 901(B), 1 CCR 212-1, and R 901(B), 1 CCR 212-2, any loss of electronically-maintained records shall not be considered a mitigating factor for violations of the rules. Licensees are required to exercise due diligence in preserving and maintaining all required records. *Id.* Further, violation of Rules M 901, 1 CCR 212-1, and R 901, 1 CCR 212-2, may constitute a license violation affecting public safety. Rules M 901(C), 1 CCR 212-1 and R 901(C), 1 CCR 212-2.

Thank you for your inquiry.

Sincerely,

James Burack
Director
Marijuana Enforcement Division