

7.35.2.26 DISCIPLINARY ACTIONS AND APPEAL PROCESS:

A. Immediate suspension; record review process: If immediate action is necessary to protect the health and safety of the public, the program administrator or their designee may immediately suspend the permit of a producer or laboratory in whole or in part.

(1) A permittee whose permit has been immediately suspended in whole or in part may request a record review in accordance with this part.

(2) The sole issue at a record review on a summary suspension is whether the permit shall remain suspended pending a final adjudicatory hearing and subsequent decision by the secretary.

(3) A permittee given notice of summary suspension may submit a written request for a record review. To be effective, the written request shall:

- (a) be made no later than 30 calendar days from the date of the notice issued by the department, as determined by the postmark;
- (b) be properly addressed to the medical psilocybin program;
- (c) state the requestor's name, address, and telephone number;
- (d) provide a brief narrative rebutting the circumstances of the suspension or withdrawal; and
- (e) include attachments of any additional documentation that the permittee wishes to be considered in the record review.

(4) The record review requested subsequent to an immediate suspension shall be conducted by the program administrator or their designee.

(5) The program administrator shall appoint a designee to conduct the record review by reviewing all documents submitted by the permittee and the department that are relevant to the immediate suspension.

(6) The record review shall be completed, and a written decision issued by the program administrator or their designee, no later than 15 calendar days from the date that the medical psilocybin program receives the written request for record review. The decision shall be issued to the permittee via certified U.S. postal mail.

B. Notices of disciplinary action; grounds for disciplinary action: The department may issue notice of an immediate suspension and notice of contemplated disciplinary action to a permittee. Notice shall be served upon a permittee's contact person of record. Notice shall be served via certified U.S. postal mail. A notice shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery of the notice or decision.

C. Grounds for disciplinary action: Disciplinary action may be taken against a permittee or a permit-applicant. Disciplinary action may consist of revocation, or suspension in whole or in part, of a permit, denial of an application for a permit, and other actions. Disciplinary action may be imposed based on:

- (a) violation of any provision of this rule;
- (b) selling or distributing psilocybin or a psilocybin product in a manner that is inconsistent with rule or statute;
- (c) threatening or harming a patient, a practitioner, clinician, guide, or an employee of the department;

- (d) intentionally destroying, damaging, altering, removing, or concealing evidence of a violation of rule or statute; attempting to do so; or asking or encouraging another person to do so;
- (e) conduct that shows willful or reckless disregard for health or safety;
- (f) failure to comply with the department's requested access to premises or materials;
- (g) falsification or misrepresentation of any material or information submitted to the department;
- (h) failure to adhere to any attestation, acknowledgement, verification, or other representation made to the department;
- (i) failure to submit or disclose information required by this rule or otherwise requested by the department;
- (j) failure to correct any violation of this rule that is cited as a result of a review or audit of financial records or other materials, or that is cited as a result of a monitoring visit or site inspection;
- (k) a discrepancy between a chain of custody form and the transported psilocybin product;
- (l) a finding of non-compliance with tax obligations by a taxation regulatory authority; and
- (m) a finding by the department that any person holds an ownership interest in a permit or permittee that is nominal or without the benefits and risks of genuine ownership.

D. Persons and entities who may request a hearing: The following persons or entities may request a hearing to contest an action or proposed action of the department, in accordance with this rule:

- (1) a permittee whose permit has been immediately suspended or who has received a notice of contemplated action to impose a disciplinary action; and
- (2) a permit-applicant whose application is denied for any reason other than failure to submit a completed application or failure to meet a submittal requirement of this rule.

E. Timing and content of request for hearing: A permittee or permit-applicant who wishes to request a hearing may do so by mailing a written request for hearing no later than 30 calendar days from the date that the notice of contemplated action is received, or in the case of an immediate suspension, no later than 30 days from the date of the immediate suspension. The request shall:

- (1) be properly addressed to the medical psilocybin program;
- (2) be mailed to the medical psilocybin program via certified U.S. postal mail (return receipt requested, to verify delivery);
- (3) state the requestor's name, address, and telephone number; and
- (4) include a statement of the issue(s) that the requestor considers relevant to the review of the action.

F. Hearing process:

- (1) All hearings held pursuant to this section shall be conducted by a hearing officer appointed by the secretary.
- (2) Hearings shall be conducted in Santa Fe, NM or, with the consent of the parties, in another location, via telephone, or via web video conference;

(3) Hearings held pursuant to this section that concern patients or patient-applicants shall be closed to the public. Hearings may also be closed in whole or in part, upon the request of a party, to prevent the disclosure of information that is confidential under applicable law.

(4) The hearing shall be recorded, at a minimum, by means of sound reproduction.

G. Scheduling: The department shall schedule and hold the hearing as soon as practicable, provided that the hearing shall not be held later than 60 calendar days from the date the department receives the request for hearing. The hearing officer may extend the 60 day time period upon motion for good cause shown, or the parties may extend the 60 day time period by mutual agreement. The department shall issue a notice of hearing, which shall include:

- (1) a statement of the location, date, and time of the hearing;
- (2) a short and plain statement of the legal authority under which the hearing is to be held; and
- (3) a short and plain statement of the subject of the hearing.

H. Presentation of evidence: All parties shall be given the opportunity to present evidence and argument on all relevant issues.

I. Record of proceeding: The record of the proceeding shall include the following:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence and briefs received or considered;
- (3) a statement of matters officially noticed;
- (4) offers of proof, objections, and rulings thereon;
- (5) proposed findings and conclusions; and
- (6) any findings or decisions recommended by the hearing officer for adoption by the secretary.

J. Recording: A party may request a copy of the recording of the proceedings.

K. Procedures and evidence:

- (1) A party may be represented by a person licensed to practice law in New Mexico or a non-lawyer representative, or may represent himself or herself.
- (2) The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence shall be admitted. Irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- (3) The experience, technical competence, and specialized knowledge of the hearing officer, the department or the department's staff may be used in the evaluation of evidence.
- (4) An appellant's failure to appear at the hearing at the date and time noticed for the hearing shall constitute a default.

L. Conduct of proceeding: Unless the hearing officer determines that a different procedure is appropriate, the hearing shall be conducted in accordance with the procedures set forth in this rule. The following procedures shall apply:

- (1) the appellant shall present an opening statement and the department may present an opening statement or reserve the statement until presentation of the department's case;

- (2) after the opening statements, if made, the appellant shall present their case;
- (3) upon the conclusion of the appellant's case, the department shall present its case;
- (4) upon conclusion of the appellee's case, the appellant may present rebuttal evidence; and
- (5) after presentation of the evidence by the parties, the parties may present closing argument.

M. Burden of proof: The appellant shall bear the burden of establishing by a preponderance of the evidence that the decision made or proposed by the department should be reversed or modified.

N. Continuances: The hearing examiner may grant a continuance for good cause shown. A motion to continue a hearing shall be made at least 10 calendar days before the hearing date.

O. Telephonic and web video hearings:

- (1) Any party requesting that a hearing be conducted via telephone or web video conference shall do so no less than 10 business days prior to the date of the hearing. Notice of the hearing shall be given to all parties and shall include all necessary telephone numbers or instructions for access to the web video conference.
- (2) The in-person presence of some parties or witnesses at the hearing shall not prevent the participation of other parties or witnesses by telephone or web video conference with prior approval of the hearing officer.

P. Recommended action and final decision:

- (1) The parties may submit briefs including proposed findings of fact and conclusions of law for consideration by the hearing officer.
- (2) No later than 30 calendar days after the last submission by a party, the hearing officer shall prepare and submit to the secretary a written recommendation of action to be taken by the secretary. The recommendation may include proposed findings of fact and conclusions of law for adoption by the secretary, and shall propose sustaining, modifying, or reversing the action or proposed action of the department.
- (3) The secretary shall issue a final written decision accepting or rejecting the hearing officer's recommendation in whole or in part no later than 45 calendar days after receipt of the hearing officer's recommendation. The final decision shall identify the final action taken. Service of the secretary's final decision shall be made upon the appellant by certified mail.
- (4) The final decision or order shall be included in a permittee's file with the medical psilocybin program.

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