



July 2, 2024

LICENSE OWNERSHIP, CONTROL, AND FINANCIAL INTEREST 10(B) Dispensary Eligibility Determinations

The Division of Cannabis Control (“the Division”) is issuing the following directive regarding licensees’ ongoing compliance with the Division’s Request for Information (“RFI”), issued in December 2023, pertaining to financial interest, ownership, and control of medical marijuana cultivators, processors, and dispensaries.

The Division relied upon the RFI documentation provided and outlined below to make 10(B) determinations. Until the Division issues 10(B) provisional licenses, any modifications to financial interest, ownership, or control could render a person ineligible for licensure. Therefore, prior to receiving a provisional license, **applicants who take any action that undermines the Division’s original eligibility determinations and/or lead the Division to investigate such actions may result in the removal of 10(B) eligibility, or a delay in the issuance of a provisional 10(B) license.** Examples of instruments which may constitute such actions include, but are not limited to: letters of intent, options to purchase, lending agreements, asset purchase agreements, management services agreements, consulting agreements, or any other instruments that implicate common ownership and/or control as defined herein.

Specifically, pursuant to the initiated statute and section 3780.10(B) of the Ohio Revised Code, the Division is required to issue the following licenses if the license applicant, or the same owners of the license applicant, have a current medical marijuana certificate of operation or provisional license:

- For level 1 cultivators – 3 new dispensary licenses
- For level 2 cultivators – 1 new dispensary license
- For existing medical dispensaries – 1 new dispensary license ***if the dispensary does not have any common ownership or control with any level I adult use cultivator, level II adult use cultivator or adult use processor license applicant or licensee.***

In accordance with the above directive, the Division requested all cultivators, processors, and dispensaries to provide the following to determine which entities were eligible for

10(B) licensure:

- Respondent's current organization chart, evidencing all owners, officers, and board members of Respondent, regardless of ownership interest;
- Respondent's current ownership list and capitalization table;
- A list of any individual or entity who has a financial interest in, or exercises influence or control over, Respondent who is not identified in the organization chart provided in subsection 1;
- A list of all individuals and entities with direct or indirect financial interest or control of or control over Respondent;
- A copy of any pending or executed merger, sale, option to purchase, letter of intent, consulting, management, support, administrative services, or other similar agreements between Respondent and any other person or entity, or of that entities' affiliates;
- Respondent's current operating agreement, if applicable; and
- Any other document that evidences the ownership, influence, or control of Respondent of any person or entity other than the people listed on the owners and officers roster submitted with the original application for licensure.

All communication included the following mandate:

- "Please be advised that the present RFI constitutes an ongoing request from MMCP to licensees. As such, should your entity enter into, modify, or negotiate any new documents associated with the above-referenced requests, you must immediately notify MMCP and provide updated responses as applicable."

Licensees are reminded they have an **ongoing duty to provide the Division with all updated information and documentation outlined and contemplated by the RFI**, including any and all documentation executed after the initial RFI submission. Failure to timely provide updated or modified RFI documentation may lead to enforcement action against the medical marijuana license, the 10(B) dispensary license, **or both**.

10(B) provisional licenses are non-transferrable. Upon receipt of a 10(B) provisional license, the 10(B) provisional licensee may enter into certain agreements that rise to financial interest but **shall not** change ownership or control.

Upon receipt of 10(B) certificate of operation, licensees must comply with all requirements pertaining to financial interest, ownership, and control as outlined under division 1301:18 of the Ohio Administrative Code. Furthermore, no person shall have financial interest in, ownership of, or control over more than five (5) medical marijuana dispensary licenses at any time, and no person may be issued more than eight (8) adult use dispensary licenses.

The Division is obligated to investigate any reported transfers or other credible evidence of licensees who are not in compliance with the above requirements. Licensees and 10(B) applicants are hereby advised that investigation(s) mandate significant Division resources which may delay the issuance of a provisional 10(B) license. Furthermore, the Division may take action against the licensee and/or 10(B) applicant, such as removal of application eligibility or 10(B) drawing rank, barring discovery of subsequent mitigating factors, such as rescission of the offending agreement prior to issuance of a 10(B) provisional license.

Please direct all questions pertaining to the present communication to DCC@com.ohio.gov with the subject line: "[MMCP License Number] [Business Name] – 10(B) Ownership Question."

Appendix:

Definitions:

- **"Control"** means the ability to make or significantly influence the strategic policies or management decisions ordinarily reserved for the majority owners or board of directors of a "person" as defined under these rules. Control may be established through ownership, contract, or otherwise; provided control will not be imputed on a bank or licensed lending institution that holds a mortgage or other lien on the person

acquired in the ordinary course of business.

- (a) When determining whether a person is exercising control, or has the ability to exercise control, over another, the division may consider, among other factors, whether, and to what extent, the person has any power to do the following on behalf of another:
 - (i) Adopt or amend governance documents, including articles of incorporation, articles of organization, bylaws, operating agreements, or buy-sell agreements.
 - (ii) Cause or prevent a merger, dissolution, equity sale, or asset sale.
 - (iii) Elect or remove directors or officers; or elect or remove other positions that exercise authority similar to those of a director or an officer in an Ohio corporation.
 - (iv) Exercise voting power similar to a shareholder in an Ohio corporation.
 - (v) Exercise voting power similar to a director in an Ohio corporation.
 - (vi) Call meetings of the directors or owners.
 - (vii) Regulate the authority of the owners, directors, or officers.
 - (viii) Issue shares, membership interest, or similar equity.
 - (ix) Declare dividends or distributions.
 - (x) Enter into contractually binding agreements.
 - (xi) Authorize a mortgage, pledge, lien or deed of trust on any real property or personal property.
 - (xii) Hire or fire organizations that manage day-to-day operations.
- (b) In addition to the listed factors, the division may consider any other factors listed under paragraph (3)(a) it deems relevant. Control may be established whether one, any or none of the factors listed are present.
- **“Financial interest”** means any actual or future right to ownership, or investment, with another person, either directly or indirectly, through business, investment, spouse, parent, or child, in licensed cannabis business. Financial interest does not include ownership of investment securities in a publicly-held corporation that is traded on a national securities exchange or over-the-counter market in the United States, provided the investment securities held by the person and the person's spouse, parent, or child, in the aggregate, do not exceed ten percent ownership in the licensed cannabis entity.
- **“Ownership”** means a person's, direct or indirect, present ownership interest in a person, including membership interest in a limited liability company, shares of stock in a corporation, or similar equity interests in any other corporate person; or a person's beneficial interest or proprietary interest in an individual or group of individuals. The definition of ownership does not include passive equity interest of less than ten percent in a licensed cannabis business which is for investment purposes only.
- **“Person”** includes, but is not limited to, an individual or a combination of individuals; a sole proprietorship, a firm, a company, a joint venture, a partnership of any type, a joint-stock company, a corporation of any type, a corporate subsidiary of any type, a limited liability company, a business trust, or any other business entity or organization; an assignee; a receiver; a trustee in bankruptcy; an unincorporated association, club, society, or other unincorporated entity or organization; person that are disregarded for federal income tax purposes; and any other nongovernmental, artificial, legal entity that is capable of engaging in business.

